

Journal of the Senate

SIXTY-FOURTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
 Wednesday, May 11, 2011, 10:00 a.m.

The Senate was called to order by President Stephen Morris.
 The roll was called with thirty-nine senators present.
 Senator Donovan was excused.
 Invocation by Chaplain Fred S. Hollomon.

Heavenly Father,

Nine years ago on May 9, I prayed this prayer when we were dealing with a quarter billion dollar shortfall. I mentioned that we spent some time wondering who to blame. After bringing the prayer up to date, I thought it was appropriate to pray it again.

We could try to blame the Governor
 Or the Democrats.
 We could try to blame Republicans
 Or some bureaucrats.

We might try to blame the weather
 Or the president of Iran,
 Or perhaps global warming
 Or tornadoes throughout the land

We could try to blame Obama
 Or one of the dictators,
 Maybe global warming
 Or the rash of tornadoes.

There are many people
 Who place the blame on God,
 While for many others
 The devil gets the nod.

What about the majority
 And the minority leaders?
 Or maybe it's the Chaplain,
 Or could it be the Reader!

It's a fruitless effort
 To try to place the blame,
 To find a good solution
 Is really why we came.

I have deliberately omitted
 President Morris' name.
 I may not be too smart
 But I'm certainly not insane!

I pray in the name of Christ, AMEN

The Pledge of Alliance was led by President Stephen Morris.

REPORTS OF STANDING COMMITTEES

Committee on **Commerce** recommends **HB 2054**, as amended by House Committee, be amended on page 6, following line 8, by inserting the following:

"New Sec. 9. New Sections 1 through 8, inclusive, shall become effective on July 1, 2011.";

And by renumbering remaining sections accordingly;

Also on page 6, in line 9, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 7, in line 24, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 8, in line 12, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 11, in line 26, by striking "74-8101" and inserting "74-8102"; also on page 11, in line 28, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 12, in line 9, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 14, in line 17, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 17, by striking all in lines 34 and 35;

By striking all on pages 18 through 20;

On page 21, by striking all in lines 1 through 28; in line 29, before "K.S.A." by inserting "From and after July 1, 2011,"; in line 31, by striking "74-8101" and inserting "74-8102";

On page 22, in line 28, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 23, in line 38, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 24, in line 5, by striking "74-8101" and inserting "74-8102"; in line 10, by striking "74-8101" and inserting "74-8102";

On page 25, in line 10, by striking "74-8101" and inserting "74-8102"; in line 20 by striking "74-"; in line 21, by striking "8101" and inserting "74-8102";

On page 26, in line 19, by striking "74-8101" and inserting "74-8102"; in line 39, by striking "74-8101" and inserting "74-8102";

On page 27, in line 16, following "state" by inserting "; and

(25) dispose of any direct or indirect stock or other equity or investment asset transferred to the department pursuant to this act except that such disposition shall be made in the best interests of the state of Kansas and solely at the discretion of the secretary and shall not be required otherwise";

Also on page 27, in line 31, before "K.S.A." by inserting "From and after July 1,

2011,";

On page 31, in line 30, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 33, in line 17, before "K.S.A." by inserting "From and after July 1, 2011,"; in line 30, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 34, in line 6, before "K.S.A." by inserting "From and after July 1, 2011,"; in line 14, by striking "74-8101" and inserting "74-8102"; in line 17, by striking "74-8101" and inserting "74-8102";

On page 36, in line 35, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 37, in line 18, before "K.S.A." by inserting "From and after July 1, 2011,"; in line 24, by striking "74-8101" and inserting "74-8102"; in line 27, by striking "74-"; in line 28, by striking "8101" and inserting "74-8102"; in line 33, by striking "74-8101" and inserting "74-8102"; in line 39, by striking "74-8101" and inserting "74-8102";

On page 38, in line 8, by striking "74-8101" and inserting "74-8102"; in line 12, by striking "74-8101" and inserting "74-8102"; in line 18, before "K.S.A." by inserting "From and after July 1, 2011,"; in line 34, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 40, in line 9, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 41, in line 35, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 44, in line 3, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 45, in line 9, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 47, in line 24, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 49, in line 33, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 50, in line 13, before "K.S.A." by inserting "From and after July 1, 2011,"; in line 24, before "K.S.A." by inserting "From and after July 1, 2011,"; in line 36, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 52, in line 36, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 56, in line 28, by striking all after "one"; by striking all in line 29; in line 30, by striking "year" and inserting "member shall be the secretary of commerce";

On page 59, in line 11, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 65, in line 16, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 66, in line 17, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 67, in line 16, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 69, in line 13, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 73, in line 4, before "K.S.A." by inserting "From and after July 1, 2011,"; in line 22, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 74, in line 18, before "K.S.A." by inserting "From and after July 1, 2011,";

On page 75, in line 4, before "K.S.A." by inserting "From and after July 1, 2011,"; in line 9, by striking "74-99b04,"; following line 10, by inserting the following:

"Sec. 48. K.S.A. 2010 Supp 74-99b04 is hereby repealed";

Also on page 75, in line 12, by striking "statute book" and inserting "Kansas register";

On page 1, in the title, in line 1, by striking all following "concerning"; in line 2, by striking "pertaining to" and inserting "certain state agencies; pertaining to the Kansas technology enterprise corporation and "; in line 4, before "amending" by inserting "pertaining to the membership of the Kansas bioscience authority,";

Also on page 1, in the title, in line 8, by striking "74-8101,"; in line 11, following "74-5050" by inserting ", 74-8101";

And the bill be passed as amended.

On motion of Senator Emler, the Senate recessed until 2:00 p.m.

AFTERNOON SESSION

The Senate met pursuant to recess with President Morris in the chair.

MESSAGE FROM THE HOUSE

The House adopts the Conference Committee report on **House Substitute SB 55**.

The House adopts the Conference Committee report on **SB 150**.

Announcing passage of **SB 154**, as amended by **House Substitute for SB 154**.

On motion of Senator Emler, the Senate recessed until 2:45 p.m.

The Senate met pursuant to recess with President Morris in the chair.

ORIGINAL MOTION

Senator Emler moved that subsection 4(k) of the Joint Rules of the Senate and House of Representatives be suspended for the purpose of considering the following bills: **H Sub for SB 55, H Sub for SB 129; SB 150; HB 2054**.

CONSIDERATION OF MOTIONS TO CONCUR AND NONCONCUR

Senator Abrams moved the Senate concur in House amendments to **H Sub for SB 129**.

H Sub for SB 129, AN ACT concerning elections; amending K.S.A. 25-321, 25-2203, 25-2311, 25-2352, 25-2411, 25-2416, 25-2423 and 25-2431 and K.S.A. 2010 Supp. 8-1324, 25-1122, 25-1122d, 25-1123, 25-1124, 25-1128, 25-2309, 25-2320, 25-2908, 25-3002 and 65-2418 and repealing the existing sections.

On roll call, the vote was: Yeas 15, Nays 23, Present and Passing 0, Absent or Not Voting 2.

Yeas: Abrams, Apple, Bruce, Kelsey, Love, Lynn, Masterson, Merrick, Olson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Taddiken, Wagle.

Nays: Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, King, Kultala, Longbine, Marshall, McGinn, Morris, Owens, Reitz, Schmidt A, Schmidt V, Schodorf, Teichman, Umbarger, Vratil.

Absent or Not Voting: Donovan, Steineger.

The motion to concur failed and **H Sub for SB 129** remains in conference.

On motion of Senator McGinn the Senate nonconcurred in the House amendments to **H Sub for SB 154** and requested a conference committee be appointed.

The President appointed Senators McGinn, Vratil and Kelly as a conference committee on the part of the Senate.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 55** submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill as printed as House Substitute for Senate Bill No. 55, as follows:

On page 1, following line 8, by inserting:

"New Section 1. (a) An individual who has been adjudicated as a mentally ill person subject to involuntary commitment for care and treatment, or who is prohibited from shipping, transporting, possessing or receiving firearms or ammunition by subsection (d)(4) or (g)(4) of 18 U.S.C. § 922, may petition for relief of disabilities for the purpose of firearm prohibitions imposed under state and federal laws.

(b) A petitioner shall submit such petition to a court of competent jurisdiction within this state.

(c) The court may only consider petitions for relief due to mental health adjudications or commitments that occurred within the state.

(d) The court shall consider the petition for relief, in accordance with the principles of due process. Such petitioner shall submit, and such court shall receive and consider:

- (1) The circumstances regarding the firearm disability imposed by federal law;
- (2) such petitioner's mental health records;
- (3) such petitioner's criminal history records; and
- (4) such petitioner's reputation, developed through character witness statements, testimony or other character evidence.

(e) The court shall grant relief only if such court determines there is clear and convincing evidence that:

- (1) The petitioner will not be likely to act in a manner dangerous to public safety; and
- (2) granting such relief would not be contrary to the public interest.

(f) If the court denies the petition for relief, the petitioner may petition a court of proper jurisdiction for a de novo judicial review of the court's decision to deny such petition.

(g) Documentation of a granted petition shall be submitted to the Kansas bureau of investigation. The Kansas bureau of investigation shall immediately cause such order to be entered into the appropriate state and federal databases.

(h) As used in this section:

(1) "Mentally ill person subject to involuntary commitment for care and treatment" has the same meaning as defined in K.S.A. 59-2946, and amendments thereto.

(2) "Due process" requires that:

(A) The petitioner shall have the opportunity to submit such petitioner's own evidence to the court;

(B) an independent decision maker, other than the individual who gathered the evidence for the court acting on the application, shall review such evidence; and

(C) a record of the proceedings shall be created and maintained for review.

Sec. 2. K.S.A. 2010 Supp. 12-4509 is hereby amended to read as follows: 12-4509.

(a) Whenever a person is found guilty of the violation of an ordinance, the municipal judge may:

- (1) Release the person without imposition of sentence;
- (2) release the person on probation after the imposition of sentence, without imprisonment or the payment of a fine or a portion thereof, subject to conditions

imposed by the court as provided in subsection (e); ~~or~~

(3) impose such sentence of fine or imprisonment, or both, as authorized for the ordinance violation-; *or*

(4) *impose a sentence of house arrest as provided in section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.*

(b) In addition to or in lieu of any other sentence authorized by law, whenever a person is found guilty of the violation of an ordinance and there is evidence that the act constituting the violation of the ordinance was substantially related to the possession, use or ingestion of cereal malt beverage or alcoholic liquor by such person, the judge may order such person to attend and satisfactorily complete an alcohol or drug education or training program certified by the chief judge of the judicial district or licensed by the secretary of social and rehabilitation services.

(c) Except as provided in subsection (d), in addition to or in lieu of any other sentence authorized by law, whenever a person is convicted of having violated, while under 21 years of age, an ordinance prohibiting an act prohibited by K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, or K.S.A. 8-1599, 41-719 or 41-727, and amendments thereto, the municipal judge shall order such person to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. If the judge finds that the person is indigent, the fee may be waived.

(d) If the person is 18 or more years of age but less than 21 years of age and is convicted of a violation of K.S.A. 41-727, and amendments thereto, involving cereal malt beverage, the provisions of subsection (c) are permissive and not mandatory.

(e) The court may impose any conditions of probation or suspension of sentence that the court deems proper, including, but not limited to, requiring that the defendant:

(1) Avoid such injurious or vicious habits, as directed by the court or the probation officer;

(2) avoid such persons or places of disreputable or harmful character, as directed by the court or the probation officer;

(3) report to the probation officer as directed;

(4) permit the probation officer to visit the defendant at home or elsewhere;

(5) work faithfully at suitable employment insofar as possible;

(6) remain within the state unless the court grants permission to leave;

(7) pay a fine or costs, applicable to the ordinance violation, in one or several sums and in the manner as directed by the court;

(8) support the defendant's dependents;

(9) reside in a residential facility located in the community and participate in educational counseling, work and other correctional or rehabilitative programs;

(10) perform community or public service work for local governmental agencies, private corporations organized not for profit, or charitable or social service organizations performing services for the community;

(11) perform services under a system of day fines whereby the defendant is required to satisfy fines, costs or reparation or restitution obligations by performing services for a period of days determined by the court on the basis of ability to pay, standard of living, support obligations and other factors;

(12) 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; or

(13) reimburse the city, in accordance with any order made under subsection (f), for all or a part of the reasonable expenditures by the city to provide counsel and other defense services to the defendant.

(f) In addition to or in lieu of any other sentence authorized by law, whenever a person is found guilty of the violation of an ordinance the judge may order such person to reimburse the city for all or a part of the reasonable expenditures by the city to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment.

Sec. 3. K.S.A. 2010 Supp. 12-4516a, as amended by section 103 of 2011 House Bill No. 2339, is hereby amended to read as follows: 12-4516a. (a) Any person who has been arrested on a violation of a city ordinance of this state may petition the court for the expungement of such arrest record.

(b) When a petition for expungement is filed, the court shall set a date for hearing on such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. When a petition for expungement is filed, the official court file shall be separated from the other records of the court, and shall be disclosed only to a judge of the court and members of the staff of the court designated by a judge of the district court, the prosecuting attorney, the arresting law enforcement agency, or any other person when authorized by a court order, subject to any conditions imposed by the order. The petition shall state: (1) The petitioner's full name;

(2) the full name of the petitioner at the time of arrest, if different than the petitioner's current name;

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

(4) the crime for which the petitioner was arrested;

(5) the date of the petitioner's arrest, and

(6) the identity of the arresting law enforcement agency.

A municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section, except that no fee shall be charged to a person who was arrested as a result of being a victim of identity theft under K.S.A. 21-4018, prior to its repeal, or section 177 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(c) At the hearing on a petition for expungement, the court shall order the arrest record and subsequent court proceedings, if any, expunged upon finding: (1) The arrest occurred because of mistaken identity;

(2) a court has found that there was no probable cause for the arrest;

(3) the petitioner was found not guilty in court proceedings; or

(4) the expungement would be in the best interests of justice and (A) charges have been dismissed; or (B) no charges have been or are likely to be filed.

(d) When the court has ordered expungement of an arrest record and subsequent court proceedings, if any, the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (c). The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest. If an order of expungement is entered, the petitioner shall be treated as not having been arrested.

(e) If the ground for expungement is as provided in subsection (c)(4), the court shall determine whether, in the interest of public welfare, the records should be available for any of the following purposes: (1) In any application for employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01 and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01 and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services;

(2) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(3) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(4) to aid in determining the petitioner's qualifications for executive director of the Kansas racing commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(5) in any application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142 and amendments thereto;

(6) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(7) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact; or

(8) in any other circumstances which the court deems appropriate.

(f) The court shall make all expunged records and related information in such court's possession, created prior to, on and after July 1, 2011, available to the Kansas bureau of investigation for the purposes of:

(1) Completing a person's criminal history record information within the central repository in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or

(2) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.

⊕ (g) Subject to any disclosures required under subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records have been expunged as provided in this section may state that such person has never been arrested.

(g) (h) Whenever a petitioner's arrest records have been expunged as provided in this section, the custodian of the records of arrest, incarceration due to arrest or court proceedings related to the arrest, shall not disclose the arrest or any information related to the arrest, except as directed by the order of expungement or when requested by the person whose arrest record was expunged.

Sec. 4. K.S.A. 2010 Supp. 22-2410 is hereby amended to read as follows: 22-2410.

(a) Any person who has been arrested in this state may petition the district court for the expungement of such arrest record.

(b) When a petition for expungement is filed, the court shall set a date for hearing on such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. When a petition for expungement is filed, the official court file shall be separated from the other records of the court, and shall be disclosed only to a judge of the court and members of the staff of the court designated by a judge of the district court, the prosecuting attorney, the arresting law enforcement agency, or any other person when authorized by a court order, subject to any conditions imposed by the order. Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$100. Except as provided further, the docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, 2011, the supreme court may impose an additional charge, not to exceed \$15 per docket fee, to fund the costs of non-judicial, nonjudicial personnel. The petition shall state:

- (1) The petitioner's full name;
- (2) the full name of the petitioner at the time of arrest, if different than the petitioner's current name;
- (3) the petitioner's sex, race and date of birth;
- (4) the crime for which the petitioner was arrested;
- (5) the date of the petitioner's arrest; and
- (6) the identity of the arresting law enforcement agency.

No surcharge or fee shall be imposed on any person filing a petition pursuant to this section, who was arrested as a result of being a victim of identity theft under K.S.A. 21-4018, prior to its repeal, or section 177 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or 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. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(c) At the hearing on a petition for expungement, the court shall order the arrest record and subsequent court proceedings, if any, expunged upon finding: (1) The arrest occurred because of mistaken identity;

- (2) a court has found that there was no probable cause for the arrest;
- (3) the petitioner was found not guilty in court proceedings; or
- (4) the expungement would be in the best interests of justice and (A) charges have been dismissed; or (B) no charges have been or are likely to be filed.

(d) When the court has ordered expungement of an arrest record and subsequent court proceedings, if any, the order shall state the information required to be stated in

the petition and shall state the grounds for expungement under subsection (c). The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest. If an order of expungement is entered, the petitioner shall be treated as not having been arrested.

(e) If the ground for expungement is as provided in subsection (c)(4), the court shall determine whether, in the interests of public welfare, the records should be available for any of the following purposes: (1) In any application for employment as a detective with a private detective agency, as defined in K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services;

(2) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(3) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(4) to aid in determining the petitioner's qualifications for executive director of the Kansas racing commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(5) in any application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(6) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(7) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact; or

(8) in any other circumstances which the court deems appropriate.

(f) *The court shall make all expunged records and related information in such court's possession, created prior to, on and after July 1, 2011, available to the Kansas bureau of investigation for the purposes of:*

(1) *Completing a person's criminal history record information within the central repository in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or*

(2) *providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.*

~~(g)~~ (g) Subject to any disclosures required under subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records have been expunged as provided in this section may state that such person has never been arrested.

~~(h)~~ (h) Whenever a petitioner's arrest records have been expunged as provided in this section, the custodian of the records of arrest, incarceration due to arrest or court proceedings related to the arrest, shall not disclose the arrest or any information related to the arrest, except as directed by the order of expungement or when requested by the

person whose arrest record was expunged.

(H) (i) The docket fee collected at the time the petition for expungement is filed shall be disbursed in accordance with K.S.A. 20-362, and amendments thereto.”;

And renumbering sections accordingly;

On page 8, following line 14, by inserting:

“Sec. 7. K.S.A. 2010 Supp. 22-2802, as amended by section 118 of 2011 House Bill No. 2339, is hereby amended to read as follows: 22-2802. (1) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to assure the public safety. If the person is being bound over for a felony, the bond shall also be conditioned on the person's appearance in the district court or by way of a two-way electronic audio-video communication as provided in subsection (14) at the time required by the court to answer the charge against such person and at any time thereafter that the court requires. Unless the magistrate makes a specific finding otherwise, if the person is being bonded out for a person felony or a person misdemeanor, the bond shall be conditioned on the person being prohibited from having any contact with the alleged victim of such offense for a period of at least 72 hours. The magistrate may impose such of the following additional conditions of release as will reasonably assure the appearance of the person for preliminary examination or trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise such person;

(b) place restrictions on the travel, association or place of abode of the person during the period of release;

(c) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody during specified hours;

(d) place the person under a house arrest program pursuant to section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or

(e) place the person under the supervision of a court services officer responsible for monitoring the person's compliance with any conditions of release ordered by the magistrate. *The magistrate may order the person to pay for any costs associated with the supervision provided by the court services department in an amount not to exceed \$15 per week of such supervision. The magistrate may also order the person to pay for all other costs associated with the supervision and conditions for compliance in addition to the \$15 per week.*

(2) In addition to any conditions of release provided in subsection (1), for any person charged with a felony, the magistrate may order such person to submit to a drug and alcohol abuse examination and evaluation in a public or private treatment facility or state institution and, if determined by the head of such facility or institution that such person is a drug or alcohol abuser or is incapacitated by drugs or alcohol, to submit to treatment for such drug or alcohol abuse, as a condition of release.

(3) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.

(4) A deposit of cash in the amount of the bond may be made in lieu of the

execution of the bond pursuant to ~~paragraph~~ subsection (3). Except as provided in ~~paragraph~~ subsection (5), such deposit shall be in the full amount of the bond and in no event shall a deposit of cash in less than the full amount of bond be permitted. Any person charged with a crime who is released on a cash bond shall be entitled to a refund of all moneys paid for the cash bond, after deduction of any outstanding restitution, costs, fines and fees, after the final disposition of the criminal case if the person complies with all requirements to appear in court. The court may not exclude the option of posting bond pursuant to ~~paragraph~~ subsection (3).

(5) Except as provided further, the amount of the appearance bond shall be the same whether executed as described in subsection (3) or posted with a deposit of cash as described in subsection (4). When the appearance bond has been set at \$2,500 or less and the most serious charge against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson felony, a drug severity level 4 felony or a violation of K.S.A. 8-1567, and amendments thereto, the magistrate may allow the person to deposit cash with the clerk in the amount of 10% of the bond, provided the person meets at least the following qualifications:

- (A) Is a resident of the state of Kansas;
 - (B) has a criminal history score category of G, H or I;
 - (C) has no prior history of failure to appear for any court appearances;
 - (D) has no detainer or hold from any other jurisdiction;
 - (E) has not been extradited from, and is not awaiting extradition to, another state;
- and
- (F) has not been detained for an alleged violation of probation.

(6) In the discretion of the court, a person charged with a crime may be released upon the person's own recognizance by guaranteeing payment of the amount of the bond for the person's failure to comply with all requirements to appear in court. The release of a person charged with a crime upon the person's own recognizance shall not require the deposit of any cash by the person.

(7) The court shall not impose any administrative fee.

(8) In determining which conditions of release will reasonably assure appearance and the public safety, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the crime charged; the weight of the evidence against the defendant; *whether the defendant is lawfully present in the United States*; the defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, record of convictions, record of appearance or failure to appear at court proceedings or of flight to avoid prosecution; the likelihood or propensity of the defendant to commit crimes while on release, including whether the defendant will be likely to threaten, harass or cause injury to the victim of the crime or any witnesses thereto; and whether the defendant is on probation or parole from a previous offense at the time of the alleged commission of the subsequent offense.

(9) The appearance bond shall set forth all of the conditions of release.

(10) A person for whom conditions of release are imposed and who continues to be detained as a result of the person's inability to meet the conditions of release shall be entitled, upon application, to have the conditions reviewed without unnecessary delay by the magistrate who imposed them. If the magistrate who imposed conditions of release is not available, any other magistrate in the county may review such conditions.

(11) A magistrate ordering the release of a person on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release. If the imposition of additional or different conditions results in the detention of the person, the provisions of subsection (10) shall apply.

(12) Statements or information offered in determining the conditions of release need not conform to the rules of evidence. No statement or admission of the defendant made at such a proceeding shall be received as evidence in any subsequent proceeding against the defendant.

(13) The appearance bond and any security required as a condition of the defendant's release shall be deposited in the office of the magistrate or the clerk of the court where the release is ordered. If the defendant is bound to appear before a magistrate or court other than the one ordering the release, the order of release, together with the bond and security shall be transmitted to the magistrate or clerk of the court before whom the defendant is bound to appear.

(14) Proceedings before a magistrate as provided in this section to determine the release conditions of a person charged with a crime including release upon execution of an appearance bond may be conducted by two-way electronic audio-video communication between the defendant and the judge in lieu of personal presence of the defendant or defendant's counsel in the courtroom in the discretion of the court. The defendant may be accompanied by the defendant's counsel. The defendant shall be informed of the defendant's right to be personally present in the courtroom during such proceeding if the defendant so requests. Exercising the right to be present shall in no way prejudice the defendant.

(15) The magistrate may order the person to pay for any costs associated with the supervision of the conditions of release of the appearance bond in an amount not to exceed \$15 per week of such supervision. *As a condition of sentencing under section 244 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, the court may impose the full amount of any such costs in addition to the \$15 per week, including, but not limited to, costs for treatment and evaluation under subsection (2).*

Sec. 8. K.S.A. 22-3001 is hereby amended to read as follows: 22-3001. (†) (a) A majority of the district judges in any judicial district may order a grand jury to be summoned in any county in the district when it is determined to be in the public interest.

(b) *The district or county attorney in such attorney's county may 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, as set forth in this subsection, shall order a grand jury to be summoned.*

(‡) (c) A grand jury shall be summoned in any county within 60 days after a petition praying therefor is presented to the district court, bearing the signatures of a number of electors equal to 100 plus 2% of the total number of votes cast for governor in the county in the last preceding election. The petition shall be in substantially the following form:

The undersigned qualified electors of the county of _____ and state of Kansas hereby request that the district court of _____ county, Kansas, within 60 days after the filing of this petition, cause a grand jury to be summoned in the county

to investigate alleged violations of law and to perform such other duties as may be authorized by law.

The signatures to the petition need not all be affixed to one paper, but each paper to which signatures are affixed shall have substantially the foregoing form written or printed at the top thereof. Each signer shall add to such signer's signature such signer's place of residence, giving the street and number or rural route number, if any. One of the signers of each paper shall verify upon oath that each signature appearing on the paper is the genuine signature of the person whose name it purports to be and that such signer believes that the statements in the petition are true. The petition shall be filed in the office of the clerk of the district court who shall forthwith transmit it to the county election officer, who shall determine whether the persons whose signatures are affixed to the petition are qualified electors of the county. Thereupon, the county election officer shall return the petition to the clerk of the district court, together with such election officer's certificate stating the number of qualified electors of the county whose signatures appear on the petition and the aggregate number of votes cast for all candidates for governor in the county in the last preceding election. The judge or judges of the district court of the county shall then consider the petition and, if it is found that the petition is in proper form and bears the signatures of the required number of electors, a grand jury shall be ordered to be summoned.

~~(2)~~ (d) *The grand jury shall consist of 15 members and shall be drawn and summoned in the same manner as petit jurors for the district court. Twelve members thereof shall constitute a quorum. The judge or judges ordering the grand jury shall direct that a sufficient number of legally qualified persons be summoned for service as grand jurors.*

Sec. 9. K.S.A. 22-3601 is hereby amended to read as follows: 22-3601. (a) Any appeal permitted to be taken from a *district court's* final judgment ~~of a district court~~ in a criminal case shall be taken to the court of appeals, except in those cases reviewable by law in the district court ~~and those cases where a~~ or in which a direct appeal to the supreme court is required. Whenever an interlocutory appeal is permitted in a criminal case in the district court, such appeal shall be taken to the court of appeals.

(b) Any appeal permitted to be taken from a *district court's* final judgment ~~of a district court~~ in a criminal case shall be taken directly to the supreme court in the following cases:

~~(1) Any case in which the defendant has been convicted of a class A felony or in which a maximum sentence of life imprisonment has been imposed or for crimes committed on or after July 1, 1993, any case in which the defendant has been convicted of an off-grid crime; and~~

~~(2) (1) Any case in which a statute of this state or of the United States has been held unconstitutional; ;~~

~~(2) any case in which the defendant has been convicted of a class A felony;~~

~~(3) 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 section 267 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and~~

~~(4) 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. The provisions of this paragraph shall not apply to any case in which the off-grid crime~~

was:

(A) *Aggravated human trafficking, subsection (c)(2)(B) of section 61 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(B) *rape, subsection (b)(2)(B) of section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(C) *aggravated criminal sodomy, subsection (c)(2)(B)(ii) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(D) *aggravated indecent liberties with a child, subsection (c)(2)(C)(ii) of section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(E) *sexual exploitation of a child, subsection (b)(2)(B) of section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(F) *promoting prostitution, subsection (b)(4) of section 230 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or*

(G) *an attempt, conspiracy or criminal solicitation, as defined in section 33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, of any such felony.*

Sec. 10. K.S.A. 22-4603 is hereby amended to read as follows: 22-4603. (1) Whenever any able-bodied prisoner is confined in the county jail or the jail of any town or city, having been convicted of a misdemeanor or of a violation of an ordinance of such town or city, the sheriff of such county, or the marshal or the chief of police of such town or city, under the direction of the county commissioners or the governing body of the town or city, may ~~cause~~ allow such persons to work at suitable public or charitable employment for not to exceed more than eight hours on each working day.

(2) A person so employed shall ~~be given credit at the rate of five dollars a day on any fine and costs imposed upon him.~~ receive a credit on any fine and costs imposed in an amount equal to \$5 for each full hour spent by the person in the specified work.

(3) Persons held in jail and awaiting trial or held on civil process, may, with their consent, be likewise so employed and shall receive a credit on any fines and costs in an amount equal to \$5 for each full hour spent by the person in the specified work, or if there are no such fines and costs, compensation at the rate of five dollars a day for such employment in an amount agreed to by the person and the city or county, but not less than \$5 a day, to be paid by the city or the county.

(4) Any prisoner employed as above provided, shall continue to be deemed prisoners during the hours of their employment and subject to all laws, rules and regulations relating to prisoners.

Sec. 11. K.S.A. 22-4701 is hereby amended to read as follows: 22-4701. As used in this act, unless the context clearly requires otherwise:

(a) "Central repository" means the criminal justice information system central repository created by this act and the juvenile offender information system created pursuant to K.S.A. ~~2007~~ 2010 Supp. 38-2326, and amendments thereto.

(b) "Criminal history record information" means all data initiated or collected by a criminal justice agency on a person pertaining to a reportable event, and any supporting documentation. ~~The term Criminal history record information~~ does not include:

(1) Data contained in intelligence or investigatory files or police work-product records used solely for police investigation purposes;

(2) wanted posters, police blotter entries, court records of public judicial proceedings or published court opinions;

(3) data pertaining to violations of the traffic laws of the state or any other traffic

law or ordinance, other than vehicular homicide; or

(4) presentence investigation and other reports prepared for use by a court in the exercise of criminal jurisdiction or by the governor in the exercise of the power of pardon, reprieve or commutation.

(c) "Criminal justice agency" means any government agency or subdivision of any such agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation or release of persons suspected, charged or convicted of a crime and which allocates a substantial portion of its annual budget to any of these functions. The term includes, but is not limited to, the following agencies, when exercising jurisdiction over criminal matters or criminal history record information:

(1) State, county, municipal and railroad police departments, sheriffs' offices and countywide law enforcement agencies, correctional facilities, jails and detention centers;

(2) the offices of the attorney general, county or district attorneys and any other office in which are located persons authorized by law to prosecute persons accused of criminal offenses;

(3) the district courts, the court of appeals, the supreme court, the municipal courts and the offices of the clerks of these courts;

(4) the Kansas sentencing commission;

(5) the Kansas parole board; and

(6) the juvenile justice authority.

(d) "Criminal justice information system" means the equipment (including computer hardware and software), facilities, procedures, agreements and personnel used in the collection, processing, preservation and dissemination of criminal history record information.

(e) "Director" means the director of the Kansas bureau of investigation.

(f) "Disseminate" means to transmit criminal history record information in any oral or written form. The term does not include:

(1) The transmittal of such information within a criminal justice agency;

(2) the reporting of such information as required by this act; or

(3) the transmittal of such information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.

(g) "Reportable event" means an event specified or provided for in K.S.A. 22-4705, and amendments thereto.

Sec. 12. K.S.A. 22-4705 is hereby amended to read as follows: 22-4705. (a) The following events are reportable events under this act:

(1) Issuance of an arrest warrant;

(2) an arrest;

(3) release of a person after arrest without the filing of a charge;

(4) dismissal or quashing of an indictment or criminal information;

(5) an acquittal, conviction or other disposition at or following trial, including a finding of probation before judgment;

(6) imposition of a sentence;

(7) commitment to a correctional facility, whether state or locally operated;

(8) release from detention or confinement;

- (9) an escape from confinement;
 - (10) a pardon, reprieve, commutation of sentence or other change in a sentence, including a change ordered by a court;
 - (11) judgment of an appellate court that modifies or reverses the lower court decision;
 - (12) order of a court in a collateral proceeding that affects a person's conviction, sentence or confinement, including any expungement or annulment of arrests or convictions pursuant to state statute; and
 - (13) any other event arising out of or occurring during the course of criminal justice proceedings declared to be reportable by rule or regulation of the director.
- (b) There is hereby established a criminal justice information system central repository for the collection, storage, and dissemination of criminal history record information. The central repository shall be operated by the Kansas bureau of investigation under the administrative control of the director.
- (c) Except as otherwise provided by this subsection, every criminal justice agency shall report criminal history record information, whether collected manually or by means of an automated system, to the central repository, in accordance with rules and regulations adopted pursuant to this act. A criminal justice agency shall report to the central repository those reportable events involving a violation of a county resolution or city ordinance only when required by rules and regulations adopted by the director.
- (d) Reporting methods may include:
- (1) Submittal of criminal history record information by a criminal justice agency directly to the central repository;
 - (2) if the information can readily be collected and reported through the court system, submittal to the central repository by the administrative office of the courts; or
 - (3) if the information can readily be collected and reported through criminal justice agencies that are part of a geographically based information system, submittal to the central repository by the agencies.
- (e) Nothing in this section shall prevent a criminal justice agency from maintaining more detailed information than is required to be reported to the central repository. However, the dissemination of that criminal history record information is governed by the provisions of this act.
- (f) The director may determine, by rule and regulation, the reportable events to be reported by each criminal justice agency, in order to avoid duplication in reporting.
- (g) *Except as otherwise provided in this subsection, no court or criminal justice agency may assess fees or charges against the central repository for providing criminal history record information created prior to, on or after July 1, 2011. A court or criminal justice agency may assess a fee or charge against the central repository for providing criminal history record information if such court or criminal justice agency has previously provided such criminal history record information as required by law.*
- Sec. 13. K.S.A. 2010 Supp. 38-2312, as amended by section 162 of 2011 House Bill No. 2339, is hereby amended to read as follows: 38-2312. (a) Except as provided in subsection (b) and (c), any records or files specified in this code concerning a juvenile may be expunged upon application to a judge of the court of the county in which the records or files are maintained. The application for expungement may be made by the juvenile, if 18 years of age or older or, if the juvenile is less than 18 years of age, by the juvenile's parent or next friend.
- (b) There shall be no expungement of records or files concerning acts committed

by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-3401, prior to its repeal, or section 37 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, murder in the first degree, K.S.A. 21-3402, prior to its repeal, or section 38 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, murder in the second degree, K.S.A. 21-3403, prior to its repeal, or section 39 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, voluntary manslaughter, K.S.A. 21-3404, prior to its repeal, or section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, involuntary manslaughter, K.S.A. 21-3439, prior to its repeal, or section 36 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, capital murder, K.S.A. 21-3442, prior to its repeal, involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3502, prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, rape, K.S.A. 21-3503, prior to its repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, indecent liberties with a child, K.S.A. 21-3504, prior to its repeal, or subsection (b) of section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, aggravated indecent liberties with a child, K.S.A. 21-3506, prior to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, aggravated criminal sodomy, K.S.A. 21-3510, prior to its repeal, or subsection (a) of section 72 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, indecent solicitation of a child, K.S.A. 21-3511, prior to its repeal, or subsection (b) of section 72 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, aggravated indecent solicitation of a child, K.S.A. 21-3516, prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, sexual exploitation, K.S.A. 21-3603, prior to its repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, aggravated incest, K.S.A. 21-3608, prior to its repeal, or subsection (a) of section 78 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, endangering a child, K.S.A. 21-3608a, prior to its repeal, or subsection (b) of section 78 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, aggravated endangering a child, K.S.A. 21-3609, prior to its repeal, or section 79 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, abuse of a child, or which would constitute an attempt to commit a violation of any of the offenses specified in this subsection.

(c) *Notwithstanding any other law to the contrary, for any offender who is required to register as provided in the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register as provided in the Kansas offender registration act.*

(e) (d) When a petition for expungement is filed, the court shall set a date for a hearing on the petition and shall give notice thereof to the county or district attorney. The petition shall state: (1) The juvenile's full name; (2) the full name of the juvenile as reflected in the court record, if different than (1); (3) the juvenile's sex and date of birth; (4) the offense for which the juvenile was adjudicated; (5) the date of the trial; and (6) the identity of the trial court. Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$100. On and after the effective date of this act through June 30, 2011, the supreme court may impose a

charge, not to exceed \$15 per case, to fund the costs of non-judicial personnel. All petitions for expungement shall be docketed in the original action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(4) (e) (1) After hearing, the court shall order the expungement of the records and files if the court finds that:

(A) The juvenile has reached 23 years of age or that two years have elapsed since the final discharge;

(B) since the final discharge of the juvenile, the juvenile has not been convicted of a felony or of a misdemeanor other than a traffic offense or adjudicated as a juvenile offender under the revised Kansas juvenile justice code and no proceedings are pending seeking such a conviction or adjudication; and

(C) the circumstances and behavior of the petitioner warrant expungement.

(2) The court may require that all court costs, fees and restitution shall be paid.

(e) (f) Upon entry of an order expunging records or files, the offense which the records or files concern shall be treated as if it never occurred, except that upon conviction of a crime or adjudication in a subsequent action under this code the offense may be considered in determining the sentence to be imposed. The petitioner, the court and all law enforcement officers and other public offices and agencies shall properly reply on inquiry that no record or file exists with respect to the juvenile. Inspection of the expunged files or records thereafter may be permitted by order of the court upon petition by the person who is the subject thereof. The inspection shall be limited to inspection by the person who is the subject of the files or records and the person's designees.

(f) (g) ~~Copies~~ *A certified copy* of any order made pursuant to subsection (a) or (e) (d) shall be sent to ~~each public officer and agency in the county having possession of any~~ *the Kansas bureau of investigation, which shall notify every juvenile or criminal justice agency which may possess* records or files ordered to be expunged. If the ~~officer or~~ *officer* agency fails to comply with the order within a reasonable time after its receipt, ~~the officer or~~ *such* agency may be adjudged in contempt of court and punished accordingly.

(g) (h) The court shall inform any juvenile who has been adjudicated a juvenile offender of the provisions of this section.

(h) (i) Nothing in this section shall be construed to prohibit the maintenance of information relating to an offense after records or files concerning the offense have been expunged if the information is kept in a manner that does not enable identification of the juvenile.

(i) (j) Nothing in this section shall be construed to permit or require expungement of files or records related to a child support order registered pursuant to the revised Kansas juvenile justice code.

(j) (k) Whenever the records or files of any adjudication have been expunged under the provisions of this section, the custodian of the records or files of adjudication relating to that offense shall not disclose the existence of such records or files, except when requested by:

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(7) the governor or the Kansas racing commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission; ~~or~~

(8) the Kansas sentencing commission; or

(9) the Kansas bureau of investigation, for the purposes of:

(A) Completing a person's criminal history record information within the central repository in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or

(B) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.

(l) The provisions of subsection (k)(9) shall apply to all records created prior to, on and after July 1, 2011.

Sec. 14. K.S.A. 2010 Supp. 75-5291 is hereby amended to read as follows: 75-5291. (a) (1) The secretary of corrections may make grants to counties for the development, implementation, operation and improvement of community correctional services that address the criminogenic needs of felony offenders including, but not limited to, adult intensive supervision, substance abuse and mental health services, employment and residential services, and facilities for the detention or confinement, care or treatment of offenders as provided in this section except that no community corrections funds shall be expended by the secretary for the purpose of establishing or operating a conservation camp as provided by K.S.A. 75-52,127, and amendments thereto.

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

(A) Whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes. In addition, the court may place in a community correctional services program adult offenders, convicted of a felony offense, whose offense is classified in grid blocks 6-H, 6-I, 7-C, 7-D, 7-E, 7-F, 7-G, 7-H or 7-I of the sentencing guidelines grid for nondrug crimes;

(B) whose severity level and criminal history score designate a presumptive prison

sentence on either sentencing guidelines grid but receive a nonprison sentence as a result of departure;

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

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

(E) on and after January 1, 2011, for offenders who are expected to be subject to supervision in Kansas, who are determined to be "high risk or needs, or both" by the use of a statewide, mandatory, standardized risk assessment tool or instrument which shall be specified by the Kansas sentencing commission;

(F) placed in community correctional services programs as a condition of supervision following the successful completion of a conservation camp program; or

(G) who has been sentenced to community corrections supervision pursuant to K.S.A. 21-4729, *prior to its repeal, or section 305 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(3) Notwithstanding any law to the contrary and subject to the availability of funding therefor, adult offenders sentenced to community supervision in Johnson county for felony crimes that occurred on or after July 1, 2002, but before ~~January~~ *July* 1, ~~2011~~ *2013*, shall be placed under court services or community corrections supervision based upon court rules issued by the chief judge of the 10th judicial district. The provisions contained in this subsection shall not apply to offenders transferred by the assigned agency to an agency located outside of Johnson county. The provisions of this paragraph shall expire on ~~January~~ *July* 1, ~~2011~~ *2013*.

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

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

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

(2) The secretary shall appoint one member from the southeast community corrections region, one member from the northeast community corrections region, one member from the central community corrections region and one member from the

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

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

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

- (A) Efficiencies in the delivery of field supervision services;
 - (B) effectiveness and enhancement of existing interventions;
 - (C) identification of new interventions; and
 - (D) statewide performance indicators.
- (5) The committee's report concerning enhanced or new interventions shall address:
- (A) Goals and measurable objectives;
 - (B) projected costs;
 - (C) the impact on public safety; and
 - (D) the evaluation process.

(6) *The committee shall submit its report to the secretary annually on or before July 15 in order for the enhanced or new interventions to be considered for inclusion within the department of corrections budget request for community correctional services or in the department's enhanced services budget request for the subsequent fiscal year.*

Sec. 15. K.S.A. 2010 Supp. 75-52,112 is hereby amended to read as follows: 75-52,112. (a) *As used in this section, "supervision success rate" means the percentage of those persons under supervision in a community corrections program whose supervision is not revoked and remanded to the custody of the department of corrections for imprisonment.*

(b) *On and after July 1, 2007 2011, subject to the provision of appropriation acts, the secretary of corrections shall develop and implement a grant program with the goal of increasing public safety, reducing the risk of offenders on community supervision and ~~reducing each community corrections program's revocations rate by at least 20% from such program's fiscal year 2006 revocation rate~~ achieving and maintaining a supervision success rate of at least 75% or improving such rate by at least 3% from the previous year.*

(c) *Any county or counties operating community correctional services may apply for the grant. The program shall give priority to a county or counties in which the ~~revocation~~ supervision success rate for offenders on community supervision is significantly ~~higher~~ lower than the statewide average, which target a higher ~~percentage of revocation reductions~~ supervision success rate than the required ~~minimum of 20% or~~ supervision success rate of 75% or 3% annual supervision success rate improvement or which target the successful reentry of offenders who are considered medium or high risk for revocation.*

~~(b)~~ (d) The secretary shall adopt grant requirements in accordance with this section. Proposals for grants under this program shall include, but not be limited to, provisions

to:

(1) Target offenders at medium and high risk for revocation utilizing risk assessment instruments approved by the secretary;

(2) reduce and specialize caseloads for community corrections officers;

(3) provide the offenders with the needed supervision and services to improve such offenders' opportunity to successfully complete community correctional services programs, resulting in a reduction in revocations to prison. Such services may include, but not be limited to, employment training and placement, educational assistance, transportation and housing. Such services shall be evidence-based and address offenders' criminogenic risks, needs and responsivity characteristics;

(4) use an intermediate sanctions community supervision model;

(5) provide staff training and skill development for community corrections officers in risk reduction and intervention. Such training and development shall be approved and certified by the secretary;

(6) utilize treatment options, including substance abuse treatment, mental health treatment, and cognitive and behavioral programs for offenders. For identified need areas, approved assessment and evaluation instruments should be utilized to ensure offender placement into appropriate levels of treatment and intervention;

(7) use gang intervention strategies;

(8) address safety concerns of the community;

(9) implement a method of tracking and reporting revocations;

(10) establish a goal of reducing the number of offenders, by a specified percentage, whose supervision is revoked and the offender sentenced to prison by providing *a plan to:* ~~(A) A plan to reduce the revocation rate for offenders on community supervision by at least 20% from such program's fiscal year 2006 revocations rate; (B) a plan to reduce the revocation rate at a percentage greater than the 20% minimum established to receive such grants; or Achieve and maintain a supervision success rate of at least 75% or improve such rate by at least 3% from the previous year; or (C) a plan which targets (B) target~~ the successful reentry of offenders who are considered medium or high risk for revocation;

(11) develop a specific accountability system for monitoring, tracking and utilizing the grant funds and to evaluate the effectiveness of the grant funds; and

(12) develop a consistent set of policies that will guide judges and community corrections officers in the supervision and revocation of offenders on community corrections supervision.

(e) The department of corrections shall establish a date for achieving goals based upon implementation time-lines and goals specific to each grant, which may include an overall reduction or a reduction for a specifically targeted population.

(f) The department of corrections shall evaluate the programs which received a grant using a research-based process evaluation targeting the critical components of effective programs to ensure that the program is being delivered as such program was designed. Continued funding shall be contingent on the program meeting the established goals.

(g) *The secretary shall prepare a report which states the number of programs receiving grants pursuant to this section, specifically identifying each program, summarizing the provisions of each program and the success of the program in reducing revocations. Such report shall be delivered to the governor; the secretary of the senate, the chief clerk of the house of representatives and the Kansas reentry policy*

council on or before the first day of the regular legislative session each year in which the grant program is funded.

Sec. 16. Section 74 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 32 of 2011 House Bill No. 2339, is hereby amended to read as follows: Sec. 74. (a) Sexual exploitation of a child is:

(1) Employing, using, persuading, inducing, enticing or coercing a child under 18 years of age, or a person whom the offender believes to be a child under 18 years of age, to engage in sexually explicit conduct with the intent to promote any performance;

(2) possessing any visual depiction of a child under 18 years of age shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person;

(3) being a parent, guardian or other person having custody or control of a child under 18 years of age and knowingly permitting such child to engage in, or assist another to engage in, sexually explicit conduct for any purpose described in subsection (a)(1) or (2); or

(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 a child under 18 years of age, knowing the character and content of the performance.

(b) (1) Sexual exploitation of a child as defined in:

(A) Subsection (a)(2) or (a)(3) is a severity level 5, person felony; and

(B) subsection (a)(1) or (a)(4) is a severity level 5, person felony, except as provided in subsection (b)(2).

(2) Sexual exploitation of a child as defined in subsection (a)(1) or (a)(4) or attempt, conspiracy or criminal solicitation to commit sexual exploitation of a child as defined in subsection (a)(1) or (a)(4) is an off-grid person felony, when the offender is 18 years of age or older and the child is under 14 years of age.

(c) If the offender is 18 years of age or older and the child is under 14 years of age, the provisions of:

(1) Subsection (c) of section 33 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of attempting to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4);

(2) subsection (c) of section 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4); and

(3) subsection (d) of section 35 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4).

(d) As used in this section:

(1) "Sexually explicit conduct" means actual or simulated: Exhibition in the nude; sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex; masturbation; sado-masochistic abuse with the intent of sexual stimulation; or lewd exhibition of the genitals, female breasts or pubic area of any person;

(2) "promoting" means procuring, transmitting, distributing, circulating, presenting, producing, directing, manufacturing, issuing, publishing, displaying, exhibiting or advertising:

(A) For pecuniary profit; or
(B) with intent to arouse or gratify the sexual desire or appeal to the prurient interest of the offender or any other person;

(3) "performance" means any film, photograph, negative, slide, book, magazine or other printed or visual medium, any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer generated image that contains or incorporates in any manner any film, photograph, negative, photocopy, video tape or video laser disk or any play or other live presentation;

(4) "nude" means any state of undress in which the human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered; and

(5) "visual depiction" means any photograph, film, video picture, digital or computer-generated image or picture, whether made or produced by electronic, mechanical or other means.";

On page 9, following line 18, by inserting:

"Sec. 18. Section 244 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 66 of 2011 House Bill No. 2339, is hereby amended to read as follows: Sec. 244. (a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;

(2) impose the fine applicable to the offense *and may impose the provisions of subsection (q)*;

(3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases except for violations of K.S.A. 8-1567, and amendments thereto, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence and up to 60 days in a county jail upon each revocation of the probation sentence, or community corrections placement;

(4) assign the defendant to a community correctional services program as provided in K.S.A. 75-5291, and amendments thereto, or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(5) assign the defendant to a conservation camp for a period not to exceed six months as a condition of probation followed by a six-month period of follow-up through adult intensive supervision by a community correctional services program, if the offender successfully completes the conservation camp program;

(6) assign the defendant to a house arrest program pursuant to section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(7) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (c) of section 242 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(8) order the defendant to repay the amount of any reward paid by any crime

stoppers chapter, individual, corporation or public entity which materially aided in the apprehension or conviction of the defendant; repay the amount of any costs and expenses incurred by any law enforcement agency in the apprehension of the defendant, if one of the current crimes of conviction of the defendant includes escape from custody or aggravated escape from custody, as defined in section 136 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; repay expenses incurred by a fire district, fire department or fire company responding to a fire which has been determined to be arson or aggravated arson as defined in section 98 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the defendant is convicted of such crime; repay the amount of any public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation which leads to the defendant's conviction; or repay the amount of any medical costs and expenses incurred by any law enforcement agency or county. Such repayment of the amount of any such costs and expenses incurred by a county, law enforcement agency, fire district, fire department or fire company or any public funds utilized by a law enforcement agency shall be deposited and credited to the same fund from which the public funds were credited to prior to use by the county, law enforcement agency, fire district, fire department or fire company;

(9) order the defendant to pay the administrative fee authorized by K.S.A. 22-4529, and amendments thereto, unless waived by the court;

(10) order the defendant to pay a domestic violence special program fee authorized by K.S.A. 20-369, and amendments thereto;

(11) if the defendant is convicted of a misdemeanor or convicted of a felony specified in subsection (i) of section 285 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, assign the defendant to work release program, other than a program at a correctional institution under the control of the secretary of corrections as defined in K.S.A. 75-5202, and amendments thereto, provided such work release program requires such defendant to return to confinement at the end of each day in the work release program. *On a second conviction of K.S.A. 8-1567, and amendments thereto, an offender placed into a work release program must serve a total of 120 hours of confinement. Such 120 hours of confinement 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. On a third or subsequent conviction of K.S.A. 8-1567, and amendments thereto, an offender placed into a work release program must serve a total of 240 hours of confinement. Such 240 hours of confinement 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;*

(12) *order the defendant to pay the full amount of unpaid costs associated with the conditions of release of the appearance bond under K.S.A. 22-2802, and amendments thereto;*

(13) impose any appropriate combination of (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), ~~and~~ (11) and (12); or

~~(13)~~ (14) suspend imposition of sentence in misdemeanor cases.

(b) (1) In addition to or in lieu of any of the above, the court shall 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 which

would render a plan of restitution unworkable. In regard to a violation of section 177 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, such damage or loss shall include, but not be limited to, attorney fees and costs incurred to repair the credit history or rating of the person whose personal identification documents were obtained and used in violation of such section, and to satisfy a debt, lien or other obligation incurred by the person whose personal identification documents were obtained and used in violation of such section. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefor.

(2) If the court orders restitution, the restitution shall be a judgment against the defendant which may be collected by the court by garnishment or other execution as on judgments in civil cases. If, after 60 days from the date restitution is ordered by the court, a defendant is found to be in noncompliance with the plan established by the court for payment of restitution, and the victim to whom restitution is ordered paid has not initiated proceedings in accordance with K.S.A. 60-4301 et seq., and amendments thereto, the court shall assign an agent procured by the attorney general pursuant to K.S.A. 75-719, and amendments thereto, to collect the restitution on behalf of the victim. The chief judge of each judicial district may assign such cases to an appropriate division of the court for the conduct of civil collection proceedings.

(c) In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (d) of section 242 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(d) In addition to any of the above, the court shall order the defendant to reimburse the county general fund for all or a part of the expenditures by the county to provide counsel and other defense services to the defendant. Any such reimbursement to the county shall be paid only after any order for restitution has been paid in full. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment.

~~(e) In imposing a fine the court may authorize the payment thereof in installments.~~ In releasing a defendant on probation, the court shall direct that the defendant be under the supervision of a court services officer. If the court commits the defendant to the custody of the secretary of corrections or to jail, the court may specify in its order the amount of restitution to be paid and the person to whom it shall be paid if restitution is later ordered as a condition of parole, conditional release or postrelease supervision.

(f) (1) When a new felony is committed while the offender is incarcerated and serving a sentence for a felony, or while the offender is on probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision for a felony, a new sentence shall be imposed pursuant to the consecutive sentencing requirements of section 246 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise

presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(2) When a new felony is committed while the offender is incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671, prior to its repeal, or K.S.A. 2010 Supp. 38-2373, and amendments thereto, for an offense, which if committed by an adult would constitute the commission of a felony, upon conviction, the court shall sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure. The conviction shall operate as a full and complete discharge from any obligations, except for an order of restitution, imposed on the offender arising from the offense for which the offender was committed to a juvenile correctional facility.

(3) When a new felony is committed while the offender is on release for a felony pursuant to the provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto, or similar provisions of the laws of another jurisdiction, a new sentence may be imposed pursuant to the consecutive sentencing requirements of section 246 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(g) Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of section 305 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, prior to revocation of a nonprison sanction of a defendant whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of section 305 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, the court shall consider placement of the defendant in the Labette correctional conservation camp, conservation camps established by the secretary of corrections pursuant to K.S.A. 75-52,127, and amendment thereto, or a community intermediate sanction center. Pursuant to this paragraph the defendant shall not be sentenced to imprisonment if space is available in a conservation camp or a community intermediate sanction center and the defendant meets all of the conservation camp's or a community intermediate sanction center's placement criteria unless the court states on the record the reasons for not placing the defendant in a conservation camp or a community intermediate sanction center.

(h) The court in committing a defendant to the custody of the secretary of corrections shall fix a term of confinement within the limits provided by law. In those

cases where the law does not fix a term of confinement for the crime for which the defendant was convicted, the court shall fix the term of such confinement.

(i) In addition to any of the above, the court shall order the defendant to reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. The amount of attorney fees to be included in the court order for reimbursement shall be the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less.

(j) This section shall not deprive the court of any authority conferred by any other Kansas statute to decree a forfeiture of property, suspend or cancel a license, remove a person from office or impose any other civil penalty as a result of conviction of crime.

(k) An application for or acceptance of probation or assignment to a community correctional services program shall not constitute an acquiescence in the judgment for purpose of appeal, and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has applied for probation, suspended sentence or assignment to a community correctional services program.

(l) The secretary of corrections is authorized to make direct placement to the Labette correctional conservation camp or a conservation camp established by the secretary pursuant to K.S.A. 75-52,127, and amendments thereto, of an inmate sentenced to the secretary's custody if the inmate:

(1) Has been sentenced to the secretary for a probation revocation, as a departure from the presumptive nonimprisonment grid block of either sentencing grid, for an offense which is classified in grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, or for an offense which is classified in grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes and such offense does not meet the requirements of section 305 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and

(2) otherwise meets admission criteria of the camp.

If the inmate successfully completes a conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district attorney. The inmate shall then be assigned by the court to six months of follow-up supervision conducted by the appropriate community corrections services program. The court may also order that supervision continue thereafter for the length of time authorized by section 248 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(m) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of this section shall not apply.

(n) Except as provided by subsection (f) of section 286 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, in addition to any of the above, for felony violations of K.S.A. 2010 Supp. 21-36a06, and amendments thereto, the court shall require the defendant who meets the requirements established in section 305 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to participate in a certified drug abuse treatment program, as provided in K.S.A. 2010 Supp. 75-52,144, and amendments thereto, including, but not limited to, an approved after-care plan. If the defendant fails to participate in or has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the treatment program, as established by judicial finding, the defendant shall be subject to revocation of probation and the defendant shall serve the underlying prison sentence as established in section 286 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto. For those offenders who are convicted on or after July 1, 2003, upon completion of the underlying prison sentence, the defendant shall not be subject to a period of postrelease supervision. The amount of time spent participating in such program shall not be credited as service on the underlying prison sentence.

(o) (1) Except as provided in paragraph (3), in addition to any other penalty or disposition imposed by law, upon a conviction for unlawful possession of a controlled substance or controlled substance analog in violation of K.S.A. 2010 Supp. 21-36a06, and amendments thereto, in which the trier of fact makes a finding that the unlawful possession occurred while transporting the controlled substance or controlled substance analog in any vehicle upon a highway or street, the offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state shall be suspended for one year.

(2) Upon suspension of a license pursuant to this subsection, the court shall require the person to surrender the license to the court, which shall transmit the license to the division of motor vehicles of the department of revenue, to be retained until the period of suspension expires. At that time, the licensee may apply to the division for return of the license. If the license has expired, the person may apply for a new license, which shall be issued promptly upon payment of the proper fee and satisfaction of other conditions established by law for obtaining a license unless another suspension or revocation of the person's privilege to operate a motor vehicle is in effect.

(3) (A) In lieu of suspending the driver's license or privilege to operate a motor vehicle on the highways of this state of any person as provided in paragraph (1), the judge of the court in which such person was convicted may enter an order which places conditions on such person's privilege of operating a motor vehicle on the highways of this state, a certified copy of which such person shall be required to carry any time such person is operating a motor vehicle on the highways of this state. Any such order shall prescribe the duration of the conditions imposed, which in no event shall be for a period of more than one year.

(B) Upon entering an order restricting a person's license hereunder, the judge shall require such person to surrender such person's driver's license to the judge who shall cause it to be transmitted to the division of vehicles, together with a copy of the order. Upon receipt thereof, the division of vehicles shall issue without charge a driver's license which shall indicate on its face that conditions have been imposed on such person's privilege of operating a motor vehicle and that a certified copy of the order imposing such conditions is required to be carried by the person for whom the license

was issued any time such person is operating a motor vehicle on the highways of this state. If the person convicted is a nonresident, the judge shall cause a copy of the order to be transmitted to the division and the division shall forward a copy of it to the motor vehicle administrator, of such person's state of residence. Such judge shall furnish to any person whose driver's license has had conditions imposed on it under this paragraph a copy of the order, which shall be recognized as a valid Kansas driver's license until such time as the division shall issue the restricted license provided for in this paragraph.

(C) Upon expiration of the period of time for which conditions are imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by such licensee. In the event such license has expired, such person may apply to the division for a new license, which shall be issued immediately by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless such person's privilege to operate a motor vehicle on the highways of this state has been suspended or revoked prior thereto. If any person shall violate any of the conditions imposed under this paragraph, such person's driver's license or privilege to operate a motor vehicle on the highways of this state shall be revoked for a period of not less than 60 days nor more than one year by the judge of the court in which such person is convicted of violating such conditions.

(4) As used in this subsection, "highway" and "street" means the same as in K.S.A. 8-1424 and 8-1473, and amendments thereto.

(p) In addition to any of the above, for any criminal offense that includes the domestic violence designation pursuant to section 1 of chapter 101 of the 2010 Session Laws of Kansas, and amendments thereto, 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 a domestic violence offender assessment and any other evaluation prior to sentencing if the assessment or evaluation would assist the court in determining an appropriate sentence. The entity completing the assessment or evaluation shall provide the assessment or evaluation and recommendations to the court and the court shall provide the domestic violence assessment and any other evaluation to any entity responsible for supervising such defendant. A defendant ordered to undergo a domestic violence offender assessment shall be required to pay for the assessment and, unless otherwise ordered by the court or the department of corrections, for completion of all recommendations.

(q) *In imposing a fine, the court may authorize the payment thereof in installments. In lieu of payment of any fine imposed, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed 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 performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance shall become due on that date. If conditional reduction of any fine is rescinded by the court for any reason, then pursuant to the court's order the person may be ordered to perform community service by one year after the date of such rescission or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine*

required to be paid by the person, the remaining balance of the fine shall become due on that date. All credits for community service shall be subject to review and approval by the court.

Sec. 19. Section 249 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 249. (a) The court or the secretary of corrections may implement a house arrest program for defendants or inmates being sentenced by the court or in the custody of the secretary of corrections *or as a sanction for offenders who have failed to comply with the conditions of probation, parole or postrelease supervision, except:*

- (1) No defendant shall be placed by the court under house arrest if found guilty of:
 - (A) Any crime designated as a class A or B felony in article 34 or 35 of the Kansas Statutes Annotated, prior to their repeal;
 - (B) subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; ~~or~~
 - (C) section 79 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;
 - (D) any off-grid felony; or
 - (E) any nondrug crime ranked in severity levels 1 through 5 or any felony ranked in severity levels 1 through 3 of the drug grid, unless the offender has been sentenced to probation;

(2) no inmate shall be placed under house arrest if such inmate's security status is greater than minimum security; or

(3) no inmate shall be placed under house arrest who has been denied parole by the parole board within the last 6 months. Any inmate who, while participating in the house arrest program, is denied parole by the parole board shall be allowed to remain under house arrest until the completion of the sentence or until the inmate is otherwise removed from the program.

(b) ~~Prior to the~~ *At the time of* placement of an inmate under house arrest, the court ~~or~~, secretary *or house arrest staff* shall provide written notification to the sheriff and district or county attorney of the county in which any person under house arrest is to be placed and to the chief law enforcement officer of any incorporated city or town in which such person is to be placed of the placement of the person under house arrest within the county or incorporated city or town.

(c) House arrest sanctions shall be administered by the court and the secretary of corrections, respectively, through rules and regulations, and may include, but are not limited to, rehabilitative restitution in money or in kind, curfew, revocation or suspension of the driver's license, community service, deprivation of nonessential activities or privileges, or other appropriate restraints on the inmate's liberty.

(d) *Upon placement in a house arrest program, the court, secretary or house arrest staff shall inform the offender, and any other people residing with such offender, of the nature and extent of such house arrest monitoring, and shall obtain the written agreement of such offender to comply with all requirements of the program.*

(e) *The offender shall remain within the property boundaries of the offender's residence at all times during the term of house arrest, except as provided under the house arrest agreement with such offender.*

(f) *The offender shall allow any law enforcement officer, community corrections officer, court services officer or duly authorized agent of the department of corrections,*

to enter such offender's residence at any time to verify the offender's compliance with the conditions of the house release.

(g) As a condition of house arrest, the court or secretary may require an offender placed under house arrest to pay any supervision costs associated with the house arrest program.

(h) The offender shall consent to be monitored by:

(1) An electronic monitoring device on such offender's person;

(2) an electronic monitoring device in such offender's home;

(3) a remote blood alcohol monitoring device;

(4) a home telephone verification procedure;

(5) radio frequency devices; or

(6) any combination of monitoring methods as the court, secretary or house arrest staff finds necessary.

(i) The secretary or the court may contract for independent monitoring services. Such independent monitoring service shall be able to provide monitoring 24 hours a day, every day of the year, and any other services as determined by the secretary or the court.

(j) An offender violating the provisions of K.S.A. 8-1567, and amendments thereto, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. On a second conviction of K.S.A. 8-1567, and amendments thereto, an offender placed under house arrest shall serve a total of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 120 hours. On a third or subsequent conviction of K.S.A. 8-1567, and amendments thereto, an offender placed under house arrest shall serve a total of 240 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 240 hours.

(k) As used in this section:

(1) "House arrest staff" means an independent contractor or government entity, and agents thereof, utilized by the secretary or court to administer the provisions of a house arrest program;

(2) "electronic monitoring device" means:

(A) An active or passive global positioning system-enabled device capable of recording and transmitting an offender's location at all times or at designated intervals. Such monitoring device may record or transmit sound, visual images or other information regarding such offender's location, via wireless communication; or

(B) a radio frequency device capable of monitoring an offender's location; and

(3) "remote alcohol monitoring device" means a device capable of monitoring an offender's blood alcohol content via micro fuel cell or deep lung tissue sample. Such monitoring devices shall be of comparable accuracy to roadside breath alcohol testing devices utilized by law enforcement, and shall have wireless or landline telephone transmission capabilities. Such device may be used in conjunction with an alcohol and drug-sensing bracelet to monitor such offender's compliance with the terms of house arrest.

Sec. 20. Section 254 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 67 of 2011 House Bill No. 2339, is hereby amended to read as

follows: Sec. 254. (a) (1) Except as provided in subsections (b) ~~and (c)~~, (c) and (d), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, nondrug crimes ranked in severity levels 6 through 10 or any felony ranked in severity level 4 of the drug grid, may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

(2) Except as provided in subsections (b) ~~and (c)~~, (c) and (d), any person who has fulfilled the terms of a diversion agreement may petition the district court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(b) Except as provided in subsection (c) and (d), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed, the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any nondrug crime ranked in severity levels 1 through 5 or any felony ranked in severity levels 1 through 3 of the drug grid, or:

(1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its repeal, or section 41 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto, or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(4) violating the provisions of the fifth clause of K.S.A. 8-142, and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;

(7) violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) a violation of K.S.A. 21-3405b, prior to its repeal.

(c) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses:

(1) Rape as defined in K.S.A. 21-3502, prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(2) indecent liberties with a child or aggravated indecent liberties with a child as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal, or section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(3) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(4) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior to its repeal, or section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(5) indecent solicitation of a child or aggravated indecent solicitation of a child as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or section 72 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(6) sexual exploitation of a child as defined in K.S.A. 21-3516, prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(7) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal, or section 81 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(8) endangering a child or aggravated endangering a child as defined in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or section 78 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(9) abuse of a child as defined in K.S.A. 21-3609, prior to its repeal, or section 79 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(10) capital murder as defined in K.S.A. 21-3439, prior to its repeal, or section 36 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(11) murder in the first degree as defined in K.S.A. 21-3401, prior to its repeal, or section 37 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(12) murder in the second degree as defined in K.S.A. 21-3402, prior to its repeal, or section 38 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(13) voluntary manslaughter as defined in K.S.A. 21-3403, prior to its repeal, or section 39 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(14) involuntary manslaughter as defined in K.S.A. 21-3404, prior to its repeal, or section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(15) sexual battery as defined in K.S.A. 21-3517, prior to its repeal, or section 69 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed;

(16) aggravated sexual battery as defined in K.S.A. 21-3518, prior to its repeal, or section 69 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(17) a violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation;

(18) a violation of K.S.A. 8-2,144, and amendments thereto, including any diversion for such violation; or

(19) any conviction for any offense in effect at any time prior to July 1, 2011, that is comparable to any offense as provided in this subsection.

(d) Notwithstanding any other law to the contrary, for any offender who is required to register as provided in the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register as provided in the Kansas offender registration act.

~~(d)~~ (e) (1) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecutor and the arresting law enforcement agency. The petition shall state the:

- (A) Defendant's full name;
- (B) full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;
- (C) defendant's sex, race and date of birth;
- (D) crime for which the defendant was arrested, convicted or diverted;
- (E) date of the defendant's arrest, conviction or diversion; and
- (F) identity of the convicting court, arresting law enforcement authority or diverting authority.

(2) Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$100. On and after April 15, 2010 through June 30, 2011, the supreme court may impose a charge, not to exceed \$15 per case, to fund the costs of non-judicial personnel. The charge established in this section shall be the only fee collected or moneys in the nature of a fee collected for the case. Such charge shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

(3) All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas parole board.

~~(e)~~ (f) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

- (1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;
- (2) the circumstances and behavior of the petitioner warrant the expungement;
- (3) the expungement is consistent with the public welfare.

~~(f)~~ (g) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

- (1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;
- (2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 2010 Supp. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services;

(B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) to aid in determining the petitioner's qualifications for the following under the Kansas expanded lottery act: (i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;

(F) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(G) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(H) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(I) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-12a102, and amendments thereto;

(J) in any application for employment as a law enforcement officer as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; or

(K) for applications received on and after July 1, 2006, to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 2010 Supp. 75-7c01 et seq., and amendments thereto;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged; and

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

(g) (h) Whenever a person is convicted of a crime, pleads guilty and pays a fine for

a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

~~(h)~~ (i) Subject to the disclosures required pursuant to subsection ~~(f)~~ (g), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of a crime has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such crime, but the expungement of a felony conviction does not relieve an individual of complying with any state or federal law relating to the use or possession of firearms by persons convicted of a felony.

~~(h)~~ (j) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

- (1) The person whose record was expunged;
- (2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;
- (3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;
- (4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;
- (5) a person entitled to such information pursuant to the terms of the expungement order;
- (6) a prosecutor, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;
- (7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;
- (8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;
- (9) the governor or the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure,

renewal of licensure or continued licensure by the commission;

(10) the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications of the following under the Kansas expanded lottery act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;

(11) the Kansas sentencing commission;

(12) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-gaming compact;

(13) the Kansas securities commissioner or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(14) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;

(15) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto; ~~or~~

(16) the attorney general and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act; *or*

(17) *the Kansas bureau of investigation for the purposes of:*

(A) *Completing a person's criminal history record information within the central repository, in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or*

(B) *providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.*

(k) *The provisions of subsection (j)(17) shall apply to records created prior to, on and after July 1, 2011.*

Sec. 21. Section 285 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 1 of 2011 Senate Substitute for House Bill No. 2008, is hereby amended to read as follows: Sec. 285. (a) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. The following sentencing guidelines grid shall be applicable to nondrug felony crimes:

SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor No Record
I	683 620 592	618 586 554	285 272 258	267 233 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 30
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	25 23 22	21 20 19	18 17 16
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

LEGEND
Presumptive Probation
Presumptive Imprisonment
Presumptive Imprisonment

(b) Sentences expressed in the sentencing guidelines grid for nondrug crimes represent months of imprisonment.

(c) The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool. The grid's vertical axis is the crime severity scale which classifies current crimes of conviction. The grid's horizontal axis is the criminal history scale which classifies criminal histories.

(d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions, subject to the sentencing court's discretion to enter a departure sentence. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to all other crimes and the offender's criminal history.

(e) (1) The sentencing court has discretion to sentence at any place within the sentencing range. In the usual case it is recommended that the sentencing judge select the center of the range and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the:

- (A) Prison sentence;
- (B) maximum potential reduction to such sentence as a result of good time; and
- (C) period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the:

- (A) Prison sentence; and
- (B) duration of the nonprison sanction at the sentencing hearing.

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence as provided in subsection (q).

(g) The sentence for a violation of K.S.A. 21-3415, prior to its repeal, aggravated battery against a law enforcement officer committed prior to July 1, 2006, or a violation of subsection (d) of section 47 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, aggravated assault against a law enforcement officer, which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(h) When a firearm is used to commit any person felony, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(i) (1) The sentence for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of section 49 of chapter 136 of the 2010 Session Laws of Kansas, subsections (b)(3) and (b)(4) of section 109 of chapter 136 of the 2010 Session Laws of Kansas, section 223 of chapter 136 of the 2010 Session Laws of Kansas and section 227 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or section 288 of chapter 136 of the 2010

Session Laws of Kansas, and amendments thereto.

(2) If because of the offender's criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the offender is subject to imprisonment, the provisions of this section and section 288 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in section 109 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(3) Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of section 49 of chapter 136 of the 2010 Session Laws of Kansas, subsections (b)(3) and (b)(4) of section 109 of chapter 136 of the 2010 Session Laws of Kansas, section 223 and section 227 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not be served in a state facility in the custody of the secretary of corrections, except that the term of imprisonment for felony violations of K.S.A. 8-1567, and amendments thereto, may be served in a state correctional facility designated by the secretary of corrections if the secretary determines that substance abuse treatment resources and facility capacity is available. The secretary's determination regarding the availability of treatment resources and facility capacity shall not be subject to review. *Prior to imposing any sentence pursuant to this subsection, the court may consider assigning the defendant to a house arrest program pursuant to section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.*

(j) (1) The sentence for any persistent sex offender whose current convicted crime carries a presumptive term of imprisonment shall be double the maximum duration of the presumptive imprisonment term. The sentence for any persistent sex offender whose current conviction carries a presumptive nonprison term shall be presumed imprisonment and shall be double the maximum duration of the presumptive imprisonment term.

(2) Except as otherwise provided in this subsection, as used in this subsection, "persistent sex offender" means a person who:

(A) (i) Has been convicted in this state of a sexually violent crime, as defined in K.S.A. 22-3717, and amendments thereto; and

(ii) at the time of the conviction under subsection (j)(2)(A)(i) has at least one conviction for a sexually violent crime, as defined in K.S.A. 22-3717, and amendments thereto, in this state or comparable felony under the laws of another state, the federal government or a foreign government; or

(B) (i) has been convicted of rape, as defined in K.S.A. 21-3502, prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and

(ii) at the time of the conviction under subsection (j)(2)(B)(i) has at least one conviction for rape in this state or comparable felony under the laws of another state, the federal government or a foreign government.

(3) Except as provided in subsection (j)(2)(B), the provisions of this subsection shall not apply to any person whose current convicted crime is a severity level 1 or 2 felony.

(k) (1) If it is shown at sentencing that the offender committed any felony violation for the benefit of, at the direction of, or in association with any criminal street

gang, with the specific intent to promote, further or assist in any criminal conduct by gang members, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(2) As used in this subsection, "criminal street gang" means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities:

(A) The commission of one or more person felonies; or

(B) the commission of felony violations of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, *or any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009*; and

(C) its members have a common name or common identifying sign or symbol; and

(D) its members, individually or collectively, engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, *any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009*, or any substantially similar offense from another jurisdiction.

(l) Except as provided in subsection (o), the sentence for a violation of subsection (a)(1) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or any attempt or conspiracy, as defined in sections 33 and 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to commit such offense, when such person being sentenced has a prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715, prior to its repeal, 21-3716, prior to its repeal, subsection (a)(1) or (a)(2) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, or subsection (b) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or any attempt or conspiracy to commit such offense, shall be presumptive imprisonment.

(m) The sentence for a violation of K.S.A 22-4903 or subsection (a)(2) of section 138 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be presumptive imprisonment. If an offense under such sections is classified in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison sentence as provided in subsection (q).

(n) The sentence for a violation of criminal deprivation of property, as defined in section 89 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such property is a motor vehicle, and when such person being sentenced has any combination of two or more prior convictions of subsection (b) of K.S.A. 21-3705, prior to its repeal, or of criminal deprivation of property, as defined in section 89 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such property is a motor vehicle, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(o) The sentence for a felony violation of theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary as defined in subsection (a) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has no prior convictions for a violation of K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary as defined in subsection (a) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or the

sentence for a felony violation of theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has one or two prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary or aggravated burglary as defined in section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or the sentence for a felony violation of burglary as defined in subsection (a) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has one prior felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary or aggravated burglary as defined in section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be the sentence as provided by this section, except that the court may order an optional nonprison sentence for a defendant to participate in a drug treatment program, including, but not limited to, an approved after-care plan, if the court makes the following findings on the record:

- (1) Substance abuse was an underlying factor in the commission of the crime;
- (2) substance abuse treatment in the community is likely to be more effective than a prison term in reducing the risk of offender recidivism; and
- (3) participation in an intensive substance abuse treatment program will serve community safety interests.

A defendant sentenced to an optional nonprison sentence under this subsection shall be supervised by community correctional services. The provisions of subsection (f)(1) of section 305 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall apply to a defendant sentenced under this subsection. The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(p) The sentence for a felony violation of theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has any combination of three or more prior felony convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary or aggravated burglary as defined in section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or the sentence for a violation of burglary as defined in subsection (a) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has any combination of two or more prior convictions for violations of K.S.A. 21-3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary or aggravated burglary as defined in section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section, except that the court may recommend that an offender be placed in the custody of the secretary of corrections, in a facility designated by the secretary to participate in an intensive substance abuse treatment program, upon making the following findings on the record:

- (1) Substance abuse was an underlying factor in the commission of the crime;

(2) substance abuse treatment with a possibility of an early release from imprisonment is likely to be more effective than a prison term in reducing the risk of offender recidivism; and

(3) participation in an intensive substance abuse treatment program with the possibility of an early release from imprisonment will serve community safety interests by promoting offender reformation.

The intensive substance abuse treatment program shall be determined by the secretary of corrections, but shall be for a period of at least four months. Upon the successful completion of such intensive treatment program, the offender shall be returned to the court and the court may modify the sentence by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits. If the offender's term of imprisonment expires, the offender shall be placed under the applicable period of postrelease supervision. The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(q) As used in this section, an "optional nonprison sentence" is a sentence which the court may impose, in lieu of the presumptive sentence, upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

(3) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence shall not be considered a departure and shall not be subject to appeal.

(r) The sentence for a violation of subsection (c)(2) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

(s) The sentence for a violation of section 76 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(t) (1) 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 act, the offender shall be sentenced to an additional 30 months' imprisonment.

(2) The sentence imposed pursuant to subsection (t)(1) shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

(3) As used in this subsection, "ballistic resistant material" means: (A) Any commercially produced material designed with the purpose of providing ballistic and trauma protection, including, but not limited to, bulletproof vests and kevlar vests; and (B) any homemade or fabricated substance or item designed with the purpose of providing ballistic and trauma protection.

(u) The sentence for a violation of section 177 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or any attempt or conspiracy, as defined in

sections 33 and 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to commit such offense, when such person being sentenced has a prior conviction for a violation of K.S.A. 21-4018, prior to its repeal, or section 177 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or any attempt or conspiracy to commit such offense, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.”;

Also on page 9, in line 19, by striking all following "K.S.A."; by striking all in line 20 and inserting:

"22-2501, 22-3001, 22-3601, 22-4603, 22-4701 and 22-4705 and K.S.A. 2010 Supp. 12-4509, 12-4516a, as amended by section 103 of 2011 House Bill No. 2339, 21-3516, 21-4619, 22-2410, 22-2410, as amended by section 114 of 2011 House Bill No. 2339, 22-2410, as amended by section 12 of 2011 Senate Bill No. 247, 22-2502, 22-2516, 22-2802, as amended by section 118 of 2011 House Bill No. 2339, 22-2802, as amended by section 2 of 2011 House Bill No. 2118, 22-2802, as amended by section 13 of 2011 Senate Bill No. 247, 22-2807a, 38-2312, as amended by section 162 of 2011 House Bill No. 2339, 75-5291, 75-5291, as amended by section 280 of 2011 House Bill No. 2339 and 75-52,112 and sections 184 and 249 of chapter 136 of the 2010 Session Laws of Kansas and section 74 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 32 of 2011 House Bill No. 2339, section 244 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 66 of 2011 House Bill No. 2339, section 244 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 3 of 2011 House Bill No. 2118, section 244 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 36 of 2011 Senate Bill No. 247, section 254 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 67 of 2011 House Bill No. 2339, section 285 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 1 of 2011 Senate Substitute for House Bill No. 2008, section 285 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 77 of 2011 House Bill No. 2339 and section 285 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 38 of 2011 Senate Bill No. 247 are hereby repealed."

On page 1, in the title, in line 1, by striking all following "concerning"; by striking all in lines 2 through 6 and inserting:

"crimes, punishment and criminal procedure; relating to expunged records; petitions for relief; house arrest; electronic communications; warrants for interception and information; conditions of release and bond; grand juries; appeals; community corrections; sexual exploitation of a child; harassment by telecommunications device; amending K.S.A. 22-3001, 22-3601, 22-4603, 22-4701 and 22-4705 and K.S.A. 2010 Supp. 12-4509, 12-4516a, as amended by section 103 of 2011 House Bill No. 2339, 22-2410, 22-2502, 22-2516, 22-2802, as amended by section 118 of 2011 House Bill No. 2339, 38-2312, as amended by section 162 of 2011 House Bill No. 2339, 75-5291 and 75-52,112 and sections 184 and 249 of chapter 136 of the 2010 Session Laws of Kansas and section 74 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 32 of 2011 House Bill No. 2339, section 244 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 66 of 2011 House Bill No. 2339, section 254 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 67 of 2011 House Bill No. 2339 and section 285 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 1 of 2011 Senate Substitute for House Bill No. 2008 and repealing the existing sections; also repealing K.S.A. 22-2501 and K.S.A. 2010 Supp.

21-3516, 21-4619, 22-2410, as amended by section 114 of 2011 House Bill No. 2339, 22-2410, as amended by section 12 of 2011 Senate Bill No. 247, 22-2802, as amended by section 2 of 2011 House Bill No. 2118, 22-2802, as amended by section 13 of 2011 Senate Bill No. 247, 22-2807a and 75-5291, as amended by section 280 of 2011 House Bill No. 2339 and section 244 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 3 of 2011 House Bill No. 2118, section 244 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 36 of 2011 Senate Bill No. 247, section 285 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 77 of 2011 House Bill No. 2339 and section 285 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 38 of 2011 Senate Bill No. 247.";

And your committee on conference recommends the adoption of this report.

PAT COLLOTON

LANCE KINZER

MELODY McCRAY-MILLER

Conferees on part of House

THOMAS C. OWENS

JEFF KING

DAVID HALEY

Conferees on part of Senate

Senator Owens moved the Senate adopt the Conference Committee Report on **H Sub for SB 55**.

On roll call, the vote was: Yeas 37, Nays 1, Present and Passing 0, Absent or Not Voting 2.

Yeas: Abrams, Apple, Bruce, Brungardt, Emler, Faust-Goudeau, Francisco, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt A, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Haley.

Absent or Not Voting: Donovan, Steineger.

The Conference Committee Report was adopted

EXPLANATION OF VOTE

MR. PRESIDENT: I vote "NO" on the Conference Committee Report on *SB 55*; a committee report that I, as a Senate conferee, actually signed. Voting "NO" on *ALL* measures on this roll call for the first time, I believe, in my eleven sessions now as a Kansas Senator, *SB 55* is a good bill with the *exception* of repealing K.S.A. 22-2501 which currently codifies exceptions to warrant requirements for searches made by law enforcement officers.

The ambiguity of no statutory language for counsel and courts to consistently interpret is actually far worse, in my opinion, than the current statute which, unconstitutionally, "allows" searches for any crime and not just for the specific crime which is the foundation for the probable cause to effectuate the search in the first place.

I intend to push again for the "Gold Standard" The Equal-Protection-Under-the-Law standard next year to rid Kansas of the ongoing prospect of "fishing expeditions" by law enforcement. —DAVID HALEY

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 150** submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill as printed with House Committee amendments, as follows:

On page 3, by striking all in lines 36 through 43;

On page 4, by striking all in lines 1 through 3;

And by renumbering remaining sections accordingly;

Also on page 4, in line 42, by striking "person registered to vote who"; in line 43, by striking "resides" and inserting "owner of land, as defined under this section,";

On page 7, by striking all in lines 6 through 8;

And by renumbering remaining subsections accordingly;

Also on page 7, in line 19, following the period, by creating a new paragraph;

On page 9, in line 3, by striking "a majority " and inserting "two-thirds of the members"; in line 6, by striking all after "ordinance."; by striking all in line 7; in line 8, by striking all before "When"; in line 18, after "annexation" by inserting "involving 40 acres or more"; in line 20, by striking "street"; in line 21, by striking "real estate" and inserting "qualified electors as defined in K.S.A. 12-519, and amendments thereto,"; also in line 21, by striking all after the period; in line 22, by striking "residing in the area proposed to be annexed, then"; in line 24, by striking "in the area proposed to be"; in line 25, by striking "annexed"; in line 26, by striking "residing in the area proposed to be annexed and"; in line 28, by striking all after "electors"; in line 29, by striking all before "reject"; in line 33, after "thereto." by inserting "If the area proposed to be annexed is less than 40 acres, then the board may render a judgment on the petition unless the board has previously granted three annexations of adjoining tracts within a 60-month period."; by striking all in line 43;

By striking all of pages 10 and 11;

On page 12, by striking all in lines 1 through 12 and inserting the following:

"Sec. 8. K.S.A. 12-531 is hereby amended to read as follows: 12-531. (a) ~~Five~~ *Three* years following the annexation of any land pursuant to K.S.A. 12-520 or 12-521, and amendments thereto, or, where there has been litigation relating to the annexation, ~~five-three~~ years following the conclusion of such litigation, the board of county commissioners shall call a hearing to consider whether the city has provided the municipal services as provided in the timetable set forth in the plan in accordance with K.S.A. 12-520b or 12-521, and amendments thereto. The board of county commissioners shall schedule the matter for public hearing and shall give notice of the date, hour and place of the hearing to: (1) The city; and (2) any landowner in the area subject to the service extension plan.

(b) At the hearing, the board shall hear testimony as to the city's extension of municipal services, or lack thereof, from the city and the landowner. After the hearing, the board shall make a finding as to whether or not the city has provided services in accordance with its service extension plan. If the board finds that the city has not provided services as provided in its service extension plan, the board shall notify the city and the landowner that such property may be deannexed, as provided in K.S.A. 12-532, *and amendments thereto*, if the services are not provided within $2\frac{1}{2}$ 1 1/2 years of the date of the board's findings.

(c) If the board of county commissioners refuses to hold the hearing as required, any owner of land living in such area annexed may bring an action under provisions of K.S.A. 60-1201 et seq., and amendments thereto, to compel the board to hold the hearing. The court, upon finding the hearing is required, shall award reasonable attorney fees and costs to the landowner.

Sec. 9. K.S.A. 12-532 is hereby amended to read as follows: 12-532. (a) If, within $2\frac{1}{2}$ years following the conclusion of the hearing required by K.S.A. 12-531, *and amendments thereto*, or, where there has been litigation relating to the hearing, $2\frac{1}{2}$ years following the conclusion of such litigation, the city has not provided the municipal services as provided in the timetable set forth in the plan prepared in accordance with K.S.A. 12-520b or 12-521, and amendments thereto, the owner of such land may petition the board of county commissioners to exclude such land from the boundaries of the city. Within 10 days after receipt of the petition, the board shall schedule the matter for public hearing and shall give notice of the date, hour and place of the hearing to: (1) The owner; (2) the city; (3) the township into which the property, if deannexed, would be placed; and (4) the governing body of any fire district, sewer district, water district or other special district governments which have jurisdiction over territory adjacent to the area sought to be deannexed. The notice shall be sent by certified mail no less than 21 days before the date of the hearing.

(b) At the hearing, the board shall hear testimony as to the city's extension of municipal services, or lack thereof, from both the owner and representatives of the city. Except as provided by subsection (e), if the board finds after the hearing that the city has failed to provide the municipal services in accordance with the plan and consistent with the timetable therein, the board may enter an order excluding the land from the boundaries of the city. Any such order shall take effect in the same manner as provided in K.S.A. 12-523, and amendments thereto, for the effective date of annexation ordinances. Such land shall not be annexed again for ~~one~~ *three year* years from the effective date of the order without the written consent of the owner of the land.

(c) The county clerk shall certify a copy of the order to the register of deeds of the county. The register of deeds shall record the order in the deed records of the county, and, at the expense of the ~~owner~~ *city*, the register of deeds also shall record the order of exclusion on the margin of the recorded plat of such land, giving reference thereon to the page and book of records where the order is recorded in the register's office.

(d) Except as provided by this subsection, after the effective date of the order to exclude the land from the city, such land shall not be liable for any general taxes imposed by the city. Such land shall remain liable, however, for any taxes or special assessments levied by the city as are necessary to pay its proportionate share of the interest on and principal of such bonds or other indebtedness incurred by the city for improvements to the land which were approved by the city before the date on which the owner or owners filed a petition for the exclusion of the land from the city.

(e) The board shall not order exclusion of any land if:

(1) The service extension plan conditions the extension of certain improvements or services on the filing of a legally sufficient petition by the owners of the land for the creation of an improvement district and to levy special assessments therein to pay a portion of the costs of such improvements, and a sufficient petition has not been filed;

(2) since the annexation, the governing body of the city initiated the creation of an improvement or benefit district affecting such land to levy special assessments thereon to pay a portion of the costs of certain municipal improvements, and the formation of

the district was blocked by the filing of a sufficient protest petition by some or all of the owners of any land in the proposed district;

(3) the exclusion would result in the land being completely surrounded by other tracts of land located within the city's boundaries; or

(4) the board finds the exclusion of the land would have an adverse impact on the health, safety and welfare of the residents of the city or such land.

(f) Any owner or the city aggrieved by the decision of the board may appeal the decision to the district court in the manner provided in K.S.A. 19-223, and amendments thereto. Any city so appealing shall not be required to execute the bond prescribed therein.

(g) If the board of county commissioners refuses to hold the hearing as required, any owner of land may bring an action under provisions of K.S.A. 60-1201 et seq., and amendments thereto, to compel the board to hold the hearing. The court, upon finding the hearing is required, shall award reasonable attorney fees and costs to the landowner.";

On page 13, following line 30, by inserting the following:

"New Sec. 12. (a) If any land located within a fire district is annexed by a city and such land remains a part of the fire district beyond the current tax year, the owner of such land shall be entitled to a refund of all ad valorem taxes paid for fire service, including any tax levy for bond and interest payments from either the city or the fire district, whichever entity levies taxes for fire service against the land but does not provide such service.

(b) Cities and fire districts shall establish procedures for landowners to obtain refunds of ad valorem property taxes as required by this section.

Sec. 13. K.S.A. 2010 Supp. 19-214 is hereby amended to read as follows: 19-214.

(a) Except as provided in subsection (b), in K.S.A. 19-216a, and amendments thereto, all contracts for the expenditure of county moneys for the construction of any courthouse, jail or other county building, or the construction of any bridge, highway, road, dam, turnpike or related structures or stand-alone parking lots in excess of \$25,000, shall be awarded, on a public letting, to the lowest and best bid. The person, firm or corporation to whom the contract may be awarded shall give and file with the board of county commissioners a good and sufficient surety bond by a surety company authorized to do business in the state of Kansas, to be approved by the county attorney or county counselor, in the amount of the contract, and conditioned for the faithful performance of the contract.

(b) The provisions of subsection (a) shall not apply: (1) To the expenditure of county funds for professional services; (2) to the provisions of K.S.A. 68-521, and amendments thereto; or (3) to the purchase of contracts of insurance; or (4) to the repair of any courthouse, jail or other county building or the repair or replacement of any such building's equipment when an emergency based upon public health or safety is declared by the board of county commissioners. Such emergency shall be defined as an occurrence of severe damage to a building or its equipment resulting from any natural or manmade cause, including fire, flood, earthquake, wind, storm, explosion, riot, terrorism or hostile military or paramilitary action, or events of similar nature or character. Such damage must be so severe it prevents the building or equipment from being used for its intended function. Construction of a replacement building remains subject to the provisions of subsection (a).";

Also on page 13, in line 32, after "Supp." by inserting "19-214 and";
 On page 1, in the title, in line 1, by striking "boundaries" and inserting "certain municipalities"; in line 3, after "Supp." by inserting "19-214 and";
 And your committee on conference recommends the adoption of this report.

STEVE HUEBERT

JOE SEIWERT

ANN E. MAH

Conferees on part of House

PETE BRUNGARDT

ROGER P. REITZ

OETHA FAUST-GOUDEAU

Conferees on part of Senate

Senator Reitz moved the Senate adopt the Conference Committee Report on **SB 150**.
 On roll call, the vote was: Yeas 31, Nays 6, Present and Passing 1, Absent or Not Voting 2.

Yeas: Abrams, Apple, Bruce, Brungardt, Emler, Faust-Goudeau, Francisco, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Love, Lynn, Masterson, McGinn, Merrick, Olson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Schmidt A, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Wagle.

Nays: Haley, Longbine, Marshall, Owens, Reitz, Vratil.

Present and Passing: Morris.

Absent or Not Voting: Donovan, Steineger.

The Conference Committee Report was adopted.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Haley, Morris, Emler, Hensley, Apple, Abrams, Bruce, Brungardt, Faust-Goudeau, Francisco, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, McGinn, Merrick, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Reitz, A. Schmidt, V. Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Vratil and Wagle introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1866—

A RESOLUTION commemorating the 10th anniversary of September 11th, 2001.

WHEREAS, The people of Kansas were deeply moved and affected by the terroristic tragedy of September 11, 2001, and on their behalf the Kansas Senate wishes to commemorate a decade of remorse, remembrance, resilience and resounding spirit; and

WHEREAS, September 11, 2001 was a catastrophe that few Kansans will ever forget. There remains a deep sense of mourning throughout the Nation when, on that date, commercial aircrafts were hijacked and intentionally crashed into the Twin Towers of the World Trade Center in New York, the Pentagon in northern Virginia and prematurely into the Pennsylvania countryside. We all remember our Nation collectively pausing while firefighters and police officers valiantly attempted to save the victims of the attack; and

WHEREAS, Nearly 3,000 Americans died as a result of the September 11, 2001 attack. Their faces, their images and their stories are woven into our national conscience and seared upon our national resolve. This number includes firefighter Joe

Spor, Jr., who was killed in the collapse of the Twin Towers. His widow and children were adopted by the City of Anthony, Kansas. The city's residents gave them support and comfort; and

WHEREAS, Even amid suffering and death, Kansans stood in solidarity after this dramatic attack on American soil and erected a memorial. The official Kansas 9/11 Memorial, built of Kansas limestone and brick, is located in Anthony, Kansas. This monument to our state and national resolve serves as a place of connection between the survivors of the September 11th tragedy and all of us who support them; and

WHEREAS, Kansans responded as well to the human tragedy even as grief reverberated throughout the Nation. The Kansas National Guard served in the national disaster efforts and in the airports; and

WHEREAS, Kansas has remained committed to America's war against terrorism and intends to stop terrorism on our shores and abroad. Specifically, we have supported our family and friends who serve in the Kansas National Guard as well as our active duty troops who call Kansas home. We submit honor to and we genuinely thank our Guard members who have served in over 10,000 deployments overseas, especially since September 11, 2001. Moreover, we will always remember the sacrifices made by more than 10 Kansas soldiers who have died and dozens of Kansans who have been wounded in Afghanistan and in Iraq; and

WHEREAS, Following September 11, 2001, Kansas rejuvenated its national spirit and has worked harder to build even stronger connectional bonds with the rest of the Nation. A decade after this tragedy, Kansas continues to send our men and women to fight against acts of terrorism that imperil not only our people, but our very way of life as other people in other countries yearn for the freedom borne of democracy: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we remember those who lost their lives on September 11, 2001, and we express our strong desire for a unified and harmonious Nation; and

Be it further resolved: That Kansas recommitts on this solemn anniversary to never forget this day of all American patriots, and to insure that the remembrances and that the lessons of September 11, 2001 are imparted to succeeding generations of Kansans as integral to our national security and to our national spirit; and

Be it further resolved: That despite the capture and eradication of top al-Qaeda masterminds and operatives, Kansans remain committed and resolved in successfully ending the war against terror; and

Be it finally resolved: That the Secretary of the Senate shall send an enrolled copy of this resolution to the President of the United States of America, the Governor of the State of New York, the President of the New York Senate and Senators Haley, Morris, Emler and Hensley. Copies shall also be distributed to each member of the Kansas Congressional Delegation for solemn and appropriate dissemination to survivors.

On emergency motion of Senator Haley **SR 1866** was adopted unanimously.

SPECIAL REMARKS

Exactly four months from this day, September 11, 2011...across the Land, bells toll and our Nation pauses to remember and to give solemn recognition of an exact decade of our forced awakening to a national change. In February of this Session, we started the research and drafting of this Resolution, well before any of the events relating to the

eradication of top operatives ensued.

Thank each of you for joining me in this Tribute to that solemn future anniversary. The Kansas Legislature has yet to mark this date in any Resolution, Tribute or Legislation.

Every Kansan, every American, of a certain age remembers where they were while the events of that day, “9-11” as it has become commonly, almost casually, to be known as today, unfolded. Still in my first year as a Senator, I commuted cautiously from my home in Kansas City to a Juvenile Justice conference at the Capital Plaza Hotel and clearly remembering the prophetic words of our then colleague, Senator David Adkins who said to those in attendance: “We don't know who's behind all of this but one thing's for sure; America, as we know it today, will never be the same again...” And then he offered a prayer, certainly not his usual custom.

Senator Adkins observation would be codified, echoed more succinctly by President George W. Bush, who would say time and time again, simply: “September 11th changed everything.” Indeed, it did.

The assault on the Twin Towers in New York, the Pentagon in Virginia, and a Pennsylvania countryside by hijacked commercial airlines that were intentionally crashed was an assault on our American culture by anti-American foreign assailants. In the last decade we have proven the adage that what did not kill us, only made us stronger.

The attack came not at what divides as Americans, too often, but an attack on our collective culture as Americans. Our collective American psyche reawakened grew stronger and grows stronger still today...a decade later.

Though I am a native Kansan, and a proud statesman of Kansas, I am not always content with Kansas law. Nor am I always proud of our laws. But, the laws of the Land can balance and ameliorate and temper the best and the worst laws of all States. Federal law is the hallmark of our culture in that it is representative of ALL America. This then is OUR Country; right or wrong.

September 11th, 2001 changed everything. Today, we pause to remember and commemorate the lives lost and the valor of the men and women who fought to restore order and to save lives. Today, we, who cherish liberty and justice for all, declare that the United States of America is still the hallmark of nations on the face of the planet today and even with blemishes, our democracy makes us yet proud to be Americans “where at least we know we're free.”

America's cultural spirit, rekindled by a day of foreign terror, burns brighter after this decade. – DAVID HALEY

REPORT ON ENGROSSED BILLS

SB 61; H Sub SB 63 reported correctly engrossed May 11, 2011.

Also, **SB 193** correctly re-engrossed May 11, 2011.

REPORT ON ENROLLED BILLS

SR 1863, SR 1864, SR 1865 reported correctly enrolled, properly signed and presented to the Secretary of Senate on May 11, 2011.

ORIGINAL MOTION

On emergency motion of Senator Emler, **HB 2054** was advanced on the calendar

under the heading of General Orders to the first order of business.

COMMITTEE OF THE WHOLE

On motion of Senator Emler, the Senate resolved itself into Committee of the Whole, for consideration of the bill on the calendar under the heading of General Orders with Senator Umbarger in the chair.

On motion of Senator Umbarger the following report was adopted:

HB 2054 be amended by the adoption of the committee amendments, and **HB 2054** be passed as amended.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator Emler an emergency was declared by a 2/3 constitutional majority, and **HB 2054** was advanced to Final Action and roll call.

HB 2054, AN ACT concerning certain state agencies; pertaining to the Kansas technology enterprise corporation and the abolishing thereof; pertaining to the transfer of the powers and duties thereof to the department of commerce and the board of regents; pertaining to the membership of the Kansas bioscience authority; amending K.S.A. 74-5001a, 74-8102, 74-8103, 74-8106, 74-8107, 74-8108, 74-8108a, 74-8109, 74-8110, 74-8111, 74-8316, 74-8317, 74-8318, 74-8319, 74-8401, 75-2935b, 75-3208 and 76-770 and K.S.A. 2010 Supp. 74-520a, 74-5005, 74-50,133, 74-50,151, 74-50,156, 74-8104, 74-8131, 74-8132, 74-8133, 74-8134, 74-8135, 74-8136, 74-99b03, 74-99b04, 74-99b09, 74-99b63, 74-99b66, 74-99c03 and 75-2935 and repealing the existing sections; also repealing K.S.A. 74-5050, 74-8101 and 74-8105.

On roll call, the vote was: Yeas 21, Nays 11, Present and Passing 6, Absent or Not Voting 2.

Yeas: Abrams, Apple, Bruce, Emler, Huntington, Kelsey, King, Longbine, Love, Lynn, Masterson, Merrick, Morris, Olson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Schmidt A, Taddiken, Wagle.

Nays: Brungardt, Faust-Goudeau, Francisco, Haley, Hensley, Kultala, Marshall, Owens, Reitz, Schmidt V, Vratil.

Present and Passing: Holland, Kelly, McGinn, Schodorf, Teichman, Umbarger.

Absent or Not Voting: Donovan, Steineger.

The bill passed, as amended.

CHANGE OF REFERENCE

The President withdrew **S Sub for HB 2357** from the Calendar under the heading of General Orders and re-referred the bill to the Committee on **Ways and Means**.

On motion of Senator Emler the adjourned until 10:00 a.m., Thursday, May 12, 2011.

HELEN MORELAND, ROSE MARIE GLATT, SHIRLEY LAMOTT, *Journal Clerks.*

PAT SAVILLE, *Secretary of the Senate.*

