

HOUSE BILL No. 2323

By Committee on Corrections and Juvenile Justice

2-11

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to abolition of the death penalty; creating the crime of aggravated
3 murder; sentences of imprisonment for life without the possibility of
4 parole; amending K.S.A. 22-3405, 22-3705 and 22-4210 and K.S.A.
5 2010 Supp. 22-3717, 22-3728, 22-4902, 38-2255, 38-2271, 38-2312,
6 38-2365, 39-970, 65-5117, 72-1397 and 75-52,148 and sections 54,
7 254, 258, 260, 262, 266, 268, 269 and 287 of chapter 136 of the 2010
8 Session Laws of Kansas and repealing the existing sections; also
9 repealing K.S.A. 2010 Supp. 21-4619, 21-4623, 21-4624, 21-4634,
10 21-4642, 22-3717c and 38-2255a and sections 36, 257 and 259 of
11 chapter 136 of the 2010 Session Laws of Kansas.

12
13 WHEREAS, Kansas reenacted the death penalty in 1994; and

14 WHEREAS, Inmates in Kansas are currently under sentence of death;
15 and

16 WHEREAS, Kansas has not carried out an execution since 1965:
17 Now, therefore,

18
19 *Be it enacted by the Legislature of the State of Kansas:*

20 New Section 1. (a) No person shall be sentenced to death for a crime
21 committed on or after July 1, 2011.

22 (b) Any person who is sentenced to death for a crime committed
23 prior to July 1, 2011, may be put to death pursuant to the provisions of
24 article 40 of chapter 22 of the Kansas Statutes Annotated, and
25 amendments thereto.

26 (c) This section shall be part of and supplemental to the Kansas
27 criminal code.

28 New Sec. 2. (a) Aggravated murder is the:

29 (1) Intentional and premeditated killing of any person in the
30 commission of kidnapping, as defined in subsection (a) of section 43 of
31 chapter 136 of the 2010 Session Laws of Kansas, and amendments
32 thereto, or aggravated kidnapping, as defined in subsection (b) of section
33 43 of chapter 136 of the 2010 Session Laws of Kansas, and amendments
34 thereto, when the kidnapping or aggravated kidnapping was committed
35 with the intent to hold such person for ransom;

36 (2) intentional and premeditated killing of any person pursuant to a

1 contract or agreement to kill such person or being a party to the contract
2 or agreement pursuant to which such person is killed;

3 (3) intentional and premeditated killing of any person by an inmate
4 or prisoner confined in a state correctional institution, community
5 correctional institution or jail or while in the custody of an officer or
6 employee of a state correctional institution, community correctional
7 institution or jail;

8 (4) intentional and premeditated killing of the victim of one of the
9 following crimes in the commission of, or subsequent to, such crime:
10 Rape, as defined in section 67 of chapter 136 of the 2010 Session Laws of
11 Kansas, and amendments thereto, criminal sodomy, as defined in
12 subsections (a)(3) or (a)(4) of section 68 of chapter 136 of the 2010
13 Session Laws of Kansas, and amendments thereto, or aggravated criminal
14 sodomy, as defined in subsection (b) of section 68 of chapter 136 of the
15 2010 Session Laws of Kansas, and amendments thereto, or any attempt
16 thereof, as defined in section 33 of chapter 136 of the 2010 Session Laws
17 of Kansas, and amendments thereto;

18 (5) intentional and premeditated killing of a law enforcement officer;

19 (6) intentional and premeditated killing of more than one person as a
20 part of the same act or transaction or in two or more acts or transactions
21 connected together or constituting parts of a common scheme or course of
22 conduct; or

23 (7) intentional and premeditated killing of a child under the age of
24 14 in the commission of kidnapping, as defined in subsection (a) of
25 section 43 of chapter 136 of the 2010 Session Laws of Kansas, and
26 amendments thereto, or aggravated kidnapping, as defined in subsection
27 (b) of section 43 of chapter 136 of the 2010 Session Laws of Kansas, and
28 amendments thereto, when the kidnapping or aggravated kidnapping was
29 committed with intent to commit a sex offense upon or with the child or
30 with intent that the child commit or submit to a sex offense.

31 (b) For purposes of this section, "sex offense" means rape, as
32 defined in section 67 of chapter 136 of the 2010 Session Laws of Kansas,
33 and amendments thereto, aggravated indecent liberties with a child, as
34 defined in subsection (b) of section 70 of chapter 136 of the 2010 Session
35 Laws of Kansas, and amendments thereto, aggravated criminal sodomy,
36 as defined in subsection (b) of section 68 of chapter 136 of the 2010
37 Session Laws of Kansas, and amendments thereto, prostitution, as
38 defined in section 229 of chapter 136 of the 2010 Session Laws of
39 Kansas, and amendments thereto, promoting prostitution, as defined in
40 section 230 of chapter 136 of the 2010 Session Laws of Kansas, and
41 amendments thereto, or sexual exploitation of a child, as defined in
42 section 74 of chapter 136 of the 2010 Session Laws of Kansas, and
43 amendments thereto.

1 (c) Notwithstanding subsections (b)(1) or (b)(2) of section 9 of
2 chapter 136 of the 2010 Session Laws of Kansas, and amendments
3 thereto, when the same conduct of a defendant may establish the
4 commission of aggravated murder and the commission of another crime
5 under the laws of this state, the defendant may be prosecuted and
6 sentenced for each of such crimes.

7 (d) Aggravated murder is an off-grid person felony.

8 (e) This section shall be part of and supplemental to the Kansas
9 criminal code.

10 New Sec. 3. (a) When it is provided by law that a person shall be
11 sentenced pursuant to this section, such person shall be sentenced to
12 imprisonment for life without the possibility of parole. A defendant who
13 is sentenced to imprisonment for life without the possibility of parole
14 shall spend the remainder of the defendant's natural life incarcerated and
15 in the custody of the secretary of corrections. A defendant who is
16 sentenced to imprisonment for life without the possibility of parole shall
17 not be eligible for commutation of sentence, parole, probation,
18 assignment to a community correctional services program, conditional
19 release, postrelease supervision, functional incapacitation release
20 pursuant to K.S.A. 22-3728, and amendments thereto, or suspension,
21 modification or reduction of sentence. Upon sentencing a defendant to
22 imprisonment for life without the possibility of parole, the court shall
23 commit the defendant to the custody of the secretary of corrections and
24 the court shall state in the sentencing order of the judgment form or
25 journal entry, whichever is delivered with the defendant to the
26 correctional institution, that the defendant has been sentenced to
27 imprisonment for life without the possibility of parole.

28 (b) This section shall be part of and supplemental to the Kansas
29 criminal code.

30 Sec. 4. Section 54 of chapter 136 of the 2010 Session Laws of
31 Kansas is hereby amended to read as follows: Sec. 54. (a) As used in
32 this section:

33 (1) "Abortion" means an abortion as defined by K.S.A. 65-6701, and
34 amendments thereto; and

35 (2) "unborn child" means a living individual organism of the species
36 homo sapiens, in utero, at any stage of gestation from fertilization to
37 birth.

38 (b) This section shall not apply to:

39 (1) Any act committed by the mother of the unborn child;

40 (2) any medical procedure, including abortion, performed by a
41 physician or other licensed medical professional at the request of the
42 pregnant woman or her legal guardian; or

43 (3) the lawful dispensation or administration of lawfully prescribed

1 medication.

2 (c) As used in sections 36, 37, 38, 39, 40, 41, and subsections (a)
3 and (b) of section 48, and amendments thereto, "person" and "human
4 being" also mean an unborn child.

5 (d) This section shall be known as Alexa's law.

6 Sec. 5. Section 254 of chapter 136 of the 2010 Session Laws of
7 Kansas is hereby amended to read as follows: Sec. 254. (a) (1) Except as
8 provided in subsections (b) and (c), any person convicted in this state of a
9 traffic infraction, cigarette or tobacco infraction, misdemeanor or a class
10 D or E felony, or for crimes committed on or after July 1, 1993, nondrug
11 crimes ranked in severity levels 6 through 10 or any felony ranked in
12 severity level 4 of the drug grid, may petition the convicting court for the
13 expungement of such conviction or related arrest records if three or more
14 years have elapsed since the person: (A) Satisfied the sentence imposed;
15 or (B) was discharged from probation, a community correctional services
16 program, parole, postrelease supervision, conditional release or a
17 suspended sentence.

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

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

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

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

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

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

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

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

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

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

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

17 (1) Rape as defined in *K.S.A. 21-3502, prior to its repeal, or section*
18 *67 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
19 thereto;

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

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

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

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

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

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

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

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

5 (10) capital murder as defined in ~~section 36, and amendments~~
6 ~~thereto~~ *K.S.A. 21-3439, prior to its repeal;*

7 (11) *aggravated murder as defined in section 2, and amendments*
8 *thereto;*

9 ~~(11)~~(12) *murder in the first degree as defined in K.S.A. 21-3401,*
10 *prior to its repeal, or section 37 of chapter 136 of the 2010 Session Laws*
11 *of Kansas,* and amendments thereto;

12 ~~(12)~~(13) *murder in the second degree as defined in K.S.A. 21-3402,*
13 *prior to its repeal, or section 38 of chapter 136 of the 2010 Session Laws*
14 *of Kansas,* and amendments thereto;

15 ~~(13)~~(14) *voluntary manslaughter as defined in K.S.A. 21-3403, prior*
16 *to its repeal, or section 39 of chapter 136 of the 2010 Session Laws of*
17 *Kansas,* and amendments thereto;

18 ~~(14)~~(15) *involuntary manslaughter as defined in K.S.A. 21-3404,*
19 *prior to its repeal, or section 40 of chapter 136 of the 2010 Session Laws*
20 *of Kansas,* and amendments thereto;

21 ~~(15)~~(16) *sexual battery as defined in K.S.A. 21-3517, prior to its*
22 *repeal, or section 69 of chapter 136 of the 2010 Session Laws of Kansas,*
23 *and amendments thereto, when the victim was less than 18 years of age at*
24 *the time the crime was committed;*

25 ~~(16)~~(17) *aggravated sexual battery as defined in K.S.A. 21-3518,*
26 *prior to its repeal, or section 69 of chapter 136 of the 2010 Session Laws*
27 *of Kansas,* and amendments thereto;

28 ~~(17)~~(18) *a violation of K.S.A. 8-1567, and amendments thereto,*
29 *including any diversion for such violation;*

30 ~~(18)~~(19) *a violation of K.S.A. 8-2,144, and amendments thereto,*
31 *including any diversion for such violation; or*

32 ~~(19)~~(20) *any conviction for any offense in effect at any time prior to*
33 ~~the effective date of this act~~ *July 1, 2011, that is comparable to any offense*
34 *as provided in this subsection.*

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

- 39 (A) Defendant's full name;
- 40 (B) full name of the defendant at the time of arrest, conviction or
41 diversion, if different than the defendant's current name;
- 42 (C) defendant's sex, race and date of birth;
- 43 (D) crime for which the defendant was arrested, convicted or

1 diverted;

2 (E) date of the defendant's arrest, conviction or diversion; and

3 (F) identity of the convicting court, arresting law enforcement
4 authority or diverting authority.

5 (2) Except as *otherwise* provided further, ~~there shall be no docket~~
6 ~~fee for filing a petition pursuant to this section by law, a petition for~~
7 *expungement shall be accompanied by a docket fee in the amount of*
8 *\$100.* On and after ~~July 1, 2009 through June 30, 2010~~ *April 15, 2010*
9 *through June 30, 2011,* the supreme court may impose a charge, not to
10 exceed ~~\$10~~ *\$15* per case, to fund the costs of non-judicial personnel. The
11 charge established in this section shall be the only fee collected or
12 moneys in the nature of a fee collected for the case. Such charge shall
13 only be established by an act of the legislature and no other authority is
14 established by law or otherwise to collect a fee.

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

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

24 (1) The petitioner has not been convicted of a felony in the past two
25 years and no proceeding involving any such crime is presently pending or
26 being instituted against the petitioner;

27 (2) the circumstances and behavior of the petitioner warrant the
28 expungement;

29 (3) the expungement is consistent with the public welfare.

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

39 (1) Upon conviction for any subsequent crime, the conviction that
40 was expunged may be considered as a prior conviction in determining the
41 sentence to be imposed;

42 (2) the petitioner shall disclose that the arrest, conviction or
43 diversion occurred if asked about previous arrests, convictions or

1 diversions:

2 (A) In any application for licensure as a private detective, private
3 detective agency, certification as a firearms trainer pursuant to K.S.A.
4 ~~2009~~ 2010 Supp. 75-7b21, and amendments thereto, or employment as a
5 detective with a private detective agency, as defined by K.S.A. 75-7b01,
6 and amendments thereto; as security personnel with a private patrol
7 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
8 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
9 the department of social and rehabilitation services;

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

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

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

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

27 (F) upon application for a commercial driver's license under K.S.A.
28 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

39 (K) for applications received on and after July 1, 2006, to aid in
40 determining the petitioner's qualifications for a license to carry a
41 concealed weapon pursuant to the personal and family protection act,
42 K.S.A. ~~2009~~ 2010 Supp. 75-7c01 et seq., and amendments thereto;

43 (3) the court, in the order of expungement, may specify other

1 circumstances under which the conviction is to be disclosed;

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

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

9 (g) Whenever a person is convicted of a crime, pleads guilty and
10 pays a fine for a crime, is placed on parole, postrelease supervision or
11 probation, is assigned to a community correctional services program, is
12 granted a suspended sentence or is released on conditional release, the
13 person shall be informed of the ability to expunge the arrest records or
14 conviction. Whenever a person enters into a diversion agreement, the
15 person shall be informed of the ability to expunge the diversion.

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

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

30 (1) The person whose record was expunged;

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

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

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

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

1 (6) a prosecutor, and such request is accompanied by a statement
2 that the request is being made in conjunction with a prosecution of an
3 offense that requires a prior conviction as one of the elements of such
4 offense;

5 (7) the supreme court, the clerk or disciplinary administrator thereof,
6 the state board for admission of attorneys or the state board for discipline
7 of attorneys, and the request is accompanied by a statement that the
8 request is being made in conjunction with an application for admission,
9 or for an order of reinstatement, to the practice of law in this state by the
10 person whose record has been expunged;

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

16 (9) the governor or the Kansas racing and gaming commission, or a
17 designee of the commission, and the request is accompanied by a
18 statement that the request is being made to aid in determining
19 qualifications for executive director of the commission, for employment
20 with the commission, for work in sensitive areas in parimutuel racing as
21 deemed appropriate by the executive director of the commission or for
22 licensure, renewal of licensure or continued licensure by the commission;

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

31 (11) the Kansas sentencing commission;

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

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

43 (14) the Kansas commission on peace officers' standards and

1 training and the request is accompanied by a statement that the request is
2 being made to aid in determining certification eligibility as a law
3 enforcement officer pursuant to K.S.A. 74-5601 et seq., and amendments
4 thereto;

5 (15) a law enforcement agency and the request is accompanied by a
6 statement that the request is being made to aid in determining eligibility
7 for employment as a law enforcement officer as defined by K.S.A. 22-
8 2202, and amendments thereto; or

9 (16) the attorney general and the request is accompanied by a
10 statement that the request is being made to aid in determining
11 qualifications for a license to carry a concealed weapon pursuant to the
12 personal and family protection act.

13 Sec. 6. Section 258 of chapter 136 of the 2010 Session Laws of
14 Kansas is hereby amended to read as follows: Sec. 258. Upon
15 conviction of a defendant of ~~capital~~ *aggravated* murder and a
16 finding that the defendant was less than 18 years of age at the
17 time of the commission thereof, the court shall sentence the
18 defendant as otherwise provided by law, and no sentence of
19 ~~death or life without the possibility of parole shall be imposed~~
20 ~~hereunder.~~

21 Sec. 7. Section 260 of chapter 136 of the 2010 Session Laws of
22 Kansas is hereby amended to read as follows: Sec. 260. (a) Except as
23 provided in ~~section~~ *sections 258 and 262 of chapter 136 of the 2010*
24 *Session Laws of Kansas*, and amendments thereto, if a defendant is
25 convicted of the crime of ~~capital murder and a sentence of death is not~~
26 ~~imposed pursuant to subsection (c) of section 257, and amendments~~
27 ~~thereto, or requested pursuant to subsection (a) or (b) of section 257, and~~
28 ~~amendments thereto, aggravated murder~~, the defendant shall be sentenced
29 to life without the possibility of parole *pursuant to section 3, and*
30 *amendments thereto.*

31 (b) If a defendant is convicted of murder in the first degree based
32 upon the finding of premeditated murder, the court shall determine
33 whether the defendant shall be required to serve a mandatory term of
34 imprisonment of 40 years or for crimes committed on and after July 1,
35 1999, a mandatory term of imprisonment of 50 years or sentenced as
36 otherwise provided by law.

37 (c) In order to make such determination, the court may be presented
38 evidence concerning any matter that the court deems relevant to the
39 question of sentence and shall include matters relating to any of the
40 aggravating circumstances enumerated in section 264 *of chapter 136 of*
41 *the 2010 Session Laws of Kansas*, and amendments thereto, and any
42 mitigating circumstances. Any such evidence which the court deems to

1 have probative value may be received regardless of its admissibility under
2 the rules of evidence, provided that the defendant is accorded a fair
3 opportunity to rebut any hearsay statements. Only such evidence of
4 aggravating circumstances as the state has made known to the defendant
5 prior to the sentencing shall be admissible and no evidence secured in
6 violation of the constitution of the United States or of the state of Kansas
7 shall be admissible. No testimony by the defendant at the time of
8 sentencing shall be admissible against the defendant at any subsequent
9 criminal proceeding. At the conclusion of the evidentiary presentation,
10 the court shall allow the parties a reasonable period of time in which to
11 present oral argument.

12 (d) If the court finds that one or more of the aggravating
13 circumstances enumerated in section 264 of chapter 136 of the 2010
14 Session Laws of Kansas, and amendments thereto, exist and, further, that
15 the existence of such aggravating circumstances is not outweighed by any
16 mitigating circumstances which are found to exist, the defendant shall be
17 sentenced pursuant to section 263 of chapter 136 of the 2010 Session
18 Laws of Kansas, and amendments thereto; otherwise, the defendant shall
19 be sentenced as provided by law. The court shall designate, in writing, the
20 statutory aggravating circumstances which it found. ~~The court may make
21 the findings required by this subsection for the purpose of determining
22 whether to sentence a defendant pursuant to section 263, and amendments
23 thereto, notwithstanding contrary findings made by the jury or court
24 pursuant to subsection (c) of section 257, and amendments thereto, for the
25 purpose of determining whether to sentence such defendant to death.~~

26 Sec. 8. Section 262 of chapter 136 of the 2010 Session Laws of
27 Kansas is hereby amended to read as follows: Sec. 262. ~~(a) If, under
28 section 257, and amendments thereto, the county or district attorney has
29 filed a notice of intent to request a separate sentencing proceeding to
30 determine whether the defendant should be sentenced to death and the
31 defendant is convicted of the crime of capital murder, the defendant's
32 counsel or the warden of the correctional institution or sheriff having
33 custody of the defendant may request a determination by the court of
34 whether the defendant is mentally retarded. If the court determines that
35 there is not sufficient reason to believe that the defendant is mentally
36 retarded, the court shall so find and the defendant shall be sentenced in
37 accordance with sections 257, 259, 264, 265, 268 and 269, and
38 amendments thereto. If the court determines that there is sufficient reason
39 to believe that the defendant is mentally retarded, the court shall conduct
40 a hearing to determine whether the defendant is mentally retarded.~~

41 ~~(b) (a)~~ If a defendant is convicted of the crime of capital murder and
42 a sentence of death is not imposed *aggravated murder*, or if a defendant is
43 convicted of the crime of murder in the first degree based upon the

1 finding of premeditated murder, the defendant's counsel or the warden of
2 the correctional institution or sheriff having custody of the defendant may
3 request a determination by the court of whether the defendant is mentally
4 retarded. If the court determines that there is not sufficient reason to
5 believe that the defendant is mentally retarded, the court shall so find and
6 the defendant shall be sentenced in accordance with sections 260, 263,
7 264 and 265 of *chapter 136 of the 2010 Session Laws of Kansas*, and
8 amendments thereto. If the court determines that there is sufficient reason
9 to believe that the defendant is mentally retarded, the court shall conduct
10 a hearing to determine whether the defendant is mentally retarded.

11 (c) At the hearing, the court shall determine whether the defendant is
12 mentally retarded. The court shall order a psychiatric or psychological
13 examination of the defendant. For that purpose, the court shall appoint
14 two licensed physicians or licensed psychologists, or one of each,
15 qualified by training and practice to make such examination, to examine
16 the defendant and report their findings in writing to the judge within ~~10~~¹⁴
17 days after the order of examination is issued. The defendant shall have
18 the right to present evidence and cross-examine any witnesses at the
19 hearing. No statement made by the defendant in the course of any
20 examination provided for by this section, whether or not the defendant
21 consents to the examination, shall be admitted in evidence against the
22 defendant in any criminal proceeding.

23 (d) If, at the conclusion of a hearing pursuant to subsection (a), the
24 court determines that the defendant is not mentally retarded, the
25 defendant shall be sentenced in accordance with sections ~~257, 259~~, 264,
26 265, 268 and 269 of *chapter 136 of the 2010 Session Laws of Kansas*, and
27 amendments thereto.

28 (e) If, at the conclusion of a hearing pursuant to subsection (b), the
29 court determines that the defendant is not mentally retarded, the
30 defendant shall be sentenced in accordance with sections 260, 263, 264
31 and 265 of *chapter 136 of the 2010 Session Laws of Kansas*, and
32 amendments thereto.

33 (f) If, at the conclusion of a hearing pursuant to this section, the
34 court determines that the defendant is mentally retarded, the court shall
35 sentence the defendant as otherwise provided by law, and no sentence of
36 death, life without the possibility of parole, or mandatory term of
37 imprisonment shall be imposed hereunder.

38 (g) Unless otherwise ordered by the court for good cause shown, the
39 provisions of subsection (b) shall not apply if it has been determined,
40 pursuant to a hearing granted under the provisions of subsection (a), that
41 the defendant is not mentally retarded.

42 (h) As used in this section, "mentally retarded" means having
43 significantly subaverage general intellectual functioning, as defined by

1 K.S.A. 76-12b01, and amendments thereto, to an extent which
2 substantially impairs one's capacity to appreciate the criminality of one's
3 conduct or to conform one's conduct to the requirements of law.

4 Sec. 9. Section 266 of chapter 136 of the 2010 Session Laws of
5 Kansas is hereby amended to read as follows: Sec. 266. (a) An aggravated
6 habitual sex offender shall be sentenced to imprisonment for life without
7 the possibility of parole. Such offender shall spend the remainder of the
8 offender's natural life incarcerated and in the custody of the secretary of
9 corrections. An offender who is sentenced to imprisonment for life
10 without the possibility of parole shall not be eligible for *commutation of*
11 *sentence*, parole, probation, assignment to a community correctional
12 services program, conditional release, postrelease supervision, *functional*
13 *incapacitation release pursuant to K.S.A. 22-3728*, and amendments
14 *thereto*, or suspension, modification or reduction of sentence.

15 (b) Upon sentencing a defendant to imprisonment for life
16 without the possibility of parole, the court shall commit the defendant to
17 the custody of the secretary of corrections and the court shall state in the
18 sentencing order of the judgment form or journal entry, whichever is
19 delivered with the defendant to the correctional institution, that the
20 defendant has been sentenced to imprisonment for life without the
21 possibility of parole.

22 (c) As used in this section:

23 (1) "Aggravated habitual sex offender" means a person who,
24 on and after July 1, 2006: (A) Has been convicted in this state of a
25 sexually violent crime, as described in subsection (c)(3)(A) through (c)(3)
26 ~~(H)~~(H) or (c)(3)~~(I)~~(J); and (B) prior to the conviction of the felony under
27 subparagraph (A), has been convicted ~~on at least two prior conviction~~
28 ~~events of any sexually violent crime of two or more sexually violent~~
29 *crimes*;

1 (2) ~~"prior conviction event" means one or more felony~~
2 ~~convictions of a sexually violent crime occurring on the same day and~~
3 ~~within a single court. These convictions may result from multiple counts~~
4 ~~within an information or from more than one information. If a person~~
5 ~~crosses a county line and commits a felony as part of the same criminal~~
6 ~~act or acts, such felony, if such person is convicted, shall be considered~~
7 ~~part of the prior conviction event.~~

8 (3) "Sexually violent crime" means:

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

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

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

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

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

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

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

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

14 (I) any federal or other state conviction for a felony offense
15 that under the laws of this state would be a sexually violent crime as
16 defined in this section;

17 (J) an attempt, conspiracy or criminal solicitation, as defined in
18 *K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or section 33,*
19 *34 or 35 of chapter 136 of the 2010 Session Laws of Kansas*, and
20 amendments thereto, of a sexually violent crime as defined in this section;
21 or

22 (K) any act which at the time of sentencing for the offense has

1 been determined beyond a reasonable doubt to have been sexually
2 motivated. As used in this subparagraph, "sexually motivated" means that
3 one of the purposes for which the defendant committed the crime was for
4 the purpose of the defendant's sexual gratification.

5 Sec. 10. Section 268 of chapter 136 of the 2010 Session Laws of
6 Kansas is hereby amended to read as follows: Sec. 268. (a) In the
7 event the term of imprisonment for life without the
8 possibility of parole or any provision of section 266 or 267 of
9 chapter 136 of the 2010 Session Laws of Kansas, and amendments
10 thereto, authorizing such term is held to be unconstitutional
11 by the supreme court of Kansas or the United States supreme
12 court, the court having jurisdiction over a person previously
13 sentenced shall cause such person to be brought before the
14 court and shall modify the sentence to require no term of
15 imprisonment for life without the possibility of parole and
16 shall sentence the defendant to the maximum term of
17 imprisonment otherwise provided by law.

18 ~~(b) In the event a sentence of death or any provision of this act~~
19 ~~authorizing such sentence is held to be unconstitutional by the supreme~~
20 ~~court of Kansas or the United States supreme court, the court having~~
21 ~~jurisdiction over a person previously sentenced shall cause such person to~~
22 ~~be brought before the court and shall modify the sentence and resentence~~
23 ~~the defendant as otherwise provided by law.~~

24 (e) (b) In the event the mandatory term of imprisonment or any
25 provision of chapter 341 of the 1994 Session Laws of Kansas authorizing
26 such mandatory term is held to be unconstitutional by the supreme court
27 of Kansas or the United States supreme court, the court having
28 jurisdiction over a person previously sentenced shall cause such person to
29 be brought before the court and shall modify the sentence to require no
30 mandatory term of imprisonment and shall sentence the defendant as
31 otherwise provided by law.

32 Sec. 11. Section 269 of chapter 136 of the 2010 Session Laws of
33 Kansas is hereby amended to read as follows: Sec. 269. (a) The
34 provisions of K.S.A. 21-4622 through 21-4630, as they
35 existed immediately prior to July 1, 1994, shall be applicable
36 only to persons convicted of crimes committed on or after

1 July 1, 1990, and before July 1, 1994.

2 (b) The provisions of K.S.A. 21-4622 through 21-4627 and 21-4629
3 and 21-4630, as amended on July 1, 1994, *and prior to their repeal, and*
4 *sections 258, 262, 264, 265 and subsection (b) of section 268 of chapter*
5 *136 of the 2010 Session Laws of Kansas, and amendments thereto, shall*
6 *be applicable only to persons convicted of crimes committed on or after*
7 *July 1, 1994.*

8 (c) K.S.A. 21-4633 through 21-4640, *prior to their repeal, and*
9 *sections 260, 261, 262, 263, 264, 265 and subsection (c) of section 268 of*
10 *chapter 136 of the 2010 Session Laws of Kansas, and amendments*
11 *thereto, shall be applicable only to persons convicted of crimes*
12 *committed on or after July 1, 1994.*

13 Sec. 12. Section 287 of chapter 136 of the 2010 Session Laws of
14 Kansas is hereby amended to read as follows: Sec. 287. (a) Sentences
15 of imprisonment shall represent the time a person shall
16 actually serve, subject to a reduction of the primary sentence
17 for good time as authorized by section 302 *of chapter 136 of the*
18 *2010 Session Laws of Kansas, and amendments thereto.*

19 (b) The sentencing court shall pronounce sentence in all felony
20 cases.

21 (c) Violations of sections ~~36~~, 37, 56, 57 and 126 *of chapter 136 of*
22 *the 2010 Session Laws of Kansas, and amendments thereto, are off-grid*
23 *crimes for the purpose of sentencing. Except as otherwise provided by*
24 *sections ~~257~~, 258, ~~259~~, 262, 264, 265, 268 and 269 of chapter 136 of the*
25 *2010 Session Laws of Kansas, and amendments thereto, the sentence*
26 *shall be imprisonment for life and shall not be subject to statutory*
27 *provisions for suspended sentence, community service or probation.*

28 (d) As identified in sections 61, 67, 68, 70, 74 and 230 *of chapter*
29 *136 of the 2010 Session Laws of Kansas, and amendments thereto, if the*
30 *offender is 18 years of age or older and the victim is under 14 years of*
31 *age, such violations are off-grid crimes for the purposes of sentencing.*
32 *Except as provided in section 266 of chapter 136 of the 2010 Session*
33 *Laws of Kansas, and amendments thereto, the sentence shall be*
34 *imprisonment for life pursuant to section 267 of chapter 136 of the 2010*
35 *Session Laws of Kansas, and amendments thereto.*

36 (e) *Violation of section 2, and amendments thereto, is an off-grid*
37 *crime for the purposes of sentencing. Except as provided in sections 258*
38 *and 262 of chapter 136 of the 2010 Session Laws of Kansas, and*
39 *amendments thereto, the sentence shall be imprisonment for life without*
40 *the possibility of parole pursuant to section 3, and amendments thereto.*

41 Sec. 13. K.S.A. 22-3405 is hereby amended to read as follows: 22-
42 3405. (1) The defendant in a felony case shall be present at the

1 arraignment, at every stage of the trial including the impaneling of the
2 jury and the return of the verdict, and at the imposition of sentence,
3 except as otherwise provided by law. In prosecutions for crimes not
4 punishable by death *or life without the possibility of parole*, the
5 defendant's voluntary absence after the trial has been commenced in such
6 person's presence shall not prevent continuing the trial to and including
7 the return of the verdict. A corporation may appear by counsel for all
8 purposes.

9 (2) The defendant must be present, either personally or by counsel,
10 at every stage of the trial of traffic infraction, cigarette or tobacco
11 infraction and misdemeanor cases.

12 Sec. 14. K.S.A. 22-3705 is hereby amended to read as follows: 22-
13 3705. (a) The governor may, when ~~he~~ *the governor* deems it proper or
14 advisable, commute a sentence in any criminal case by reducing the
15 penalty as follows:

16 ~~(a) (1) If the sentence is death, to imprisonment for life or for any~~
17 ~~term not less than ten years without the possibility of parole and not to~~
18 ~~any lesser sentence;~~

19 ~~(b) (2) except as provided in subsection (b), if the sentence is to~~
20 ~~imprisonment, by reducing the duration of such imprisonment;~~

21 ~~(c) (3) if the sentence is a fine, by reducing the amount thereof;~~

22 ~~(d) (4) if the sentence is both imprisonment and fine, by reducing~~
23 ~~either or both.~~

24 (b) *The governor shall not commute a sentence of life without the*
25 *possibility of parole.*

26 Sec. 15. K.S.A. 2010 Supp. 22-3717 is hereby amended to read as
27 follows: 22-3717. (a) Except as otherwise provided by this section;
28 K.S.A. 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4635 through
29 21-4638, *prior to their repeal*; K.S.A. 21-4624, *prior to its repeal*; K.S.A.
30 21-4642, *prior to its repeal*; *sections 260, 263, 264, 265 and 266 of*
31 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
32 thereto; *section 3, and amendments thereto*; and K.S.A. 8-1567, and
33 amendments thereto; ~~K.S.A. 21-4642, and amendments thereto; and~~
34 ~~K.S.A. 21-4624, and amendments thereto~~, an inmate, including an inmate
35 sentenced pursuant to K.S.A. 21-4618, *prior to its repeal*, or *section 276*
36 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
37 thereto, shall be eligible for parole after serving the entire minimum
38 sentence imposed by the court, less good time credits.

39 (b) (1) Except as provided by K.S.A. 21-4635 through 21-4638,
40 *prior to their repeal*, and *sections 260, 263, 264 and 265 of chapter 136*
41 *of the 2010 Session Laws of Kansas*, and amendments thereto, an inmate
42 sentenced to imprisonment for the crime of capital murder, or an inmate
43 sentenced for the crime of murder in the first degree based upon a finding

1 of premeditated murder, committed on or after July 1, 1994, shall be
2 eligible for parole after serving 25 years of confinement, without
3 deduction of any good time credits.

4 (2) Except as provided by subsection (b)(1) ~~or~~, (b)(4) and (b)(6),
5 K.S.A. 1993 Supp. 21-4628, prior to its repeal, ~~and~~ K.S.A. 21-4635
6 through 21-4638, *prior to their repeal, and sections 260, 263, 264 and*
7 *265 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
8 thereto, an inmate sentenced to imprisonment for an off-grid offense
9 committed on or after July 1, 1993, but prior to July 1, 1999, shall be
10 eligible for parole after serving 15 years of confinement, without
11 deduction of any good time credits and an inmate sentenced to
12 imprisonment for an off-grid offense committed on or after July 1, 1999,
13 shall be eligible for parole after serving 20 years of confinement without
14 deduction of any good time credits.

15 (3) Except as provided by K.S.A. 1993 Supp. 21-4628, prior to its
16 repeal, an inmate sentenced for a class A felony committed before July 1,
17 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, *prior to*
18 *its repeal, or section 276 of chapter 136 of the 2010 Session Laws of*
19 *Kansas*, and amendments thereto, shall be eligible for parole after serving
20 15 years of confinement, without deduction of any good time credits.

21 (4) An inmate sentenced to imprisonment for a violation of
22 subsection (a) of K.S.A. 21-3402, *prior to its repeal, or subsection (a) of*
23 *section 38 of chapter 136 of the 2010 Session Laws of Kansas*, and
24 amendments thereto, committed on or after July 1, 1996, but prior to July
25 1, 1999, shall be eligible for parole after serving 10 years of confinement
26 without deduction of any good time credits.

27 (5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
28 4643, *prior to its repeal, or section 267 of chapter 136 of the 2010*
29 *Session Laws of Kansas*, and amendments thereto, committed on or after
30 July 1, 2006, shall be eligible for parole after serving the mandatory term
31 of imprisonment without deduction of any good time credits.

32 (6) *An inmate sentenced to imprisonment for life without the*
33 *possibility of parole pursuant to section 3, and amendments thereto, shall*
34 *not be eligible for parole.*

35 (c) (1) Except as provided in subsection (e), if an inmate is
36 sentenced to imprisonment for more than one crime and the sentences run
37 consecutively, the inmate shall be eligible for parole after serving the total
38 of:

39 (A) The aggregate minimum sentences, as determined pursuant to
40 K.S.A. 21-4608, *prior to its repeal, or section 246 of chapter 136 of the*
41 *2010 Session Laws of Kansas*, and amendments thereto, less good time
42 credits for those crimes which are not class A felonies; and

43 (B) an additional 15 years, without deduction of good time credits,

1 for each crime which is a class A felony.

2 (2) (A) If an inmate is sentenced to imprisonment pursuant to K.S.A.
3 21-4643, ~~and amendments thereto~~ prior to its repeal, for crimes
4 committed on or after July 1, 2006, but prior to July 1, 2011, the inmate
5 shall be eligible for parole after serving the mandatory term of
6 imprisonment.

7 (B) *If an inmate is sentenced to imprisonment pursuant to section*
8 *267 of chapter 136 of the 2010 Session Laws of Kansas, and amendments*
9 *thereto, for crimes committed on or after July 1, 2011, the inmate shall be*
10 *eligible for parole after serving the mandatory term of imprisonment.*

11 (d) (1) Persons sentenced for crimes, other than off-grid crimes,
12 committed on or after July 1, 1993, or persons subject to subparagraph
13 (G), will not be eligible for parole, but will be released to a mandatory
14 period of postrelease supervision upon completion of the prison portion
15 of their sentence as follows:

16 (A) Except as provided in subparagraphs (D) and (E), persons
17 sentenced for nondrug severity level 1 through 4 crimes and drug severity
18 levels 1 and 2 crimes must serve 36 months, plus the amount of good
19 time and program credit earned and retained pursuant to K.S.A. 21-4722,
20 prior to its repeal, or section 302 of chapter 136 of the 2010 Session
21 Laws of Kansas, and amendments thereto, on postrelease supervision.

22 (B) Except as provided in subparagraphs (D) and (E), persons
23 sentenced for nondrug severity levels 5 and 6 crimes and drug severity
24 level 3 crimes must serve 24 months, plus the amount of good time and
25 program credit earned and retained pursuant to K.S.A. 21-4722, prior to
26 its repeal, or section 302 of chapter 136 of the 2010 Session Laws of
27 Kansas, and amendments thereto, on postrelease supervision.

28 (C) Except as provided in subparagraphs (D) and (E), persons
29 sentenced for nondrug severity level 7 through 10 crimes and drug
30 severity level 4 crimes must serve 12 months, plus the amount of good
31 time and program credit earned and retained pursuant to K.S.A. 21-4722,
32 prior to its repeal, or section 302 of chapter 136 of the 2010 Session
33 Laws of Kansas, and amendments thereto, on postrelease supervision.

34 (D) (i) The sentencing judge shall impose the postrelease
35 supervision period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)
36 (1)(C), unless the judge finds substantial and compelling reasons to
37 impose a departure based upon a finding that the current crime of
38 conviction was sexually motivated. In that event, departure may be
39 imposed to extend the postrelease supervision to a period of up to 60
40 months.

41 (ii) If the sentencing judge departs from the presumptive postrelease
42 supervision period, the judge shall state on the record at the time of
43 sentencing the substantial and compelling reasons for the departure.

1 Departures in this section are subject to appeal pursuant to K.S.A. 21-
2 4721, *prior to its repeal, or section 301 of chapter 136 of the 2010*
3 *Session Laws of Kansas*, and amendments thereto.

4 (iii) In determining whether substantial and compelling reasons
5 exist, the court shall consider:

6 (a) Written briefs or oral arguments submitted by either the
7 defendant or the state;

8 (b) any evidence received during the proceeding;

9 (c) the presentence report, the victim's impact statement and any
10 psychological evaluation as ordered by the court pursuant to subsection
11 (e) of K.S.A. 21-4714, *prior to its repeal, or subsection (e) of section 294*
12 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
13 thereto; and

14 (d) any other evidence the court finds trustworthy and reliable.

15 (iv) The sentencing judge may order that a psychological evaluation
16 be prepared and the recommended programming be completed by the
17 offender. The department of corrections or the parole board shall ensure
18 that court ordered sex offender treatment be carried out.

19 (v) In carrying out the provisions of subparagraph (d)(1)(D), the
20 court shall refer to K.S.A. 21-4718, *prior to its repeal, or section 298 of*
21 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
22 thereto.

23 (vi) Upon petition, the parole board may provide for early discharge
24 from the postrelease supervision period upon completion of court ordered
25 programs and completion of the presumptive postrelease supervision
26 period, as determined by the crime of conviction, pursuant to
27 subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from
28 postrelease supervision is at the discretion of the parole board.

29 (vii) Persons convicted of crimes deemed sexually violent or
30 sexually motivated, shall be registered according to the offender
31 registration act, K.S.A. 22-4901 through 22-4910, and amendments
32 thereto.

33 (viii) Persons convicted of K.S.A. 21-3510 or 21-3511, *prior to their*
34 *repeal, or section 72 of chapter 136 of the 2010 Session Laws of Kansas*,
35 and amendments thereto, shall be required to participate in a treatment
36 program for sex offenders during the postrelease supervision period.

37 (E) The period of postrelease supervision provided in subparagraphs
38 (A) and (B) may be reduced by up to 12 months and the period of
39 postrelease supervision provided in subparagraph (C) may be reduced by
40 up to six months based on the offender's compliance with conditions of
41 supervision and overall performance while on postrelease supervision.
42 The reduction in the supervision period shall be on an earned basis
43 pursuant to rules and regulations adopted by the secretary of corrections.

1 (F) In cases where sentences for crimes from more than one severity
2 level have been imposed, the offender shall serve the longest period of
3 postrelease supervision as provided by this section available for any
4 crime upon which sentence was imposed irrespective of the severity level
5 of the crime. Supervision periods will not aggregate.

6 (G) Except as provided in subsection (u), persons convicted of a
7 sexually violent crime committed on or after July 1, 2006, and who are
8 released from prison, shall be released to a mandatory period of
9 postrelease supervision for the duration of the person's natural life.

10 (2) As used in this section, "sexually violent crime" means:

11 (A) Rape, K.S.A. 21-3502, *prior to its repeal, or section 67 of*
12 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
13 thereto;

14 (B) indecent liberties with a child, K.S.A. 21-3503, *prior to its*
15 *repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session*
16 *Laws of Kansas*, and amendments thereto;

17 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, *prior*
18 *to its repeal, or subsection (b) of section 70 of chapter 136 of the 2010*
19 *Session Laws of Kansas*, and amendments thereto;

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

24 (E) aggravated criminal sodomy, K.S.A. 21-3506, *prior to its repeal,*
25 *or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws*
26 *of Kansas*, and amendments thereto;

27 (F) indecent solicitation of a child, K.S.A. 21-3510, *prior to its*
28 *repeal, or subsection (a) of section 72 of chapter 136 of the 2010 Session*
29 *Laws of Kansas*, and amendments thereto;

30 (G) aggravated indecent solicitation of a child, K.S.A. 21-3511,
31 *prior to its repeal, or subsection (b) of section 72 of chapter 136 of the*
32 *2010 Session Laws of Kansas*, and amendments thereto;

33 (H) sexual exploitation of a child, K.S.A. 21-3516, *prior to its*
34 *repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas,*
35 and amendments thereto;

36 (I) aggravated sexual battery, K.S.A. 21-3518, *prior to its repeal, or*
37 *subsection (b) of section 69 of chapter 136 of the 2010 Session Laws of*
38 *Kansas*, and amendments thereto;

39 (J) aggravated incest, K.S.A. 21-3603, *prior to its repeal, or*
40 *subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of*
41 *Kansas*, and amendments thereto; or

42 (K) an attempt, conspiracy or criminal solicitation, as defined in
43 K.S.A. 21-3301, 21-3302 or 21-3303, *prior to their repeal, or sections*

1 33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas, and
2 amendments thereto, of a sexually violent crime as defined in this section.

3 "Sexually motivated" means that one of the purposes for which the
4 defendant committed the crime was for the purpose of the defendant's
5 sexual gratification.

6 (e) If an inmate is sentenced to imprisonment for a crime committed
7 while on parole or conditional release, the inmate shall be eligible for
8 parole as provided by subsection (c), except that the Kansas parole board
9 may postpone the inmate's parole eligibility date by assessing a penalty
10 not exceeding the period of time which could have been assessed if the
11 inmate's parole or conditional release had been violated for reasons other
12 than conviction of a crime.

13 (f) If a person is sentenced to prison for a crime committed on or
14 after July 1, 1993, while on probation, parole, conditional release or in a
15 community corrections program, for a crime committed prior to July 1,
16 1993, and the person is not eligible for retroactive application of the
17 sentencing guidelines and amendments thereto pursuant to K.S.A. 21-
18 4724, *prior to its repeal*, and amendments thereto, the new sentence shall
19 not be aggregated with the old sentence, but shall begin when the person
20 is paroled or reaches the conditional release date on the old sentence. If
21 the offender was past the offender's conditional release date at the time
22 the new offense was committed, the new sentence shall not be aggregated
23 with the old sentence but shall begin when the person is ordered released
24 by the Kansas parole board or reaches the maximum sentence expiration
25 date on the old sentence, whichever is earlier. The new sentence shall
26 then be served as otherwise provided by law. The period of postrelease
27 supervision shall be based on the new sentence, except that those
28 offenders whose old sentence is a term of imprisonment for life, imposed
29 pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, or an
30 indeterminate sentence with a maximum term of life imprisonment, for
31 which there is no conditional release or maximum sentence expiration
32 date, shall remain on postrelease supervision for life or until discharged
33 from supervision by the Kansas parole board.

34 (g) Subject to the provisions of this section, the Kansas parole board
35 may release on parole those persons confined in institutions who are
36 eligible for parole when: (1) The board believes that the inmate should be
37 released for hospitalization, for deportation or to answer the warrant or
38 other process of a court and is of the opinion that there is reasonable
39 probability that the inmate can be released without detriment to the
40 community or to the inmate; or (2) the secretary of corrections has
41 reported to the board in writing that the inmate has satisfactorily
42 completed the programs required by any agreement entered under K.S.A.
43 75-5210a, and amendments thereto, or any revision of such agreement,

1 and the board believes that the inmate is able and willing to fulfill the
2 obligations of a law abiding citizen and is of the opinion that there is
3 reasonable probability that the inmate can be released without detriment
4 to the community or to the inmate. Parole shall not be granted as an
5 award of clemency and shall not be considered a reduction of sentence or
6 a pardon.

7 (h) The Kansas parole board shall hold a parole hearing at least the
8 month prior to the month an inmate will be eligible for parole under
9 subsections (a), (b) and (c). At least the month preceding the parole
10 hearing, the county or district attorney of the county where the inmate
11 was convicted shall give written notice of the time and place of the public
12 comment sessions for the inmate to any victim of the inmate's crime who
13 is alive and whose address is known to the county or district attorney or,
14 if the victim is deceased, to the victim's family if the family's address is
15 known to the county or district attorney. Except as otherwise provided,
16 failure to notify pursuant to this section shall not be a reason to postpone
17 a parole hearing. In the case of any inmate convicted of an off-grid felony
18 or a class A felony the secretary of corrections shall give written notice of
19 the time and place of the public comment session for such inmate at least
20 one month preceding the public comment session to any victim of such
21 inmate's crime or the victim's family pursuant to K.S.A. 74-7338, and
22 amendments thereto. If notification is not given to such victim or such
23 victim's family in the case of any inmate convicted of an off-grid felony
24 or a class A felony, the board shall postpone a decision on parole of the
25 inmate to a time at least 30 days after notification is given as provided in
26 this section. Nothing in this section shall create a cause of action against
27 the state or an employee of the state acting within the scope of the
28 employee's employment as a result of the failure to notify pursuant to this
29 section. If granted parole, the inmate may be released on parole on the
30 date specified by the board, but not earlier than the date the inmate is
31 eligible for parole under subsections (a), (b) and (c). At each parole
32 hearing and, if parole is not granted, at such intervals thereafter as it
33 determines appropriate, the Kansas parole board shall consider: (1)
34 Whether the inmate has satisfactorily completed the programs required by
35 any agreement entered under K.S.A. 75-5210a, and amendments thereto,
36 or any revision of such agreement; and (2) all pertinent information
37 regarding such inmate, including, but not limited to, the circumstances of
38 the offense of the inmate; the presentence report; the previous social
39 history and criminal record of the inmate; the conduct, employment, and
40 attitude of the inmate in prison; the reports of such physical and mental
41 examinations as have been made, including, but not limited to, risk
42 factors revealed by any risk assessment of the inmate; comments of the
43 victim and the victim's family including in person comments,

1 contemporaneous comments and prerecorded comments made by any
2 technological means; comments of the public; official comments; any
3 recommendation by the staff of the facility where the inmate is
4 incarcerated; proportionality of the time the inmate has served to the
5 sentence a person would receive under the Kansas sentencing guidelines
6 for the conduct that resulted in the inmate's incarceration; and capacity of
7 state correctional institutions.

8 (i) In those cases involving inmates sentenced for a crime committed
9 after July 1, 1993, the parole board will review the inmates proposed
10 release plan. The board may schedule a hearing if they desire. The board
11 may impose any condition they deem necessary to insure public safety,
12 aid in the reintegration of the inmate into the community, or items not
13 completed under the agreement entered into under K.S.A. 75-5210a, and
14 amendments thereto. The board may not advance or delay an inmate's
15 release date. Every inmate while on postrelease supervision shall remain
16 in the legal custody of the secretary of corrections and is subject to the
17 orders of the secretary.

18 (j) (1) Before ordering the parole of any inmate, the Kansas parole
19 board shall have the inmate appear either in person or via a video
20 conferencing format and shall interview the inmate unless impractical
21 because of the inmate's physical or mental condition or absence from the
22 institution. Every inmate while on parole shall remain in the legal custody
23 of the secretary of corrections and is subject to the orders of the secretary.
24 Whenever the Kansas parole board formally considers placing an inmate
25 on parole and no agreement has been entered into with the inmate under
26 K.S.A. 75-5210a, and amendments thereto, the board shall notify the
27 inmate in writing of the reasons for not granting parole. If an agreement
28 has been entered under K.S.A. 75-5210a, and amendments thereto, and
29 the inmate has not satisfactorily completed the programs specified in the
30 agreement, or any revision of such agreement, the board shall notify the
31 inmate in writing of the specific programs the inmate must satisfactorily
32 complete before parole will be granted. If parole is not granted only
33 because of a failure to satisfactorily complete such programs, the board
34 shall grant parole upon the secretary's certification that the inmate has
35 successfully completed such programs. If an agreement has been entered
36 under K.S.A. 75-5210a, and amendments thereto, and the secretary of
37 corrections has reported to the board in writing that the inmate has
38 satisfactorily completed the programs required by such agreement, or any
39 revision thereof, the board shall not require further program participation.
40 However, if the board determines that other pertinent information
41 regarding the inmate warrants the inmate's not being released on parole,
42 the board shall state in writing the reasons for not granting the parole. If
43 parole is denied for an inmate sentenced for a crime other than a class A

1 or class B felony or an off-grid felony, the board shall hold another parole
2 hearing for the inmate not later than one year after the denial unless the
3 parole board finds that it is not reasonable to expect that parole would be
4 granted at a hearing if held in the next three years or during the interim
5 period of a deferral. In such case, the parole board may defer subsequent
6 parole hearings for up to three years but any such deferral by the board
7 shall require the board to state the basis for its findings. If parole is
8 denied for an inmate sentenced for a class A or class B felony or an off-
9 grid felony, the board shall hold another parole hearing for the inmate not
10 later than three years after the denial unless the parole board finds that it
11 is not reasonable to expect that parole would be granted at a hearing if
12 held in the next 10 years or during the interim period of a deferral. In
13 such case, the parole board may defer subsequent parole hearings for up
14 to 10 years but any such deferral shall require the board to state the basis
15 for its findings.

16 (2) Inmates sentenced for a class A or class B felony who have not
17 had a parole board hearing in the five years prior to July 1, 2010, shall
18 have such inmates' cases reviewed by the parole board on or before July
19 1, 2012. Such review shall begin with the inmates with the oldest deferral
20 date and progress to the most recent. Such review shall be done utilizing
21 existing resources unless the parole board determines that such resources
22 are insufficient. If the parole board determines that such resources are
23 insufficient, then the provisions of this paragraph are subject to
24 appropriations therefor.

25 (k) Parolees and persons on postrelease supervision shall be
26 assigned, upon release, to the appropriate level of supervision pursuant to
27 the criteria established by the secretary of corrections.

28 (l) The Kansas parole board shall adopt rules and regulations in
29 accordance with K.S.A. 77-415 et seq., and amendments thereto, not
30 inconsistent with the law and as it may deem proper or necessary, with
31 respect to the conduct of parole hearings, postrelease supervision reviews,
32 revocation hearings, orders of restitution, reimbursement of expenditures
33 by the state board of indigents' defense services and other conditions to
34 be imposed upon parolees or releasees. Whenever an order for parole or
35 postrelease supervision is issued it shall recite the conditions thereof.

36 (m) Whenever the Kansas parole board orders the parole of an
37 inmate or establishes conditions for an inmate placed on postrelease
38 supervision, the board:

39 (1) Unless it finds compelling circumstances which would render a
40 plan of payment unworkable, shall order as a condition of parole or
41 postrelease supervision that the parolee or the person on postrelease
42 supervision pay any transportation expenses resulting from returning the
43 parolee or the person on postrelease supervision to this state to answer

1 criminal charges or a warrant for a violation of a condition of probation,
2 assignment to a community correctional services program, parole,
3 conditional release or postrelease supervision;

4 (2) to the extent practicable, shall order as a condition of parole or
5 postrelease supervision that the parolee or the person on postrelease
6 supervision make progress towards or successfully complete the
7 equivalent of a secondary education if the inmate has not previously
8 completed such educational equivalent and is capable of doing so;

9 (3) may order that the parolee or person on postrelease supervision
10 perform community or public service work for local governmental
11 agencies, private corporations organized not-for-profit or charitable or
12 social service organizations performing services for the community;

13 (4) may order the parolee or person on postrelease supervision to
14 pay the administrative fee imposed pursuant to K.S.A. 22-4529, and
15 amendments thereto, unless the board finds compelling circumstances
16 which would render payment unworkable; and

17 (5) unless it finds compelling circumstances which would render a
18 plan of payment unworkable, shall order that the parolee or person on
19 postrelease supervision reimburse the state for all or part of the
20 expenditures by the state board of indigents' defense services to provide
21 counsel and other defense services to the person. In determining the
22 amount and method of payment of such sum, the parole board shall take
23 account of the financial resources of the person and the nature of the
24 burden that the payment of such sum will impose. Such amount shall not
25 exceed the amount claimed by appointed counsel on the payment voucher
26 for indigents' defense services or the amount prescribed by the board of
27 indigents' defense services reimbursement tables as provided in K.S.A.
28 22-4522, and amendments thereto, whichever is less, minus any previous
29 payments for such services.

30 (n) If the court which sentenced an inmate specified at the time of
31 sentencing the amount and the recipient of any restitution ordered as a
32 condition of parole or postrelease supervision, the Kansas parole board
33 shall order as a condition of parole or postrelease supervision that the
34 inmate pay restitution in the amount and manner provided in the journal
35 entry unless the board finds compelling circumstances which would
36 render a plan of restitution unworkable.

37 (o) Whenever the Kansas parole board grants the parole of an
38 inmate, the board, within ~~40~~ 14 days of the date of the decision to grant
39 parole, shall give written notice of the decision to the county or district
40 attorney of the county where the inmate was sentenced.

41 (p) When an inmate is to be released on postrelease supervision, the
42 secretary, within 30 days prior to release, shall provide the county or
43 district attorney of the county where the inmate was sentenced written

1 notice of the release date.

2 (q) Inmates shall be released on postrelease supervision upon the
3 termination of the prison portion of their sentence. Time served while on
4 postrelease supervision will vest.

5 (r) An inmate who is allocated regular good time credits as provided
6 in K.S.A. 22-3725, and amendments thereto, may receive meritorious
7 good time credits in increments of not more than 90 days per meritorious
8 act. These credits may be awarded by the secretary of corrections when
9 an inmate has acted in a heroic or outstanding manner in coming to the
10 assistance of another person in a life threatening situation, preventing
11 injury or death to a person, preventing the destruction of property or
12 taking actions which result in a financial savings to the state.

13 (s) The provisions of subsections (d)(1)(A), (d)(1)(B), (d)(1)(C) and
14 (d)(1)(E) shall be applied retroactively as provided in subsection (t).

15 (t) For offenders sentenced prior to the effective date of this act who
16 are eligible for modification of their postrelease supervision obligation,
17 the department of corrections shall modify the period of postrelease
18 supervision as provided for by this section for offenders convicted of
19 severity level 9 and 10 crimes on the sentencing guidelines grid for
20 nondrug crimes and severity level 4 crimes on the sentencing guidelines
21 grid for drug crimes on or before September 1, 2000; for offenders
22 convicted of severity level 7 and 8 crimes on the sentencing guidelines
23 grid for nondrug crimes on or before November 1, 2000; and for
24 offenders convicted of severity level 5 and 6 crimes on the sentencing
25 guidelines grid for nondrug crimes and severity level 3 crimes on the
26 sentencing guidelines grid for drug crimes on or before January 1, 2001.

27 (u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
28 4643, *prior to its repeal, or section 267 of chapter 136 of the 2010*
29 *Session Laws of Kansas*, and amendments thereto, for crimes committed
30 on or after July 1, 2006, shall be placed on parole for life and shall not be
31 discharged from supervision by the Kansas parole board. When the board
32 orders the parole of an inmate pursuant to this subsection, the board shall
33 order as a condition of parole that the inmate be electronically monitored
34 for the duration of the inmate's natural life.

35 (v) Whenever the Kansas parole board or the court orders a person
36 to be electronically monitored, the board or court shall order the person to
37 reimburse the state for all or part of the cost of such monitoring. In
38 determining the amount and method of payment of such sum, the board
39 or court shall take account of the financial resources of the person and the
40 nature of the burden that the payment of such sum will impose.

41 Sec. 16. K.S.A. 2010 Supp. 22-3728 is hereby amended to read as
42 follows: 22-3728. (a) (1) Upon application of the secretary of corrections,
43 the Kansas parole board may grant release to any person deemed to be

1 functionally incapacitated, upon such terms and conditions as prescribed
2 in the order granting such release.

3 (2) The Kansas parole board shall adopt rules and regulations
4 governing the procedure for initiating, processing, reviewing and
5 establishing criteria for review of applications filed on behalf of persons
6 deemed to be functionally incapacitated. Such rules and regulations shall
7 include criteria and guidelines for determining whether the functional
8 incapacitation precludes the person from posing a threat to the public.

9 (3) Subject to the provisions of subsections (a)(4) and (a)(5), a
10 functional incapacitation release shall not be granted until at least 30 days
11 after written notice of the application has been given to: (A) The
12 prosecuting attorney and the judge of the court in which the person was
13 convicted; and (B) any victim of the person's crime or the victim's family.
14 Notice of such application shall be given by the secretary of corrections
15 to the victim who is alive and whose address is known to the secretary, or
16 if the victim is deceased, to the victim's family if the family's address is
17 known to the secretary. Subject to the provisions of subsection (a)(4), if
18 there is no known address for the victim, if alive, or the victim's family, if
19 deceased, the board shall not grant or deny such application until at least
20 30 days after notification is given by publication in the county of
21 conviction. Publication costs shall be paid by the department of
22 corrections.

23 (4) All applications for functional incapacitation release shall be
24 referred to the board. The board shall examine each case and may
25 approve such application and grant a release. An application for release
26 shall not be approved unless the board determines that the person is
27 functionally incapacitated and does not represent a future risk to public
28 safety. The board shall determine whether a hearing is necessary on the
29 application. The board may request additional information or evidence it
30 deems necessary from a medical or mental health practitioner.

31 (5) The board shall establish any conditions related to the release of
32 the person. The release shall be conditional, and be subject to revocation
33 pursuant to K.S.A. 75-5217, and amendments thereto, if the person's
34 functional incapacity significantly diminishes, if the person fails to
35 comply with any condition of release, or if the board otherwise concludes
36 that the person presents a threat or risk to public safety. The person shall
37 remain on release supervision until the release is revoked, expiration of
38 the maximum sentence, or discharged by the board. Subject to the
39 provisions of subsection (f) of K.S.A. 75-5217, and amendments thereto,
40 the person shall receive credit for the time during which the person is on
41 functional incapacitation release supervision towards service of the prison
42 and postrelease supervision obligations of determinate sentences or
43 indeterminate sentences.

1 (6) The secretary of corrections shall cause the person to be
2 supervised upon release, and shall have the authority to initiate revocation
3 of the person at any time for the reasons indicated in subsection (a)(5).

4 (7) The decision of the board on the application or any revocation
5 shall be final and not subject to review by any administrative agency or
6 court.

7 (8) In determining whether a person is functionally incapacitated,
8 the board shall consider the following: (A) The person's current condition
9 as confirmed by medical or mental health care providers, including
10 whether the condition is terminal;

11 (B) the person's age and personal history;

12 (C) the person's criminal history;

13 (D) the person's length of sentence and time the person has served;

14 (E) the nature and circumstances of the current offense;

15 (F) the risk or threat to the community if released;

16 (G) whether an appropriate release plan has been established; and

17 (H) any other factors deemed relevant by the board.

18 (b) Nothing in this section shall be construed to limit or preclude
19 submission of an application for pardon or commutation of sentence
20 pursuant to K.S.A. 22-3701, and amendments thereto.

21 (c) Nothing in this section shall apply to the release of people with
22 terminal medical conditions as described in K.S.A. 2010 Supp. 22-3729,
23 and amendments thereto.

24 (d) This section does not apply to any person sentenced to
25 imprisonment for an off-grid offense.

26 (e) *This section does not apply to any person under sentence of*
27 *death or life without the possibility of parole.*

28 Sec. 17. K.S.A. 22-4210 is hereby amended to read as follows: 22-
29 4210. If a person confined in a penal institution in any other state may be
30 a material witness in a criminal action pending in a court of record or in a
31 grand jury investigation in this state, a judge of the court may certify (1)
32 that there is a criminal proceeding or investigation by a grand jury or a
33 criminal action pending in the court, (2) that a person who is confined in
34 a penal institution in the other state may be a material witness in the
35 proceeding, investigation, or action, and (3) that his presence will be
36 required during a specified time. The certificate shall be presented to a
37 judge of a court of record in the other state having jurisdiction over the
38 prisoner confined, and a notice shall be given to the attorney general of
39 the state in which the prisoner is confined.

40 This act does not apply to any person in this state confined as mentally
41 ill, in need of mental treatment, or under sentence of death *or life without*
42 *the possibility of parole.*

43 Sec. 18. K.S.A. 2010 Supp. 22-4902 is hereby amended to read as

1 follows: 22-4902. As used in the Kansas offender registration act, unless
2 the context otherwise requires:

3 (a) "Offender" means: (1) A sex offender as defined in subsection
4 (b);

5 (2) a violent offender as defined in subsection (d);

6 (3) a sexually violent predator as defined in subsection (f);

7 (4) any person who, on and after May 29, 1997, is convicted of any
8 of the following crimes when the victim is less than 18 years of age:

9 (A) Kidnapping as defined in K.S.A. 21-3420, *prior to its repeal, or*
10 *subsection (a) of section 43 of chapter 136 of the 2010 Session Laws of*
11 *Kansas*, and amendments thereto, except by a parent;

12 (B) aggravated kidnapping as defined in K.S.A. 21-3421, *prior to its*
13 *repeal, or subsection (b) of section 43 of chapter 136 of the 2010 Session*
14 *Laws of Kansas*, and amendments thereto; or

15 (C) criminal restraint as defined in K.S.A. 21-3424, *prior to its*
16 *repeal, or section 46 of chapter 136 of the 2010 Session Laws of Kansas*,
17 and amendments thereto, except by a parent;

18 (5) any person convicted of any of the following criminal sexual
19 conduct if one of the parties involved is less than 18 years of age:

20 (A) Adultery as defined by K.S.A. 21-3507, *prior to its repeal, or*
21 *section 75 of chapter 136 of the 2010 Session Laws of Kansas*, and
22 amendments thereto;

23 (B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-
24 3505, *prior to its repeal, or subsection (a)(1) or (a)(2) of section 68 of*
25 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
26 thereto;

27 (C) promoting prostitution as defined by K.S.A. 21-3513, *prior to*
28 *its repeal, or section 230 of chapter 136 of the 2010 Session Laws of*
29 *Kansas*, and amendments thereto;

30 (D) patronizing a prostitute as defined by K.S.A. 21-3515, *prior to*
31 *its repeal, or section 231 of chapter 136 of the 2010 Session Laws of*
32 *Kansas*, and amendments thereto; or

33 (E) lewd and lascivious behavior as defined by K.S.A. 21-3508,
34 *prior to its repeal, or section 77 of chapter 136 of the 2010 Session Laws*
35 *of Kansas*, and amendments thereto;

36 (6) any person who has been required to register under any federal,
37 military or other state's law or is otherwise required to be registered;

38 (7) any person who, on or after July 1, 2006, is convicted of any
39 person felony and the court makes a finding on the record that a deadly
40 weapon was used in the commission of such person felony;

41 (8) any person who has been convicted of an offense in effect at any
42 time prior to May 29, 1997, that is comparable to any crime defined in
43 subsection (4), (5), (7) or (11), or any federal, military or other state

1 conviction for an offense that under the laws of this state would be an
2 offense defined in subsection (4), (5), (7) or (11);

3 (9) any person who has been convicted of an attempt, conspiracy or
4 criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303,
5 *prior to their repeal, or section 33, 34 or 35 of chapter 136 of the 2010*
6 *Session Laws of Kansas*, and amendments thereto, of an offense defined
7 in subsection (4), (5), (7) or (10);

8 (10) any person who has been convicted of aggravated human
9 trafficking as defined in K.S.A. 21-3447, *prior to its repeal, or subsection*
10 *(b) of section 61 of chapter 136 of the 2010 Session Laws of Kansas*, and
11 amendments thereto; or

12 (11) any person who has been convicted of: (A) Unlawful
13 manufacture or attempting such of any controlled substance or controlled
14 substance analog as defined by K.S.A. 65-4159, prior to its repeal, or
15 K.S.A. 2010 Supp. 21-36a03, and amendments thereto, unless the court
16 makes a finding on the record that the manufacturing or attempting to
17 manufacture such controlled substance was for such person's personal
18 use;

19 (B) possession of ephedrine, pseudoephedrine, red phosphorus,
20 lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized
21 ammonia or phenylpropanolamine, or their salts, isomers or salts of
22 isomers with intent to use the product to manufacture a controlled
23 substance as defined by subsection (a) of K.S.A. 65-7006, prior to its
24 repeal, or subsection (a) of K.S.A. 2010 Supp. 21-36a09, and
25 amendments thereto, unless the court makes a finding on the record that
26 the possession of such product was intended to be used to manufacture a
27 controlled substance for such person's personal use; or

28 (C) K.S.A. 65-4161, prior to its repeal, or subsection (a)(1) of
29 K.S.A. 2010 Supp. 21-36a05, and amendments thereto. The provisions of
30 this paragraph shall not apply to violations of subsections (a)(2) through
31 (a)(6) or (b) of K.S.A. 2010 Supp. 21-36a05, and amendments thereto,
32 which occurred on and after July 1, 2009, through ~~the effective date of~~
33 ~~this act~~ *April 15, 2010.*

34 Convictions which result from or are connected with the same act, or
35 result from crimes committed at the same time, shall be counted for the
36 purpose of this section as one conviction. Any conviction set aside
37 pursuant to law is not a conviction for purposes of this section. A
38 conviction from another state shall constitute a conviction for purposes of
39 this section.

40 (b) "Sex offender" includes any person who, on or after April 14,
41 1994, is convicted of any sexually violent crime set forth in subsection (c)
42 or is adjudicated as a juvenile offender for an act which if committed by
43 an adult would constitute the commission of a sexually violent crime set

- 1 forth in subsection (c).
- 2 (c) "Sexually violent crime" means:
- 3 (1) Rape as defined in K.S.A. 21-3502, *prior to its repeal, or section*
4 *67 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
5 thereto;
- 6 (2) indecent liberties with a child as defined in K.S.A. 21-3503,
7 *prior to its repeal, or subsection (a) of section 70 of chapter 136 of the*
8 *2010 Session Laws of Kansas*, and amendments thereto;
- 9 (3) aggravated indecent liberties with a child as defined in K.S.A.
10 21-3504, *prior to its repeal, or subsection (b) of section 70 of chapter*
11 *136 of the 2010 Session Laws of Kansas*, and amendments thereto;
- 12 (4) criminal sodomy as defined in subsection (a)(2) ~~and~~ (a)(3) of
13 K.S.A. 21-3505, *prior to its repeal, or subsection (a)(3) or (a)(4) of*
14 *section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and
15 amendments thereto;
- 16 (5) aggravated criminal sodomy as defined in K.S.A. 21-3506, *prior*
17 *to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010*
18 *Session Laws of Kansas*, and amendments thereto;
- 19 (6) indecent solicitation of a child as defined by K.S.A. 21-3510,
20 *prior to its repeal, or subsection (a) of section 72 of chapter 136 of the*
21 *2010 Session Laws of Kansas*, and amendments thereto;
- 22 (7) aggravated indecent solicitation of a child as defined by K.S.A.
23 21-3511, *prior to its repeal, or subsection (b) of section 72 of chapter 136*
24 *of the 2010 Session Laws of Kansas*, and amendments thereto;
- 25 (8) sexual exploitation of a child as defined by K.S.A. 21-3516,
26 *prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws*
27 *of Kansas*, and amendments thereto;
- 28 (9) sexual battery as defined by K.S.A. 21-3517, *prior to its repeal,*
29 *or subsection (a) of section 69 of chapter 136 of the 2010 Session Laws*
30 *of Kansas*, and amendments thereto;
- 31 (10) aggravated sexual battery as defined by K.S.A. 21-3518, *prior*
32 *to its repeal, or subsection (b) of section 69 of chapter 136 of the 2010*
33 *Session Laws of Kansas*, and amendments thereto;
- 34 (11) aggravated incest as defined by K.S.A. 21-3603, *prior to its*
35 *repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session*
36 *Laws of Kansas*, and amendments thereto;
- 37 (12) electronic solicitation as defined by K.S.A. 21-3523, *prior to its*
38 *repeal, and section 73 of chapter 136 of the 2010 Session Laws of*
39 *Kansas*, and amendments thereto, committed on or after April 17, 2008;
- 40 (13) unlawful sexual relations as defined by K.S.A. 21-3520, *prior*
41 *to its repeal, or section 76 of chapter 136 of the 2010 Session Laws of*
42 *Kansas*, and amendments thereto, committed on or after July 1, 2010;
- 43 (14) any conviction for an offense in effect at any time prior to April

1 29, 1993, that is comparable to a sexually violent crime as defined in
2 subparagraphs (1) through (11), or any federal, military or other state
3 conviction for an offense that under the laws of this state would be a
4 sexually violent crime as defined in this section;

5 (15) an attempt, conspiracy or criminal solicitation, as defined in
6 K.S.A. 21-3301, 21-3302 or 21-3303, *prior to their repeal, or section 33,*
7 *34 or 35 of chapter 136 of the 2010 Session Laws of Kansas,* and
8 amendments thereto, of a sexually violent crime, as defined in this
9 section; or

10 (16) any act which at the time of sentencing for the offense has been
11 determined beyond a reasonable doubt to have been sexually motivated.
12 As used in this subparagraph, "sexually motivated" means that one of the
13 purposes for which the defendant committed the crime was for the
14 purpose of the defendant's sexual gratification.

15 (d) "Violent offender" includes any person who, on or after May 29,
16 1997, is convicted of any of the following crimes:

17 (1) Capital murder as defined by K.S.A. 21-3439 ~~and amendments~~
18 ~~thereto~~, *prior to its repeal*;

19 (2) *aggravated murder, as defined by section 2, and amendments*
20 *thereto*;

21 ~~(2)~~ (3) murder in the first degree as defined by K.S.A. 21-3401,
22 *prior to its repeal, or section 37 of chapter 136 of the 2010 Session Laws*
23 *of Kansas,* and amendments thereto;

24 ~~(3)~~ (4) murder in the second degree as defined by K.S.A. 21-3402,
25 *prior to its repeal, or section 38 of chapter 136 of the 2010 Session Laws*
26 *of Kansas,* and amendments thereto;

27 (4) (5) voluntary manslaughter as defined by K.S.A. 21-3403, *prior*
28 *to its repeal, or section 39 of chapter 136 of the 2010 Session Laws of*
29 *Kansas,* and amendments thereto;

30 ~~(5)~~ (6) involuntary manslaughter as defined by K.S.A. 21-3404,
31 *prior to its repeal, or section 40 of chapter 136 of the 2010 Session Laws*
32 *of Kansas,* and amendments thereto;

33 ~~(6)~~ (7) any conviction for an offense in effect at any time prior to
34 May 29, 1997, that is comparable to any crime defined in this subsection,
35 or any federal, military or other state conviction for an offense that under
36 the laws of this state would be an offense defined in this subsection; or

37 ~~(7)~~ (8) an attempt, conspiracy or criminal solicitation, as defined in
38 K.S.A. 21-3301, 21-3302 or 21-3303, *prior to their repeal, or section 33,*
39 *34 or 35 of chapter 136 of the 2010 Session Laws of Kansas,* and
40 amendments thereto, of an offense defined in this subsection.

41 (e) "Law enforcement agency having jurisdiction" means the sheriff
42 of the county in which the offender expects to reside upon the offender's
43 discharge, parole or release.

1 (f) "Sexually violent predator" means any person who, on or after
2 July 1, 2001, is found to be a sexually violent predator pursuant to K.S.A.
3 59-29a01 et seq., and amendments thereto.

4 (g) "Nonresident student or worker" includes any offender who
5 crosses into the state or county for more than 14 days, or for an aggregate
6 period exceeding 30 days in a calendar year, for the purposes of
7 employment, with or without compensation, or to attend school as a
8 student.

9 (h) "Aggravated offenses" means engaging in sexual acts involving
10 penetration with victims of any age through the use of force or the threat
11 of serious violence, or engaging in sexual acts involving penetration with
12 victims less than 14 years of age, and includes the following offenses:

13 (1) Rape as defined in subsection (a)(1)(A) ~~and subsection (a)(2)~~
14 of K.S.A. 21-3502, *prior to its repeal, or subsection (a)(1)(A) or (a)(3) of*
15 *section 67 of chapter 136 of the 2010 Session Laws of Kansas*, and
16 amendments thereto;

17 (2) aggravated criminal sodomy as defined in subsection (a)(1) ~~and~~
18 ~~subsection (a)(3)(A)~~ of K.S.A. 21-3506, *prior to its repeal, or*
19 *subsection (b)(1) or (b)(3)(A) of section 68 of chapter 136 of the 2010*
20 *Session Laws of Kansas*, and amendments thereto; and

21 (3) any attempt, conspiracy or criminal solicitation, as defined in
22 K.S.A. 21-3301, 21-3302 or 21-3303, *prior to their repeal, or section 33,*
23 *34 or 35 of chapter 136 of the 2010 Session Laws of Kansas*, and
24 amendments thereto, of an offense defined in this subsection.

25 (i) "Institution of higher education" means any postsecondary school
26 under the supervision of the Kansas board of regents.

27 Sec. 19. K.S.A. 2010 Supp. 38-2255 is hereby amended to read as
28 follows: 38-2255. (a) *Considerations.* Prior to entering an order of
29 disposition, the court shall give consideration to:

30 (1) The child's physical, mental and emotional condition;

31 (2) the child's need for assistance;

32 (3) the manner in which the parent participated in the abuse, neglect
33 or abandonment of the child;

34 (4) any relevant information from the intake and assessment process;
35 and

36 (5) the evidence received at the dispositional hearing.

37 (b) *Custody with a parent.* The court may place the child in the
38 custody of either of the child's parents subject to terms and conditions
39 which the court prescribes to assure the proper care and protection of the
40 child, including, but not limited to:

41 (1) Supervision of the child and the parent by a court services
42 officer;

43 (2) participation by the child and the parent in available programs

1 operated by an appropriate individual or agency; and

2 (3) any special treatment or care which the child needs for the child's
3 physical, mental or emotional health and safety.

4 (c) *Removal of a child from custody of a parent.* The court shall not
5 enter the initial order removing a child from the custody of a parent
6 pursuant to this section unless the court first finds probable cause that: (1)

7 (A) The child is likely to sustain harm if not immediately removed from
8 the home;

9 (B) allowing the child to remain in home is contrary to the welfare
10 of the child; or

11 (C) immediate placement of the child is in the best interest of the
12 child; and

13 (2) reasonable efforts have been made to maintain the family unit
14 and prevent the unnecessary removal of the child from the child's home
15 or that an emergency exists which threatens the safety to the child.

16 (d) *Custody of a child removed from the custody of a parent.* If the
17 court has made the findings required by subsection (c), the court shall
18 enter an order awarding custody to a relative of the child or to a person
19 with whom the child has close emotional ties who shall not be required to
20 be licensed under article 5 of chapter 65 of the Kansas Statutes
21 Annotated, and amendments thereto, to any other suitable person, to a
22 shelter facility, to a youth residential facility or, if the child is 15 years of
23 age or younger, or 16 or 17 years of age if the child has no identifiable
24 parental or family resources or shows signs of physical, mental,
25 emotional or sexual abuse, to the secretary. Custody awarded under this
26 subsection shall continue until further order of the court.

27 (1) When custody is awarded to the secretary, the secretary shall
28 consider any placement recommendation by the court and notify the court
29 of the placement or proposed placement of the child within ~~10~~ 14 days of
30 the order awarding custody. After providing the parties or interested
31 parties notice and opportunity to be heard, the court may determine
32 whether the secretary's placement or proposed placement is contrary to
33 the welfare or in the best interests of the child. In making that
34 determination the court shall consider the health and safety needs of the
35 child and the resources available to meet the needs of children in the
36 custody of the secretary. If the court determines that the placement or
37 proposed placement is contrary to the welfare or not in the best interests
38 of the child, the court shall notify the secretary, who shall then make an
39 alternative placement.

40 (2) The custodian designated under this subsection shall notify the
41 court in writing at least ~~10~~ 14 days prior to any planned placement with a
42 parent. The written notice shall state the basis for the custodian's belief
43 that placement with a parent is no longer contrary to the welfare or best

1 interest of the child. Upon reviewing the notice, the court may allow the
2 custodian to proceed with the planned placement or may set the date for a
3 hearing to determine if the child shall be allowed to return home. If the
4 court sets a hearing on the matter, the custodian shall not return the child
5 home without written consent of the court.

6 (3) The court may grant any person reasonable rights to visit the
7 child upon motion of the person and a finding that the visitation rights
8 would be in the best interests of the child.

9 (4) The court may enter an order restraining any alleged perpetrator
10 of physical, mental or emotional abuse or sexual abuse of the child from
11 residing in the child's home; visiting, contacting, harassing or
12 intimidating the child, other family member or witness; or attempting to
13 visit, contact, harass or intimidate the child, other family member or
14 witness. Such restraining order shall be served by personal service
15 pursuant to subsection (a) of K.S.A. 2010 Supp. 38-2237, and
16 amendments thereto, on any alleged perpetrator to whom the order is
17 directed.

18 (5) The court shall provide a copy of any orders entered within 10
19 days of entering the order to the custodian designated under this
20 subsection.

21 (e) *Further determinations regarding a child removed from the*
22 *home.* If custody has been awarded under subsection (d) to a person other
23 than a parent, a permanency plan shall be provided or prepared pursuant
24 to K.S.A. 2010 Supp. 38-2264, and amendments thereto. If a permanency
25 plan is provided at the dispositional hearing, the court may determine
26 whether reintegration is a viable alternative or, if reintegration is not a
27 viable alternative, whether the child should be placed for adoption or a
28 permanent custodian appointed. In determining whether reintegration is a
29 viable alternative, the court shall consider:

30 (1) Whether a parent has been found by a court to have committed
31 one of the following crimes or to have violated the law of another state
32 prohibiting such crimes or to have aided and abetted, attempted,
33 conspired or solicited the commission of one of these crimes: *Capital*
34 *murder, K.S.A. 21-3439, prior to its repeal; aggravated murder, section 2,*
35 *and amendments thereto; murder in the first degree, K.S.A. 21-3401,*
36 *prior to its repeal, or section 37 of chapter 136 of the 2010 Session Laws*
37 *of Kansas, and amendments thereto; ; murder in the second degree, K.S.A.*
38 *21-3402, prior to its repeal, or section 38 of chapter 136 of the 2010*
39 *Session Laws of Kansas, and amendments thereto; ~~capital murder, K.S.A.~~*
40 *~~21-3439, and amendments thereto; ;~~ voluntary manslaughter, K.S.A. 21-*
41 *3403, prior to its repeal, or section 39 of chapter 136 of the 2010 Session*
42 *Laws of Kansas, and amendments thereto; ; or a felony battery that*
43 *resulted in bodily injury;*

1 (2) whether a parent has subjected the child or another child to
2 aggravated circumstances;

3 (3) whether a parent has previously been found to be an unfit parent
4 in proceedings under this code or in comparable proceedings under the
5 laws of another state or the federal government;

6 (4) whether the child has been in extended out of home placement;

7 (5) whether the parents have failed to work diligently toward
8 reintegration;

9 (6) whether the secretary has provided the family with services
10 necessary for the safe return of the child to the home; and

11 (7) whether it is reasonable to expect reintegration to occur within a
12 time frame consistent with the child's developmental needs.

13 (f) *Proceedings if reintegration is not a viable alternative.* If the
14 court determines that reintegration is not a viable alternative, proceedings
15 to terminate parental rights and permit placement of the child for
16 adoption or appointment of a permanent custodian shall be initiated
17 unless the court finds that compelling reasons have been documented in
18 the case plan why adoption or appointment of a permanent custodian
19 would not be in the best interests of the child. If compelling reasons have
20 not been documented, the county or district attorney shall file a motion
21 within 30 days to terminate parental rights or a motion to appoint a
22 permanent custodian within 30 days and the court shall hold a hearing on
23 the motion within 90 days of its filing. No hearing is required when the
24 parents voluntarily relinquish parental rights or consent to the
25 appointment of a permanent custodian.

26 (g) *Additional Orders.* In addition to or in lieu of any other order
27 authorized by this section:

28 (1) The court may order the child and the parents of any child who
29 has been adjudicated a child in need of care to attend counseling sessions
30 as the court directs. The expense of the counseling may be assessed as an
31 expense in the case. No mental health provider shall charge a greater fee
32 for court-ordered counseling than the provider would have charged to the
33 person receiving counseling if the person had requested counseling on the
34 person's own initiative.

35 (2) If the court has reason to believe that a child is before the court
36 due, in whole or in part, to the use or misuse of alcohol or a violation of
37 K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto,
38 by the child, a parent of the child, or another person responsible for the
39 care of the child, the court may order the child, parent of the child or
40 other person responsible for the care of the child to submit to and
41 complete an alcohol and drug evaluation by a qualified person or agency
42 and comply with any recommendations. If the evaluation is performed by
43 a community-based alcohol and drug safety program certified pursuant to

1 K.S.A. 8-1008, and amendments thereto, the child, parent of the child or
2 other person responsible for the care of the child shall pay a fee not to
3 exceed the fee established by that statute. If the court finds that the child
4 and those legally liable for the child's support are indigent, the fee may be
5 waived. In no event shall the fee be assessed against the secretary.

6 (3) If child support has been requested and the parent or parents
7 have a duty to support the child, the court may order one or both parents
8 to pay child support and, when custody is awarded to the secretary, the
9 court shall order one or both parents to pay child support. The court shall
10 determine, for each parent separately, whether the parent is already
11 subject to an order to pay support for the child. If the parent is not
12 presently ordered to pay support for any child who is subject to the
13 jurisdiction of the court and the court has personal jurisdiction over the
14 parent, the court shall order the parent to pay child support in an amount
15 determined under K.S.A. 2010 Supp. 38-2277, and amendments thereto.
16 Except for good cause shown, the court shall issue an immediate income
17 withholding order pursuant to K.S.A. 23-4,105 et seq., and amendments
18 thereto, for each parent ordered to pay support under this subsection,
19 regardless of whether a payor has been identified for the parent. A parent
20 ordered to pay child support under this subsection shall be notified, at the
21 hearing or otherwise, that the child support order may be registered
22 pursuant to K.S.A. 2010 Supp. 38-2279, and amendments thereto. The
23 parent shall also be informed that, after registration, the income
24 withholding order may be served on the parent's employer without further
25 notice to the parent and the child support order may be enforced by any
26 method allowed by law. Failure to provide this notice shall not affect the
27 validity of the child support order.

28 Sec. 20. K.S.A. 2010 Supp. 38-2271 is hereby amended to read as
29 follows: 38-2271. (a) It is presumed in the manner provided in K.S.A. 60-
30 414, and amendments thereto, that a parent is unfit by reason of conduct
31 or condition which renders the parent unable to fully care for a child, if
32 the state establishes, by clear and convincing evidence, that:

33 (1) A parent has previously been found to be an unfit parent in
34 proceedings under K.S.A. 2010 Supp. 38-2266 et seq., and amendments
35 thereto, or comparable proceedings under the laws of another jurisdiction;

36 (2) a parent has twice before been convicted of a crime specified in
37 article 34, 35, or 36 of chapter 21 of the Kansas Statutes Annotated, and
38 amendments thereto, or comparable offenses under the laws of another
39 jurisdiction, or an attempt or attempts to commit such crimes and the
40 victim was under the age of 18 years;

41 (3) on two or more prior occasions a child in the physical custody of
42 the parent has been adjudicated a child in need of care as defined by
43 subsection (d)(1),(d)(3), (d)(5) or (d)(11) of K.S.A. 2010 Supp. 38-2202,

1 and amendments thereto, or comparable proceedings under the laws of
2 another jurisdiction.

3 (4) the parent has been convicted of causing the death of another
4 child or stepchild of the parent;

5 (5) the child has been in an out-of-home placement, under court
6 order for a cumulative total period of one year or longer and the parent
7 has substantially neglected or willfully refused to carry out a reasonable
8 plan, approved by the court, directed toward reintegration of the child
9 into the parental home;

10 (6) (A) the child has been in an out-of-home placement, under court
11 order for a cumulative total period of two years or longer; (B) the parent
12 has failed to carry out a reasonable plan, approved by the court, directed
13 toward reintegration of the child into the parental home; and (C) there is a
14 substantial probability that the parent will not carry out such plan in the
15 near future;

16 (7) a parent has been convicted of capital murder, K.S.A. 21-3439,
17 *prior to its repeal, aggravated murder, section 2*, and amendments
18 thereto, murder in the first degree, K.S.A. 21-3401, *prior to its repeal, or*
19 *section 37 of chapter 136 of the 2010 Session Laws of Kansas*, and
20 amendments thereto, murder in the second degree, K.S.A. 21-3402, *prior*
21 *to its repeal, or section 38 of chapter 136 of the 2010 Session Laws of*
22 *Kansas*, and amendments thereto, or voluntary manslaughter, K.S.A. 21-
23 3403, *prior to its repeal, or section 39 of chapter 136 of the 2010*
24 *Session Laws of Kansas*, and amendments thereto, or comparable
25 proceedings under the laws of another jurisdiction or, has been
26 adjudicated a juvenile offender because of an act which if committed by
27 an adult would be an offense as provided in this subsection, and the
28 victim of such murder was the other parent of the child;

29 (8) a parent abandoned or neglected the child after having
30 knowledge of the child's birth or either parent has been granted immunity
31 from prosecution for abandonment of the child under subsection (b) of
32 K.S.A. 21-3604, *prior to its repeal, or subsection (d) of section 82 of*
33 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;
34 or

35 (9) a parent has made no reasonable efforts to support or
36 communicate with the child after having knowledge of the child's birth;

37 (10) a father, after having knowledge of the pregnancy, failed
38 without reasonable cause to provide support for the mother during the six
39 months prior to the child's birth;

40 (11) a father abandoned the mother after having knowledge of the
41 pregnancy;

42 (12) a parent has been convicted of rape, K.S.A. 21-3502, *prior to*
43 *its repeal, or section 67 of chapter 136 of the 2010 Session Laws of*

1 *Kanas*, and amendments thereto, or comparable proceedings under the
2 laws of another jurisdiction resulting in the conception of the child; or

3 (13) a parent has failed or refused to assume the duties of a parent
4 for two consecutive years next preceding the filing of the petition. In
5 making this determination the court may disregard incidental visitations,
6 contacts, communications or contributions.

7 (b) The burden of proof is on the parent to rebut the presumption of
8 unfitness by a preponderance of the evidence. In the absence of proof that
9 the parent is presently fit and able to care for the child or that the parent
10 will be fit and able to care for the child in the foreseeable future, the court
11 shall terminate parental rights in proceedings pursuant to K.S.A. 2010
12 Supp. 38-2266 et seq., and amendments thereto.

13 Sec. 21. K.S.A. 2010 Supp. 38-2312 is hereby amended to read as
14 follows: 38-2312. (a) Except as provided in subsection (b), any records or
15 files specified in this code concerning a juvenile may be expunged upon
16 application to a judge of the court of the county in which the records or
17 files are maintained. The application for expungement may be made by
18 the juvenile, if 18 years of age or older or, if the juvenile is less than 18
19 years of age, by the juvenile's parent or next friend.

20 (b) There shall be no expungement of records or files concerning
21 acts committed by a juvenile which, if committed by an adult, would
22 constitute a violation of *K.S.A. 21-3439, prior to its repeal, capital*
23 *murder, section 2, and amendments thereto, aggravated murder, K.S.A.*
24 *21-3401, prior to its repeal, or section 37 of chapter 136 of the 2010*
25 *Session Laws of Kansas, and amendments thereto, murder in the first*
26 *degree, K.S.A. 21-3402, prior to its repeal, or section 38 of chapter 136*
27 *of the 2010 Session Laws of Kansas, and amendments thereto, murder in*
28 *the second degree, K.S.A. 21-3403, prior to its repeal, or section 39 of*
29 *chapter 136 of the 2010 Session Laws of Kansas, and amendments*
30 *thereto, voluntary manslaughter, K.S.A. 21-3404, prior to its repeal, or*
31 *section 40 of chapter 136 of the 2010 Session Laws of Kansas, and*
32 *amendments thereto, involuntary manslaughter, ~~K.S.A. 21-3439, and~~*
33 *~~amendments thereto, capital murder, K.S.A. 21-3442, prior to its repeal,~~*
34 *~~and amendments thereto, involuntary manslaughter while driving under~~*
35 *the influence of alcohol or drugs, K.S.A. 21-3502, prior to its repeal, or*
36 *section 67 of chapter 136 of the 2010 Session Laws of Kansas, and*
37 *amendments thereto, rape, K.S.A. 21-3503, prior to its repeal, or*
38 *subsection (a) of section 70 of chapter 136 of the 2010 Session Laws of*
39 *Kansas, and amendments thereto, indecent liberties with a child, K.S.A.*
40 *21-3504, prior to its repeal, or subsection (b) of section 70 of chapter*
41 *136 of the 2010 Session Laws of Kansas, and amendments thereto,*
42 *aggravated indecent liberties with a child, K.S.A. 21-3506, prior to its*
43 *repeal, or subsection (b) of section 68 of chapter 136 of the 2010 Session*

1 *Laws of Kansas*, and amendments thereto, aggravated criminal sodomy,
2 K.S.A. 21-3510, *prior to its repeal, or subsection (a) of section 72 of*
3 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
4 thereto, indecent solicitation of a child, K.S.A. 21-3511, *prior to its*
5 *repeal, or subsection (b) of section 72 of chapter 136 of the 2010 Session*
6 *Laws of Kansas*, and amendments thereto, aggravated indecent
7 solicitation of a child, K.S.A. 21-3516, *prior to its repeal, or section 74*
8 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
9 thereto, sexual exploitation, K.S.A. 21-3603, *prior to its repeal, or*
10 *subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of*
11 *Kansas*, and amendments thereto, aggravated incest, K.S.A. 21-3608,
12 *prior to its repeal, or subsection (a) of section 78 of chapter 136 of the*
13 *2010 Session Laws of Kansas*, and amendments thereto, endangering a
14 child, K.S.A. 21-3608a, *prior to its repeal, or subsection (b) of section 78*
15 *of chapter 136 of the 2010 Session Laws of Kansas, and amendments*
16 *thereto, aggravated endangering a child*, K.S.A. 21-3609, *prior to its*
17 *repeal, or section 79 of chapter 136 of the 2010 Session Laws of Kansas*,
18 and amendments thereto, abuse of a child, or which would constitute an
19 attempt to commit a violation of any of the offenses specified in this
20 subsection.

21 (c) When a petition for expungement is filed, the court shall set a
22 date for a hearing on the petition and shall give notice thereof to the
23 county or district attorney. The petition shall state: (1) The juvenile's full
24 name; (2) the full name of the juvenile as reflected in the court record, if
25 different than (1); (3) the juvenile's sex and date of birth; (4) the offense
26 for which the juvenile was adjudicated; (5) the date of the trial; and (6)
27 the identity of the trial court. Except as otherwise provided by law, a
28 petition for expungement shall be accompanied by a docket fee in the
29 amount of \$100. On and after the effective date of this act through June
30 30, 2011, the supreme court may impose a charge, not to exceed \$15 per
31 case, to fund the costs of non-judicial personnel. All petitions for
32 expungement shall be docketed in the original action. Any person who
33 may have relevant information about the petitioner may testify at the
34 hearing. The court may inquire into the background of the petitioner.

35 (d) (1) After hearing, the court shall order the expungement of the
36 records and files if the court finds that:

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

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

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

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

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

16 (f) Copies of any order made pursuant to subsection (a) or (c) shall
17 be sent to each public officer and agency in the county having possession
18 of any records or files ordered to be expunged. If the officer or agency
19 fails to comply with the order within a reasonable time after its receipt,
20 the officer or agency may be adjudged in contempt of court and punished
21 accordingly.

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

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

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

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

35 (1) The person whose record was expunged;

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

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

42 (4) the secretary of social and rehabilitation services, or a designee
43 of the secretary, for the purpose of obtaining information relating to

1 employment in an institution, as defined in K.S.A. 76-12a01, and
2 amendments thereto, of the department of social and rehabilitation
3 services of any person whose record has been expunged;

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

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

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

18 (8) the Kansas sentencing commission.

19 Sec. 22. K.S.A. 2010 Supp. 38-2365 is hereby amended to read as
20 follows: 38-2365. (a) When a juvenile offender has been placed in the
21 custody of the commissioner, the commissioner shall have a reasonable
22 time to make a placement. If the juvenile offender has not been placed,
23 any party who believes that the amount of time elapsed without
24 placement has exceeded a reasonable time may file a motion for review
25 with the court. In determining what is a reasonable amount of time,
26 matters considered by the court shall include, but not be limited to, the
27 nature of the underlying offense, efforts made for placement of the
28 juvenile offender and the availability of a suitable placement. The
29 commissioner shall notify the court, the juvenile's attorney of record and
30 the juvenile's parent, in writing, of the initial placement and any
31 subsequent change of placement as soon as the placement has been
32 accomplished. The notice to the juvenile offender's parent shall be sent to
33 such parent's last known address or addresses. The court shall have no
34 power to direct a specific placement by the commissioner, but may make
35 recommendations to the commissioner. The commissioner may place the
36 juvenile offender in an institution operated by the commissioner, a youth
37 residential facility or any other appropriate placement. If the court has
38 recommended an out-of-home placement, the commissioner may not
39 return the juvenile offender to the home from which removed without
40 first notifying the court of the plan.

41 (b) If a juvenile is in the custody of the commissioner, the
42 commissioner shall prepare and present a permanency plan at sentencing
43 or within 30 days thereafter. If a permanency plan is already in place

1 under a child in need of care proceeding, the court may adopt the plan
2 under the present proceeding. The written permanency plan shall provide
3 for reintegration of the juvenile into such juvenile's family or, if
4 reintegration is not a viable alternative, for other permanent placement of
5 the juvenile. Reintegration may not be a viable alternative when: (1) The
6 parent has been found by a court to have committed *capital murder*,
7 *K.S.A. 21-3439, prior to its repeal, aggravated murder; section 2, and*
8 *amendments thereto*, murder in the first degree, *K.S.A. 21-3401, prior to*
9 *its repeal, or section 37 of chapter 136 of the 2010 Session Laws of*
10 *Kansas*, and amendments thereto, murder in the second degree, *K.S.A.*
11 *21-3402, prior to its repeal, or section 38 of chapter 136 of the 2010*
12 *Session Laws of Kansas*, and amendments thereto, ~~capital murder, K.S.A.~~
13 ~~21-3439, and amendments thereto~~, voluntary manslaughter, *K.S.A. 21-*
14 *3403, prior to its repeal, or section 39 of chapter 136 of the 2010*
15 *Session Laws of Kansas*, and amendments thereto, of a child or violated a
16 law of another state which prohibits such murder or manslaughter of a
17 child;

18 (2) the parent aided or abetted, attempted, conspired or solicited to
19 commit such murder or voluntary manslaughter of a child;

20 (3) the parent committed a felony battery that resulted in bodily
21 injury to the juvenile who is the subject of this proceeding or another
22 child;

23 (4) the parent has subjected the juvenile who is the subject of this
24 proceeding or another child to aggravated circumstances as defined in
25 *K.S.A. 38-1502*, and amendments thereto;

26 (5) the parental rights of the parent to another child have been
27 terminated involuntarily; or

28 (6) the juvenile has been in extended out-of-home placement as
29 defined in *K.S.A. 2010 Supp. 38-2202*, and amendments thereto.

30 (c) If the juvenile is placed in the custody of the commissioner, the
31 plan shall be prepared and submitted by the commissioner. If the juvenile
32 is placed in the custody of a facility or person other than the
33 commissioner, the plan shall be prepared and submitted by a court
34 services officer. If the permanency goal is reintegration into the family,
35 the permanency plan shall include measurable objectives and time
36 schedules for reintegration.

37 (d) During the time a juvenile remains in the custody of the
38 commissioner, the commissioner shall submit to the court, at least every
39 six months, a written report of the progress being made toward the goals
40 of the permanency plan submitted pursuant to subsections (b) and (c) and
41 the specific actions taken to achieve the goals of the permanency plan. If
42 the juvenile is placed in foster care, the court may request the foster
43 parent to submit to the court, at least every six months, a report in regard

1 to the juvenile's adjustment, progress and condition. Such report shall be
2 made a part of the juvenile's court social file. The court shall review the
3 plan submitted by the commissioner and the report, if any, submitted by
4 the foster parent and determine whether reasonable efforts and progress
5 have been made to achieve the goals of the permanency plan. If the court
6 determines that progress is inadequate or that the permanency plan is no
7 longer viable, the court shall hold a hearing pursuant to subsection (e).

8 (e) When the commissioner has custody of the juvenile, a
9 permanency hearing shall be held no more than 12 months after the
10 juvenile is first placed outside such juvenile's home and at least every 12
11 months thereafter. Juvenile offenders who have been in extended out-of-
12 home placement shall be provided a permanency hearing within 30 days
13 of a request from the commissioner. The court may appoint a *guardian ad*
14 *litem* to represent the juvenile offender at the permanency hearing. At
15 each hearing, the court shall make a written finding whether reasonable
16 efforts have been made to accomplish the permanency goal and whether
17 continued out-of-home placement is necessary for the juvenile's safety.

18 (f) Whenever a hearing is required under subsection (e), the court
19 shall notify all interested parties of the hearing date, the commissioner,
20 foster parent and preadoptive parent or relatives providing care for the
21 juvenile and hold a hearing. Individuals receiving notice pursuant to this
22 subsection shall not be made a party to the action solely on the basis of
23 this notice and opportunity to be heard. After providing the persons
24 receiving notice an opportunity to be heard, the court shall determine
25 whether the juvenile's needs are being adequately met; whether services
26 set out in the permanency plan necessary for the safe return of the
27 juvenile have been made available to the parent with whom reintegration
28 is planned; and whether reasonable efforts and progress have been made
29 to achieve the goals of the permanency plan.

30 (g) If the court finds reintegration continues to be a viable
31 alternative, the court shall determine whether and, if applicable, when the
32 juvenile will be returned to the parent. The court may rescind any of its
33 prior dispositional orders and enter any dispositional order authorized by
34 this code or may order that a new plan for the reintegration be prepared
35 and submitted to the court. If reintegration cannot be accomplished as
36 approved by the court, the court shall be informed and shall schedule a
37 hearing pursuant to subsection (h). No such hearing is required when the
38 parent voluntarily relinquishes parental rights or agrees to appointment of
39 a permanent guardian.

40 (h) When the court finds any of the following conditions exist, the
41 county or district attorney or the county or district attorney's designee
42 shall file a petition alleging the juvenile to be a child in need of care and
43 requesting termination of parental rights pursuant to the Kansas code for

1 care of children: (1) The court determines that reintegration is not a viable
2 alternative and either adoption or permanent guardianship might be in the
3 best interests of the juvenile;

4 (2) the goal of the permanency plan is reintegration into the family
5 and the court determines after 12 months from the time such plan is first
6 submitted that progress is inadequate; or

7 (3) the juvenile has been in out-of-home placement for a cumulative
8 total of 15 of the last 22 months, excluding trial home visits and juvenile
9 in runaway status.

10 Nothing in this subsection shall be interpreted to prohibit termination
11 of parental rights prior to the expiration of 12 months.

12 (i) A petition to terminate parental rights is not required to be filed if
13 one of the following exceptions is documented to exist: (1) The juvenile
14 is in a stable placement with relatives;

15 (2) services set out in the case plan necessary for the safe return of
16 the juvenile have not been made available to the parent with whom
17 reintegration is planned; or

18 (3) there are one or more documented reasons why such filing would
19 not be in the best interests of the juvenile. Documented reasons may
20 include, but are not limited to: The juvenile has close emotional bonds
21 with a parent which should not be broken; the juvenile is 14 years of age
22 or older and, after advice and counsel, refuses to be adopted; insufficient
23 grounds exist for termination of parental rights; the juvenile is an
24 unaccompanied refugee minor; or there are international legal or
25 compelling foreign policy reasons precluding termination of parental
26 rights.

27 Sec. 23. K.S.A. 2010 Supp. 39-970 is hereby amended to read as
28 follows: 39-970. (a) (1) No person shall knowingly operate an adult care
29 home if, in the adult care home, there works any person who has been
30 convicted of or has been adjudicated a juvenile offender because of
31 having committed an act which if done by an adult would constitute the
32 commission of capital murder, pursuant to K.S.A. 21-3439, *prior to its*
33 *repeal, aggravated murder, pursuant to section 2, and amendments*
34 *thereto, first degree murder, pursuant to K.S.A. 21-3401, prior to its*
35 *repeal, or section 37 of chapter 136 of the 2010 Session Laws of Kansas,*
36 *and amendments thereto, second degree murder, pursuant to subsection*
37 *(a) of K.S.A. 21-3402, prior to its repeal, or subsection (a) of section 38*
38 *of chapter 136 of the 2010 Session Laws of Kansas, and amendments*
39 *thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403, prior to its*
40 *repeal, or section 39 of chapter 136 of the 2010 Session Laws of Kansas,*
41 *and amendments thereto, assisting suicide pursuant to K.S.A. 21-3406,*
42 *prior to its repeal, or section 42 of chapter 136 of the 2010 Session Laws*
43 *of Kansas, and amendments thereto, mistreatment of a dependent adult,*

1 pursuant to K.S.A. 21-3437, *prior to its repeal, or section 52 of chapter*
2 *136 of the 2010 Session Laws of Kansas*, and amendments thereto, rape,
3 pursuant to K.S.A. 21-3502, *prior to its repeal, or section 67 of chapter*
4 *136 of the 2010 Session Laws of Kansas*, and amendments thereto,
5 indecent liberties with a child, pursuant to K.S.A. 21-3503, *prior to its*
6 *repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session*
7 *Laws of Kansas*, and amendments thereto, aggravated indecent liberties
8 with a child, pursuant to K.S.A. 21-3504, *prior to its repeal, or*
9 *subsection (b) of section 70 of chapter 136 of the 2010 Session Laws of*
10 *Kansas*, and amendments thereto, aggravated criminal sodomy, pursuant
11 to K.S.A. 21-3506, *prior to its repeal, or subsection (b) of section 68 of*
12 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
13 thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510, *prior*
14 *to its repeal, or subsection (a) of section 72 of chapter 136 of the 2010*
15 *Session Laws of Kansas*, and amendments thereto, aggravated indecent
16 solicitation of a child, pursuant to K.S.A. 21-3511, *prior to its repeal, or*
17 *subsection (b) of section 72 of chapter 136 of the 2010 Session Laws of*
18 *Kansas*, and amendments thereto, sexual exploitation of a child, pursuant
19 to K.S.A. 21-3516, *prior to its repeal, or section 74 of chapter 136 of the*
20 *2010 Session Laws of Kansas*, and amendments thereto, sexual battery,
21 pursuant to K.S.A. 21-3517, *prior to its repeal, or subsection (a) of*
22 *section 69 of chapter 136 of the 2010 Session Laws of Kansas*, and
23 amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-
24 3518, *prior to its repeal, or subsection (b) of section 69 of chapter 136 of*
25 *the 2010 Session Laws of Kansas*, and amendments thereto, an attempt to
26 commit any of the crimes listed in this subsection (a)(1), pursuant to
27 K.S.A. 21-3301, *prior to its repeal, or section 33 of chapter 136 of the*
28 *2010 Session Laws of Kansas*, and amendments thereto, a conspiracy to
29 commit any of the crimes listed in this subsection (a)(1), pursuant to
30 K.S.A. 21-3302, *prior to its repeal, or section 34 of chapter 136 of the*
31 *2010 Session Laws of Kansas*, and amendments thereto, or criminal
32 solicitation of any of the crimes listed in this subsection (a)(1), pursuant
33 to K.S.A. 21-3303, *prior to its repeal, or section 35 of chapter 136 of the*
34 *2010 Session Laws of Kansas*, and amendments thereto, or similar
35 statutes of other states or the federal government. The provisions of
36 subsection (a)(2)(C) shall not apply to any person who is employed by an
37 adult care home on ~~the effective date of this act~~ *July 1, 2010* and while
38 continuously employed by the same adult care home.

39 (2) A person operating an adult care home may employ an applicant
40 who has been convicted of any of the following if five or more years have
41 elapsed since the applicant satisfied the sentence imposed or was
42 discharged from probation, a community correctional services program,
43 parole, postrelease supervision, conditional release or a suspended

1 sentence; or if five or more years have elapsed since the applicant has
2 been finally discharged from the custody of the commissioner of juvenile
3 justice or from probation or has been adjudicated a juvenile offender,
4 whichever time is longer: A felony conviction for a crime which is
5 described in: (A) Article 34 of chapter 21 of the Kansas Statutes
6 Annotated, *prior to their repeal, or sections 36 through 64, 174, 210 or*
7 *211 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
8 thereto, except those crimes listed in subsection (a)(1); (B) articles 35 or
9 36 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal,*
10 *or sections 65 through 86 or 229 through 231 of chapter 136 of the 2010*
11 *Session Laws of Kansas*, and amendments thereto, except those crimes
12 listed in subsection (a)(1) and K.S.A. 21-3605, *prior to its repeal, or*
13 *section 83 of chapter 136 of the 2010 Session Laws of Kansas*, and
14 amendments thereto; (C) K.S.A. 21-3701, *prior to its repeal, or section*
15 *87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
16 thereto; (D) an attempt to commit any of the crimes listed in this
17 subsection (a)(2) pursuant to K.S.A. 21-3301, *prior to its repeal, or*
18 *section 33 of chapter 136 of the 2010 Session Laws of Kansas*, and
19 amendments thereto; (E) a conspiracy to commit any of the crimes listed
20 in subsection (a)(2) pursuant to K.S.A. 21-3302, *prior to its repeal, or*
21 *section 34 of chapter 136 of the 2010 Session Laws of Kansas*, and
22 amendments thereto; (F) criminal solicitation of any of the crimes listed
23 in subsection (a)(2) pursuant to K.S.A. 21-3303, *prior to its repeal, or*
24 *section 35 of chapter 136 of the 2010 Session Laws of Kansas*, and
25 amendments thereto; or (G) similar statutes of other states or the federal
26 government.

27 (b) No person shall operate an adult care home if such person has
28 been found to be in need of a guardian or conservator, or both as provided
29 in K.S.A. 59-3050 through 59-3095, and amendments thereto. The
30 provisions of this subsection shall not apply to a minor found to be in
31 need of a guardian or conservator for reasons other than impairment.

32 (c) The secretary of health and environment shall have access to any
33 criminal history record information in the possession of the Kansas
34 bureau of investigation regarding any criminal history information,
35 convictions under K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their*
36 *repeal, or section 52, subsection (a) of section 69 and section 87 of*
37 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
38 thereto, adjudications of a juvenile offender which if committed by an
39 adult would have been a felony conviction, and adjudications of a
40 juvenile offender for an offense described in K.S.A. 21-3437, 21-3517
41 and 21-3701, *prior to their repeal, or section 52, subsection (a) of section*
42 *69 and section 87 of chapter 136 of the 2010 Session Laws of Kansas*,
43 and amendments thereto, concerning persons working in an adult care

1 home. The secretary shall have access to these records for the purpose of
2 determining whether or not the adult care home meets the requirements of
3 this section. The Kansas bureau of investigation may charge to the
4 department of health and environment a reasonable fee for providing
5 criminal history record information under this subsection.

6 (d) For the purpose of complying with this section, the operator of
7 an adult care home shall request from the department of health and
8 environment information regarding any criminal history information,
9 convictions under K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their*
10 *repeal, or section 52, subsection (a) of section 69 and section 87 of*
11 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
12 thereto, adjudications of a juvenile offender which if committed by an
13 adult would have been a felony conviction, and adjudications of a
14 juvenile offender for an offense described in K.S.A. 21-3437, 21-3517
15 and 21-3701, *prior to their repeal, or section 52, subsection (a) of section*
16 *69 and section 87 of chapter 136 of the 2010 Session Laws of Kansas*,
17 and amendments thereto, and which relates to a person who works in the
18 adult care home, or is being considered for employment by the adult care
19 home, for the purpose of determining whether such person is subject to
20 the provision of this section. For the purpose of complying with this
21 section, the operator of an adult care home shall receive from any
22 employment agency which provides employees to work in the adult care
23 home written certification that such employees are not prohibited from
24 working in the adult care home under this section. For the purpose of
25 complying with this section, information relating to convictions and
26 adjudications by the federal government or to convictions and
27 adjudications in states other than Kansas shall not be required until such
28 time as the secretary of health and environment determines the search for
29 such information could reasonably be performed and the information
30 obtained within a two-week period. For the purpose of complying with
31 this section, a person who operates an adult care home may hire an
32 applicant for employment on a conditional basis pending the results from
33 the department of health and environment of a request for information
34 under this subsection. No adult care home, the operator or employees of
35 an adult care home or an employment agency, or the operator or
36 employees of an employment agency, shall be liable for civil damages
37 resulting from any decision to employ, to refuse to employ or to discharge
38 from employment any person based on such adult care home's
39 compliance with the provisions of this section if such adult care home or
40 employment agency acts in good faith to comply with this section.

41 (e) The secretary of health and environment shall charge each person
42 requesting information under this section a fee equal to cost, not to
43 exceed \$10, for each name about which an information request has been

1 submitted to the department under this section.

2 (f) (1) The secretary of health and environment shall provide each
3 operator requesting information under this section with the criminal
4 history record information concerning any criminal history information
5 and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, *prior to*
6 *their repeal, or section 52, subsection (a) of section 69 and section 87 of*
7 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
8 thereto, in writing and within three working days of receipt of such
9 information from the Kansas bureau of investigation. The criminal history
10 record information shall be provided regardless of whether the
11 information discloses that the subject of the request has been convicted of
12 an offense enumerated in subsection (a).

13 (2) When an offense enumerated in subsection (a) exists in the
14 criminal history record information, and when further confirmation
15 regarding criminal history record information is required from the
16 appropriate court of jurisdiction or Kansas department of corrections, the
17 secretary shall notify each operator that requests information under this
18 section in writing and within three working days of receipt from the
19 Kansas bureau of investigation that further confirmation is required. The
20 secretary shall provide to the operator requesting information under this
21 section information in writing and within three working days of receipt of
22 such information from the appropriate court of jurisdiction or Kansas
23 department of corrections regarding confirmation regarding the criminal
24 history record information.

25 (3) Whenever the criminal history record information reveals that
26 the subject of the request has no criminal history on record, the secretary
27 shall provide notice to each operator requesting information under this
28 section, in writing and within three working days after receipt of such
29 information from the Kansas bureau of investigation.

30 (4) The secretary of health and environment shall not provide each
31 operator requesting information under this section with the juvenile
32 criminal history record information which relates to a person subject to a
33 background check as is provided by K.S.A. 2010 Supp. 38-2326, and
34 amendments thereto, except for adjudications of a juvenile offender for
35 an offense described in K.S.A. 21-3701, *prior to its repeal, or section 87*
36 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
37 thereto. The secretary shall notify the operator that requested the
38 information, in writing and within three working days of receipt of such
39 information from the Kansas bureau of investigation, whether juvenile
40 criminal history record information received pursuant to this section
41 reveals that the operator would or would not be prohibited by this section
42 from employing the subject of the request for information and whether
43 such information contains adjudications of a juvenile offender for an

1 offense described in K.S.A. 21-3701, *prior to its repeal, or section 87 of*
2 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
3 thereto.

4 (5) An operator who receives criminal history record information
5 under this subsection (f) shall keep such information confidential, except
6 that the operator may disclose such information to the person who is the
7 subject of the request for information. A violation of this paragraph (5)
8 shall be an unclassified misdemeanor punishable by a fine of \$100.

9 (g) No person who works for an adult care home and who is
10 currently licensed or registered by an agency of this state to provide
11 professional services in the state and who provides such services as part
12 of the work which such person performs for the adult care home shall be
13 subject to the provisions of this section.

14 (h) A person who volunteers in an adult care home shall not be
15 subject to the provisions of this section because of such volunteer activity.

16 (i) An operator may request from the department of health and
17 environment criminal history information on persons employed under
18 subsections (g) and (h).

19 (j) No person who has been employed by the same adult care home
20 since July 1, 1992, shall be subject to the provisions of this section while
21 employed by such adult care home.

22 (k) The operator of an adult care home shall not be required under
23 this section to conduct a background check on an applicant for
24 employment with the adult care home if the applicant has been the subject
25 of a background check under this act within one year prior to the
26 application for employment with the adult care home. The operator of an
27 adult care home where the applicant was the subject of such background
28 check may release a copy of such background check to the operator of an
29 adult care home where the applicant is currently applying.

30 (l) No person who is in the custody of the secretary of corrections
31 and who provides services, under direct supervision in nonpatient areas,
32 on the grounds or other areas designated by the superintendent of the
33 Kansas soldiers' home or the Kansas veterans' home shall be subject to
34 the provisions of this section while providing such services.

35 (m) For purposes of this section, the Kansas bureau of investigation
36 shall report any criminal history information, convictions under K.S.A.
37 21-3437, 21-3517 and 21-3701, *prior to their repeal, or section 52,*
38 *subsection (a) of section 69 and section 87 of chapter 136 of the 2010*
39 *Session Laws of Kansas*, and amendments thereto, adjudications of a
40 juvenile offender which if committed by an adult would have been a
41 felony conviction, and adjudications of a juvenile offender for an offense
42 described in K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their repeal,*
43 *or section 52, subsection (a) of section 69 and section 87 of chapter 136*

1 of the 2010 Session Laws of Kansas, and amendments thereto, to the
2 secretary of health and environment when a background check is
3 requested.

4 Sec. 24. K.S.A. 2010 Supp. 65-5117 is hereby amended to read as
5 follows: 65-5117. (a) (1) No person shall knowingly operate a home
6 health agency if, for the home health agency, there works any person who
7 has been convicted of or has been adjudicated a juvenile offender because
8 of having committed an act which if done by an adult would constitute
9 the commission of capital murder, pursuant to K.S.A. 21-3439, *prior to*
10 *its repeal, aggravated murder, pursuant to section 2, and amendments*
11 *thereto, first degree murder, pursuant to K.S.A. 21-3401, prior to its*
12 *repeal, or section 37 of chapter 136 of the 2010 Session Laws of Kansas,*
13 *and amendments thereto, second degree murder, pursuant to subsection*
14 *(a) of K.S.A. 21-3402, prior to its repeal, or subsection (a) of section 38*
15 *of chapter 136 of the 2010 Session Laws of Kansas, and amendments*
16 *thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403, prior to its*
17 *repeal, or section 39 of chapter 136 of the 2010 Session Laws of Kansas,*
18 *and amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406,*
19 *prior to its repeal, or section 42 of chapter 136 of the 2010 Session Laws*
20 *of Kansas, and amendments thereto, mistreatment of a dependent adult,*
21 *pursuant to K.S.A. 21-3437, prior to its repeal, or section 52 of chapter*
22 *136 of the 2010 Session Laws of Kansas, and amendments thereto, rape,*
23 *pursuant to K.S.A. 21-3502, prior to its repeal, or section 67 of chapter*
24 *136 of the 2010 Session Laws of Kansas, and amendments thereto,*
25 *indecent liberties with a child, pursuant to K.S.A. 21-3503, prior to its*
26 *repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session*
27 *Laws of Kansas, and amendments thereto, aggravated indecent liberties*
28 *with a child, pursuant to K.S.A. 21-3504, prior to its repeal, or*
29 *subsection (b) of section 70 of chapter 136 of the 2010 Session Laws of*
30 *Kansas, and amendments thereto, aggravated criminal sodomy, pursuant*
31 *to K.S.A. 21-3506, prior to its repeal, or subsection (b) of section 68 of*
32 *chapter 136 of the 2010 Session Laws of Kansas, and amendments*
33 *thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510, prior*
34 *to its repeal, or subsection (a) of section 72 of chapter 136 of the 2010*
35 *Session Laws of Kansas, and amendments thereto, aggravated indecent*
36 *solicitation of a child, pursuant to K.S.A. 21-3511, prior to its repeal, or*
37 *subsection (b) of section 72 of chapter 136 of the 2010 Session Laws of*
38 *Kansas, and amendments thereto, sexual exploitation of a child, pursuant*
39 *to K.S.A. 21-3516, prior to its repeal, or section 74 of chapter 136 of the*
40 *2010 Session Laws of Kansas, and amendments thereto, sexual battery,*
41 *pursuant to K.S.A. 21-3517, prior to its repeal, or subsection (a) of*
42 *section 69 of chapter 136 of the 2010 Session Laws of Kansas, and*
43 *amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-*

1 3518, *prior to its repeal, or subsection (b) of section 69 of chapter 136 of*
2 *the 2010 Session Laws of Kansas*, and amendments thereto, an attempt to
3 commit any of the crimes listed in this subsection (a)(1), pursuant to
4 K.S.A. 21-3301, *prior to its repeal, or section 33 of chapter 136 of the*
5 *2010 Session Laws of Kansas*, and amendments thereto, a conspiracy to
6 commit any of the crimes listed in this subsection (a)(1), pursuant to
7 K.S.A. 21-3302, *prior to its repeal, or section 34 of chapter 136 of the*
8 *2010 Session Laws of Kansas*, and amendments thereto, or criminal
9 solicitation of any of the crimes listed in this subsection (a)(1), pursuant
10 to K.S.A. 21-3303, *prior to its repeal, or section 35 of chapter 136 of the*
11 *2010 Session Laws of Kansas*, and amendments thereto, or similar
12 statutes of other states or the federal government. The provisions of
13 subsection (a)(2)(C) shall not apply to any person who is employed by a
14 home health agency on the effective date of this act ~~July 1, 2010~~ and while
15 continuously employed by the same home health agency.

16 (2) A person operating a home health agency may employ an
17 applicant who has been convicted of any of the following if five or more
18 years have elapsed since the applicant satisfied the sentence imposed or
19 was discharged from probation, a community correctional services
20 program, parole, postrelease supervision, conditional release or a
21 suspended sentence; or if five or more years have elapsed since the
22 applicant has been finally discharged from the custody of the
23 commissioner of juvenile justice or from probation or has been
24 adjudicated a juvenile offender, whichever time is longer: A felony
25 conviction for a crime which is described in: (A) Article 34 of chapter 21
26 of the Kansas Statutes Annotated, *prior to their repeal, or sections 36*
27 *through 64, 174, 210 or 211 of chapter 136 of the 2010 Session Laws of*
28 *Kansas*, and amendments thereto, except those crimes listed in subsection
29 (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes
30 Annotated, *prior to their repeal, or sections 65 through 86 or 229*
31 *through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and
32 amendments thereto, except those crimes listed in subsection (a)(1) and
33 K.S.A. 21-3605, *prior to its repeal, or section 83 of chapter 136 of the*
34 *2010 Session Laws of Kansas*, and amendments thereto; (C) K.S.A. 21-
35 3701, *prior to its repeal, or section 87 of chapter 136 of the 2010 Session*
36 *Laws of Kansas*, and amendments thereto; (D) an attempt to commit any
37 of the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301,
38 *prior to its repeal, or section 33 of chapter 136 of the 2010 Session Laws*
39 *of Kansas*, and amendments thereto; (E) a conspiracy to commit any of
40 the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302, *prior to*
41 *its repeal, or section 34 of chapter 136 of the 2010 Session Laws of*
42 *Kansas*, and amendments thereto; (F) criminal solicitation of any of the
43 crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3303, *prior to its*

1 *repeal, or section 35 of chapter 136 of the 2010 Session Laws of Kansas,*
2 and amendments thereto; or (G) similar statutes of other states or the
3 federal government.

4 (b) No person shall operate a home health agency if such person has
5 been found to be a person in need of a guardian or a conservator, or both,
6 as provided in K.S.A. 59-3050 through 59-3095, and amendments
7 thereto. The provisions of this subsection shall not apply to a minor found
8 to be in need of a guardian or conservator for reasons other than
9 impairment.

10 (c) The secretary of health and environment shall have access to any
11 criminal history record information in the possession of the Kansas
12 bureau of investigation regarding any criminal history information,
13 convictions under K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their*
14 *repeal, or section 52, subsection (a) of section 69 and section 87 of*
15 *chapter 136 of the 2010 Session Laws of Kansas,* and amendments
16 thereto, adjudications of a juvenile offender which if committed by an
17 adult would have been a felony conviction, and adjudications of a
18 juvenile offender for an offense described in K.S.A. 21-3437, 21-3517
19 and 21-3701, *prior to their repeal, or section 52, subsection (a) of section*
20 *69 and section 87 of chapter 136 of the 2010 Session Laws of Kansas,*
21 and amendments thereto, concerning persons working for a home health
22 agency. The secretary shall have access to these records for the purpose
23 of determining whether or not the home health agency meets the
24 requirements of this section. The Kansas bureau of investigation may
25 charge to the department of health and environment a reasonable fee for
26 providing criminal history record information under this subsection.

27 (d) For the purpose of complying with this section, the operator of a
28 home health agency shall request from the department of health and
29 environment information regarding any criminal history information,
30 convictions under K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their*
31 *repeal, or section 52, subsection (a) of section 69 and section 87 of*
32 *chapter 136 of the 2010 Session Laws of Kansas,* and amendments
33 thereto, adjudications of a juvenile offender which if committed by an
34 adult would have been a felony conviction, and adjudications of a
35 juvenile offender for an offense described in K.S.A. 21-3437, 21-3517
36 and 21-3701, *prior to their repeal, or section 52, subsection (a) of section*
37 *69 and section 87 of chapter 136 of the 2010 Session Laws of Kansas,*
38 and amendments thereto, and which relates to a person who works for the
39 home health agency or is being considered for employment by the home
40 health agency, for the purpose of determining whether such person is
41 subject to the provisions of this section. For the purpose of complying
42 with this section, information relating to convictions and adjudications by
43 the federal government or to convictions and adjudications in states other

1 than Kansas shall not be required until such time as the secretary of
2 health and environment determines the search for such information could
3 reasonably be performed and the information obtained within a two-week
4 period. For the purpose of complying with this section, the operator of a
5 home health agency shall receive from any employment agency which
6 provides employees to work for the home health agency written
7 certification that such employees are not prohibited from working for the
8 home health agency under this section. For the purpose of complying
9 with this section, a person who operates a home health agency may hire
10 an applicant for employment on a conditional basis pending the results
11 from the department of health and environment of a request for
12 information under this subsection. No home health agency, the operator
13 or employees of a home health agency or an employment agency, or the
14 operator or employees of an employment agency, which provides
15 employees to work for the home health agency shall be liable for civil
16 damages resulting from any decision to employ, to refuse to employ or to
17 discharge from employment any person based on such home health
18 agency's compliance with the provisions of this section if such home
19 health agency or employment agency acts in good faith to comply with
20 this section.

21 (e) The secretary of health and environment shall charge each person
22 requesting information under this section a fee equal to cost, not to
23 exceed \$10, for each name about which an information request has been
24 submitted under this section.

25 (f) (1) The secretary of health and environment shall provide each
26 operator requesting information under this section with the criminal
27 history record information concerning any criminal history information
28 and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, *prior to*
29 *their repeal, or section 52, subsection (a) of section 69 and section 87 of*
30 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
31 thereto, in writing and within three working days of receipt of such
32 information from the Kansas bureau of investigation. The criminal history
33 record information shall be provided regardless of whether the
34 information discloses that the subject of the request has been convicted of
35 an offense enumerated in subsection (a).

36 (2) When an offense enumerated in subsection (a) exists in the
37 criminal history record information, and when further confirmation
38 regarding criminal history record information is required from the
39 appropriate court of jurisdiction or Kansas department of corrections, the
40 secretary shall notify each operator that requests information under this
41 section in writing and within three working days of receipt from the
42 Kansas bureau of investigation that further confirmation is required. The
43 secretary shall provide to the operator requesting information under this

1 section information in writing and within three working days of receipt of
2 such information from the appropriate court of jurisdiction or Kansas
3 department of corrections regarding confirmation regarding the criminal
4 history record information.

5 (3) Whenever the criminal history record information reveals that
6 the subject of the request has no criminal history on record, the secretary
7 shall provide notice to each operator requesting information under this
8 section, in writing and within three working days after receipt of such
9 information from the Kansas bureau of investigation.

10 (4) The secretary of health and environment shall not provide each
11 operator requesting information under this section with the juvenile
12 criminal history record information which relates to a person subject to a
13 background check as is provided by K.S.A. 2010 Supp. 38-2326, and
14 amendments thereto, except for adjudications of a juvenile offender for
15 an offense described in K.S.A. 21-3701, *prior to its repeal, or section 87*
16 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
17 thereto. The secretary shall notify the operator that requested the
18 information, in writing and within three working days of receipt of such
19 information from the Kansas bureau of investigation, whether juvenile
20 criminal history record information received pursuant to this section
21 reveals that the operator would or would not be prohibited by this section
22 from employing the subject of the request for information and whether
23 such information contains adjudications of a juvenile offender for an
24 offense described in K.S.A. 21-3701, *prior to its repeal, or section 87 of*
25 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
26 thereto.

27 (5) An operator who receives criminal history record information
28 under this subsection (f) shall keep such information confidential, except
29 that the operator may disclose such information to the person who is the
30 subject of the request for information. A violation of this paragraph (5)
31 shall be an unclassified misdemeanor punishable by a fine of \$100.

32 (g) No person who works for a home health agency and who is
33 currently licensed or registered by an agency of this state to provide
34 professional services in this state and who provides such services as part
35 of the work which such person performs for the home health agency shall
36 be subject to the provisions of this section.

37 (h) A person who volunteers to assist a home health agency shall not
38 be subject to the provisions of this section because of such volunteer
39 activity.

40 (i) An operator may request from the department of health and
41 environment criminal history information on persons employed under
42 subsections (g) and (h).

43 (j) No person who has been employed by the same home health

1 agency since July 1, 1992, shall be subject to the requirements of this
2 section while employed by such home health agency.

3 (k) The operator of a home health agency shall not be required under
4 this section to conduct a background check on an applicant for
5 employment with the home health agency if the applicant has been the
6 subject of a background check under this act within one year prior to the
7 application for employment with the home health agency. The operator of
8 a home health agency where the applicant was the subject of such
9 background check may release a copy of such background check to the
10 operator of a home health agency where the applicant is currently
11 applying.

12 (l) For purposes of this section, the Kansas bureau of investigation
13 shall only report felony convictions, convictions under K.S.A. 21-3437,
14 21-3517 and 21-3701, *prior to their repeal, or section 52, subsection (a)*
15 *of section 69 and section 87 of chapter 136 of the 2010 Session Laws of*
16 *Kansas*, and amendments thereto, adjudications of a juvenile offender
17 which if committed by an adult would have been a felony conviction, and
18 adjudications of a juvenile offender for an offense described in K.S.A.
19 21-3437, 21-3517 and 21-3701, *prior to their repeal, or section 52,*
20 *subsection (a) of section 69 and section 87 of chapter 136 of the 2010*
21 *Session Laws of Kansas*, and amendments thereto, to the secretary of
22 health and environment when a background check is requested.

23 (m) This section shall be part of and supplemental to the provisions
24 of article 51 of chapter 65 of the Kansas Statutes Annotated ~~and acts~~
25 ~~amendatory thereof or supplemental thereto, and amendments thereto.~~

26 Sec. 25. K.S.A. 2010 Supp. 72-1397 is hereby amended to read as
27 follows: 72-1397. (a) The state board of education shall not knowingly
28 issue a license to or renew the license of any person who has been
29 convicted of:

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

33 (2) indecent liberties with a child, as defined in K.S.A. 21-3503,
34 *prior to its repeal, or subsection (a) of section 70 of chapter 136 of the*
35 *2010 Session Laws of Kansas*, and amendments thereto;

36 (3) aggravated indecent liberties with a child, as defined in K.S.A.
37 21-3504, *prior to its repeal, or subsection (b) of section 70 of chapter*
38 *136 of the 2010 Session Laws of Kansas*, and amendments thereto;

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

43 (5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, *prior*

1 *to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010*
2 *Session Laws of Kansas, and amendments thereto;*

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

6 (7) *aggravated indecent solicitation of a child, as defined in K.S.A.*
7 *21-3511, prior to its repeal, or subsection (b) of section 72 of chapter 136*
8 *of the 2010 Session Laws of Kansas, and amendments thereto;*

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

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

15 (10) *aggravated endangering a child, as defined in K.S.A. 21-3608a,*
16 *prior to its repeal, or subsection (b) of section 78 of chapter 136 of the*
17 *2010 Session Laws of Kansas, and amendments thereto;*

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

21 (12) *capital murder, as defined in K.S.A. 21-3439, prior to its*
22 *repeal, or aggravated murder, as defined in section 2, and amendments*
23 *thereto;*

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

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

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

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

36 (17) *involuntary manslaughter while driving under the influence of*
37 *alcohol or drugs, as defined in K.S.A. 21-3442, and amendments thereto*
38 *prior to its repeal;*

39 (18) *sexual battery, as defined in K.S.A. 21-3517, prior to its repeal,*
40 *or subsection (a) of section 69 of chapter 136 of the 2010 Session Laws*
41 *of Kansas, and amendments thereto, when, at the time the crime was*
42 *committed, the victim was less than 18 years of age or a student of the*
43 *person committing such crime;*

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

4 (20) attempt under K.S.A. 21-3301, *prior to its repeal, or section 33*
5 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
6 thereto, to commit any act specified in this subsection;

7 (21) conspiracy under K.S.A. 21-3302, *prior to its repeal, or section*
8 *34 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
9 thereto, to commit any act specified in this subsection;

10 (22) an act in another state or by the federal government that is
11 comparable to any act described in this subsection; or

12 (23) an offense in effect at any time prior to the effective date of this
13 act that is comparable to an offense as provided in this subsection.

14 (b) Except as provided in subsection (c), the state board of education
15 shall not knowingly issue a license to or renew the license of any person
16 who has been convicted of, or has entered into a criminal diversion
17 agreement after having been charged with:

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

21 (2) a felony described in any section of article 34 of chapter 21 of
22 the Kansas Statutes Annotated, *prior to their repeal, or sections 36*
23 *through 64, 174, 210 or 211 of chapter 136 of the 2010 Session Laws of*
24 *Kansas, and amendments thereto*, other than an act specified in
25 subsection (a), or a battery, as described in K.S.A. 21-3412, *prior to its*
26 *repeal, or subsection (a) of section 48 of chapter 136 of the 2010 Session*
27 *Laws of Kansas*, and amendments thereto, or domestic battery, as
28 described in K.S.A. 21-3412a, *prior to its repeal, or section 49 of chapter*
29 *136 of the 2010 Session Laws of Kansas*, and amendments thereto, if the
30 victim is a minor or student;

31 (3) a felony described in any section of article 35 of chapter 21 of
32 the Kansas Statutes Annotated, *prior to their repeal, or sections 65*
33 *through 77 or 229 through 231 of chapter 136 of the 2010 Session Laws*
34 *of Kansas, and amendments thereto*, other than an act specified in
35 subsection (a);

36 (4) any act described in any section of article 36 of chapter 21 of the
37 Kansas Statutes Annotated, *prior to their repeal, or sections 78 through*
38 *86 of chapter 136 of the 2010 Session Laws of Kansas, and amendments*
39 *thereto*, other than an act specified in subsection (a);

40 (5) a felony described in article 37 of chapter 21 of the Kansas
41 Statutes Annotated, *prior to their repeal, or sections 87 through 125 or*
42 *subsection (a)(6) of section 223 of chapter 136 of the 2010 Session Laws*
43 *of Kansas, and amendments thereto*;

1 (6) promoting obscenity, as described in K.S.A. 21-4301, *prior to its*
2 *repeal, or subsection (a) of section 212 of chapter 136 of the 2010*
3 *Session Laws of Kansas*, and amendments thereto, promoting obscenity to
4 minors, as described in K.S.A. 21-4301a, *prior to its repeal, or*
5 *subsection (b) of section 212 of chapter 136 of the 2010 Session Laws of*
6 *Kansas*, and amendments thereto, or promoting to minors obscenity
7 harmful to minors, as described in K.S.A. 21-4301c, *prior to its repeal,*
8 *or section 213 of chapter 136 of the 2010 Session Laws of Kansas*, and
9 amendments thereto;

10 (7) endangering a child, as defined in K.S.A. 21-3608, *prior to its*
11 *repeal, or subsection (a) of section 78 of chapter 136 of the 2010 Session*
12 *Laws of Kansas*, and amendments thereto;

13 (8) driving under the influence of alcohol or drugs in violation of
14 K.S.A. 8-1567 or 8-2,144, and amendments thereto, when the violation is
15 punishable as a felony;

16 (9) attempt under K.S.A. 21-3301, *prior to its repeal, or section 33*
17 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
18 thereto, to commit any act specified in this subsection;

19 (10) conspiracy under K.S.A. 21-3302, *prior to its repeal, or section*
20 *34 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
21 thereto, to commit any act specified in this subsection; or

22 (11) an act committed in violation of a federal law or in violation of
23 another state's law that is comparable to any act described in this
24 subsection.

25 (c) The state board of education may issue a license to or renew the
26 license of a person who has been convicted of committing an offense or
27 act described in subsection (b) or who has entered into a criminal
28 diversion agreement after having been charged with an offense or act
29 described in subsection (b) if the state board determines, following a
30 hearing, that the person has been rehabilitated for a period of at least five
31 years from the date of conviction of the offense or commission of the act
32 or, in the case of a person who has entered into a criminal diversion
33 agreement, that the person has satisfied the terms and conditions of the
34 agreement. The state board of education may consider factors including,
35 but not limited to, the following in determining whether to grant a
36 license:

37 (1) The nature and seriousness of the offense or act;

38 (2) the conduct of the person subsequent to commission of the
39 offense or act;

40 (3) the time elapsed since the commission of the offense or act;

41 (4) the age of the person at the time of the offense or act;

42 (5) whether the offense or act was an isolated or recurring incident;

43 and

1 (6) discharge from probation, pardon or expungement.

2 (d) Before any license is denied by the state board of education for
3 any of the offenses or acts specified in subsections (a) and (b), the person
4 shall be given notice and an opportunity for a hearing in accordance with
5 the provisions of the Kansas administrative procedure act.

6 (e) The county or district attorney shall file a report with the state
7 board of education indicating the name, address and social security
8 number of any person who has been determined to have committed any
9 offense or act specified in subsection (a) or (b) or to have entered into a
10 criminal diversion agreement after having been charged with any offense
11 or act specified in subsection (b). Such report shall be filed within 30
12 days of the date of the determination that the person has committed any
13 such act or entered into any such diversion agreement.

14 (f) The state board of education shall not be liable for civil damages
15 to any person refused issuance or renewal of a license by reason of the
16 state board's compliance, in good faith, with the provisions of this
17 section.

18 Sec. 26. K.S.A. 2010 Supp. 75-52,148 is hereby amended to read as
19 follows: 75-52,148. (a) The department of corrections shall be required to
20 review and report on the following serious offenses committed by sex
21 offenders, as defined by K.S.A. 22-4902, and amendments thereto, while
22 such offenders are in the custody of the secretary of corrections:

23 (1) Murder in the first degree, as ~~provided in K.S.A. 21-3401~~ *defined*
24 *in section 37 of chapter 136 of the 2010 Session Laws of Kansas*, and
25 amendments thereto;

26 (2) murder in the second degree, as ~~provided in K.S.A. 21-~~
27 ~~3402~~ *defined in section 38 of chapter 136 of the 2010 Session Laws of*
28 *Kansas*, and amendments thereto;

29 (3) ~~capital murder, as provided in K.S.A. 21-3439~~ *aggravated*
30 *murder, as defined in section 2*, and amendments thereto;

31 (4) rape, as ~~provided in K.S.A. 21-3502~~ *defined in section 67 of*
32 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
33 thereto;

34 (5) aggravated criminal sodomy, as ~~provided in K.S.A. 21-~~
35 ~~3506~~ *defined in subsection (b) of section 68 of chapter 136 of the 2010*
36 *Session Laws of Kansas*, and amendments thereto;

37 (6) sexual exploitation of a child, as ~~provided in K.S.A. 21-~~
38 ~~3516~~ *defined in section 74 of chapter 136 of the 2010 Session Laws of*
39 *Kansas*, and amendments thereto;

40 (7) kidnapping as ~~provided in K.S.A. 21-3420~~ *defined in subsection*
41 *(a) of section 43 of chapter 136 of the 2010 Session Laws of Kansas*, and
42 amendments thereto;

43 (8) aggravated kidnapping, as ~~provided in K.S.A. 21-3421~~ *defined in*

1 subsection (b) of section 43 of chapter 136 of the 2010 Session Laws of
2 Kansas, and amendments thereto;

3 (9) criminal restraint, as ~~provided in K.S.A. 21-3424~~ defined in
4 section 46 of chapter 136 of the 2010 Session Laws of Kansas, and
5 amendments thereto;

6 (10) indecent solicitation of a child, as ~~provided in K.S.A. 21-~~
7 ~~3510~~ defined in subsection (a) of section 72 of chapter 136 of the 2010
8 Session Laws of Kansas, and amendments thereto;

9 (11) aggravated indecent solicitation of a child, as ~~provided in~~
10 ~~K.S.A. 21-3511~~ defined in subsection (b) of section 72 of chapter 136 of
11 the 2010 Session Laws of Kansas, and amendments thereto;

12 (12) indecent liberties with a child, as ~~provided in K.S.A. 21-~~
13 ~~3503~~ defined in subsection (a) of section 70 of chapter 136 of the 2010
14 Session Laws of Kansas, and amendments thereto;

15 (13) aggravated indecent liberties with a child, as ~~provided in K.S.A.~~
16 ~~21-3504~~ defined in subsection (b) of section 70 of chapter 136 of the 2010
17 Session Laws of Kansas, and amendments thereto;

18 (14) criminal sodomy, as ~~provided in K.S.A. 21-3505~~ defined in
19 subsection (a) of section 68 of chapter 136 of the 2010 Session Laws of
20 Kansas, and amendments thereto;

21 (15) ~~aggravated~~ child abuse, as ~~provided in K.S.A. 21-3609~~ defined
22 in section 79 of chapter 136 of the 2010 Session Laws of Kansas, and
23 amendments thereto;

24 (16) aggravated robbery, as ~~provided in K.S.A. 21-3427~~ defined in
25 subsection (b) of section 55 of chapter 136 of the 2010 Session Laws of
26 Kansas, and amendments thereto;

27 (17) burglary, as ~~provided in K.S.A. 21-3715~~ defined in subsection
28 (a) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and
29 amendments thereto;

30 (18) aggravated burglary, as ~~provided in K.S.A. 21-3716~~ defined in
31 subsection (b) of section 93 of chapter 136 of the 2010 Session Laws of
32 Kansas, and amendments thereto;

33 (19) theft, as ~~provided in K.S.A. 21-3701~~ defined in section 87 of
34 chapter 136 of the 2010 Session Laws of Kansas, and amendments
35 thereto;

36 (20) vehicular homicide, as ~~provided in K.S.A. 21-3405~~ defined in
37 section 41 of chapter 136 of the 2010 Session Laws of Kansas, and
38 amendments thereto;

39 (21) involuntary manslaughter while driving under the influence, as
40 ~~provided in K.S.A. 21-3442~~ defined in subsection (a)(3) of section 40 of
41 chapter 136 of the 2010 Session Laws of Kansas, and amendments
42 thereto; or

43 (22) stalking, as ~~provided in K.S.A. 21-3438~~ defined in section 62 of

1 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
2 thereto.

3 (b) The secretary of corrections shall submit such report to the
4 speaker of the house of representatives and the president of the senate
5 annually, beginning January 1, 2007.

6 Sec. 27. K.S.A. 22-3405, 22-3705 and 22-4210 and K.S.A. 2010
7 Supp. 21-4619, 21-4623, 21-4624, 21-4634, 21-4642, 22-3717, 22-3717c,
8 22-3728, 22-4902, 38-2255, 38-2255a, 38-2271, 38-2312, 38-2365, 39-
9 970, 65-5117, 72-1397 and 75-52,148 and sections 36, 54, 254, 257, 258,
10 259, 260, 262, 266, 268, 269 and 287 of chapter 136 of the 2010 Session
11 Laws of Kansas are hereby repealed.

12 Sec. 28. This act shall take effect and be in force from and after its
13 publication in the statute book.

14