

## SENATE BILL No. 375

By Committee on Judiciary

1-14

---

9 AN ACT concerning abolition of the death penalty; amending K.S.A. 21-  
10 3452, 21-4622, 21-4634, 21-4635, 21-4641, 21-4706, 22-3405, 22-3705  
11 and 22-4210 and K.S.A. 2009 Supp. 21-4619, 22-3717, 22-4902, 38-  
12 2255, 38-2271, 38-2312, 38-2365, 39-970, 65-5117, 72-1397 and 75-  
13 52,148 and repealing the existing sections; also repealing K.S.A. 21-  
14 3439, 21-4623, 21-4624, 21-4625, 21-4626, 21-4627, 21-4629, 21-4630  
15 and 21-4631.

16  
17 WHEREAS, Kansas reenacted the death penalty in 1994; and  
18 WHEREAS, Inmates in Kansas are currently under sentence of death;  
19 and

20 WHEREAS, Kansas has not carried out an execution since 1965: Now,  
21 therefore,

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

23 New Section 1. (a) No person shall be sentenced to death for a crime  
24 committed on or after July 1, 2010.

25 (b) Any person who is sentenced to death for a crime committed prior  
26 to July 1, 2010, may be put to death pursuant to the provisions of article  
27 40 of chapter 22 of the Kansas Statutes Annotated, and amendments  
28 thereto.

29 (c) This section shall be part of and supplemental to the Kansas crim-  
30 inal code.

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

32 (1) Intentional and premeditated killing of any person in the com-  
33 mission of kidnapping, as defined in K.S.A. 21-3420, and amendments  
34 thereto, or aggravated kidnapping, as defined in K.S.A. 21-3421, and  
35 amendments thereto, when the kidnapping or aggravated kidnapping was  
36 committed with the intent to hold such person for ransom;

37 (2) intentional and premeditated killing of any person pursuant to a  
38 contract or agreement to kill such person or being a party to the contract  
39 or agreement pursuant to which such person is killed;

40 (3) intentional and premeditated killing of any person by an inmate  
41 or prisoner confined in a state correctional institution, community cor-  
42 rectional institution or jail or while in the custody of an officer or em-  
43 ployee of a state correctional institution, community correctional insti-

1   tution or jail;

2       (4) intentional and premeditated killing of the victim of one of the  
3 following crimes in the commission of, or subsequent to, such crime:  
4 Rape, as defined in K.S.A. 21-3502, and amendments thereto, criminal  
5 sodomy, as defined in subsections (a)(2) or (a)(3) of K.S.A. 21-3505, and  
6 amendments thereto, or aggravated criminal sodomy, as defined in K.S.A.  
7 21-3506, and amendments thereto, or any attempt thereof, as defined in  
8 K.S.A. 21-3301, and amendments thereto;

9       (5) intentional and premeditated killing of a law enforcement officer,  
10 as defined in K.S.A. 21-3110, and amendments thereto;

11       (6) intentional and premeditated killing of more than one person as  
12 a part of the same act or transaction or in two or more acts or transactions  
13 connected together or constituting parts of a common scheme or course  
14 of conduct. Each such intentional and premeditated killing as a part of  
15 the same act or transaction or in two or more acts or transactions shall  
16 be considered separate and independent. Each such killing shall be  
17 charged as a single count and shall not merge into one count of aggravated  
18 murder; or

19       (7) intentional and premeditated killing of a child under the age of  
20 14 in the commission of kidnapping, as defined in K.S.A. 21-3420, and  
21 amendments thereto, or aggravated kidnapping, as defined in K.S.A. 21-  
22 3421, and amendments thereto, when the kidnapping or aggravated kid-  
23 napping was committed with intent to commit a sex offense upon or with  
24 the child or with intent that the child commit or submit to a sex offense.

25       (b) For purposes of this section, "sex offense" means rape, as defined  
26 in K.S.A. 21-3502, and amendments thereto, aggravated indecent liberties  
27 with a child, as defined in K.S.A. 21-3504, and amendments thereto,  
28 aggravated criminal sodomy, as defined in K.S.A. 21-3506, and amend-  
29 ments thereto, prostitution, as defined in K.S.A. 21-3512, and amend-  
30 ments thereto, promoting prostitution, as defined in K.S.A. 21-3513, and  
31 amendments thereto, or sexual exploitation of a child, as defined in K.S.A.  
32 21-3516, and amendments thereto.

33       (c) Notwithstanding subsections (2)(a) or (b) of K.S.A. 21-3107, and  
34 amendments thereto, when the same conduct of a defendant may estab-  
35 lish the commission of aggravated murder and the commission of another  
36 crime under the laws of this state, the defendant may be prosecuted and  
37 sentenced for each of such crimes.

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

39       (e) This section shall be part of and supplemental to the Kansas crim-  
40 inal code.

41   New Sec. 3. (a) When it is provided by law that a person shall be  
42 sentenced pursuant to this section, such person shall be sentenced to  
43 imprisonment for life without the possibility of parole. A defendant who

1 is sentenced to imprisonment for life without the possibility of parole  
2 shall spend the remainder of the defendant's natural life incarcerated and  
3 in the custody of the secretary of corrections. A defendant who is sen-  
4 tenced to imprisonment for life without the possibility of parole shall not  
5 be eligible for parole, probation, assignment to a community correctional  
6 services program, conditional release, postrelease supervision, or suspen-  
7 sion, modification or reduction of sentence. Upon sentencing a defendant  
8 to imprisonment for life without the possibility of parole, the court shall  
9 commit the defendant to the custody of the secretary of corrections and  
10 the court shall state in the sentencing order of the judgment form or  
11 journal entry, whichever is delivered with the defendant to the correc-  
12 tional institution, that the defendant has been sentenced to imprisonment  
13 for life without the possibility of parole.

14 (b) This section shall be part of and supplemental to the Kansas crim-  
15 inal code.

16 Sec. 4. K.S.A. 21-3452 is hereby amended to read as follows: 21-  
17 3452. (a) This section shall be known and may be cited as Alexa's law.

18 (b) As used in this section:

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

21 (2) "Unborn child" means a living individual organism of the species  
22 homo sapiens, in utero, at any stage of gestation from fertilization to birth.

23 (c) This section shall not apply to:

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

25 (2) any medical procedure, including abortion, performed by a phy-  
26 sician or other licensed medical professional at the request of the preg-  
27 nant woman or her legal guardian; or

28 (3) the lawful dispensation or administration of lawfully prescribed  
29 medication.

30 (d) As used in K.S.A. 21-3439, *prior to its repeal, section 2*, 21-3401,  
31 21-3402, 21-3403, 21-3404, 21-3405, 21-3412, 21-3414, ~~21-3439~~ and 21-  
32 3442, and amendments thereto, "person" and "human being" also mean  
33 an unborn child.

34 (e) The provisions of this act shall be part of and supplemental to the  
35 Kansas criminal code.

36 Sec. 5. K.S.A. 2009 Supp. 21-4619 is hereby amended to read as  
37 follows: 21-4619. (a) (1) Except as provided in subsections (b) and (c),  
38 any person convicted in this state of a traffic infraction, cigarette or to-  
39 bacco infraction, misdemeanor or a class D or E felony, or for crimes  
40 committed on or after July 1, 1993, nondrug crimes ranked in severity  
41 levels 6 through 10 or any felony ranked in severity level 4 of the drug  
42 grid, may petition the convicting court for the expungement of such con-  
43 viction or related arrest records if three or more years have elapsed since

1 the person: (A) Satisfied the sentence imposed; or (B) was discharged  
2 from probation, a community correctional services program, parole, post-  
3 release supervision, conditional release or a suspended sentence.

4 (2) Except as provided in subsections (b) and (c), any person who has  
5 fulfilled the terms of a diversion agreement may petition the district court  
6 for the expungement of such diversion agreement and related arrest re-  
7 cords if three or more years have elapsed since the terms of the diversion  
8 agreement were fulfilled.

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

18 (1) Vehicular homicide, as defined by K.S.A. 21-3405, and amend-  
19 ments thereto, or as prohibited by any law of another state which is in  
20 substantial conformity with that statute;

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

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

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

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

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

39 (7) violating the provisions of K.S.A. 40-3104, and amendments  
40 thereto, relating to motor vehicle liability insurance coverage; or  
41 (8) a violation of K.S.A. 21-3405b, prior to its repeal.

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

1 offenses: (1) Rape as defined in K.S.A. 21-3502, and amendments thereto;  
 2 (2) indecent liberties with a child as defined in K.S.A. 21-3503, and  
 3 amendments thereto; (3) aggravated indecent liberties with a child as  
 4 defined in K.S.A. 21-3504, and amendments thereto; (4) criminal sodomy  
 5 as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, and amend-  
 6 ments thereto; (5) aggravated criminal sodomy as defined in K.S.A. 21-  
 7 3506, and amendments thereto; (6) indecent solicitation of a child as  
 8 defined in K.S.A. 21-3510, and amendments thereto; (7) aggravated in-  
 9 decent solicitation of a child as defined in K.S.A. 21-3511, and amend-  
 10 ments thereto; (8) sexual exploitation of a child as defined in K.S.A. 21-  
 11 3516, and amendments thereto; (9) aggravated incest as defined in K.S.A.  
 12 21-3603, and amendments thereto; (10) endangering a child as defined  
 13 in K.S.A. 21-3608, and amendments thereto; (11) aggravated endangering  
 14 a child as defined in K.S.A. 21-3608a, and amendments thereto; (12)  
 15 abuse of a child as defined in K.S.A. 21-3609, and amendments thereto;  
 16 (13) capital murder as defined in K.S.A. 21-3439, ~~and amendments~~  
 17 ~~thereto prior to its repeal~~; (14) *aggravated murder as defined in section*  
 18 *2, and amendments thereto*, ~~(14)~~ (15) murder in the first degree as defined  
 19 in K.S.A. 21-3401, and amendments thereto; ~~(15)~~ (16) murder in the  
 20 second degree as defined in K.S.A. 21-3402, and amendments thereto;  
 21 ~~(16)~~ (17) voluntary manslaughter as defined in K.S.A. 21-3403, and  
 22 amendments thereto; ~~(17)~~ (18) involuntary manslaughter as defined in  
 23 K.S.A. 21-3404, and amendments thereto; ~~(18)~~ (19) involuntary man-  
 24 slaughter while driving under the influence of alcohol or drugs as defined  
 25 in K.S.A. 21-3442, and amendments thereto; ~~(19)~~ (20) sexual battery as  
 26 defined in K.S.A. 21-3517, and amendments thereto, when the victim was  
 27 less than 18 years of age at the time the crime was committed; ~~(20)~~ (21)  
 28 aggravated sexual battery as defined in K.S.A. 21-3518, and amendments  
 29 thereto; ~~(21)~~ (22) a violation of K.S.A. 8-1567, and amendments thereto,  
 30 including any diversion for such violation; ~~(22)~~ (23) a violation of K.S.A.  
 31 8-2,144, and amendments thereto, including any diversion for such vio-  
 32 lation; or ~~(23)~~ (24) any conviction for any offense in effect at any time  
 33 prior to the effective date of this act, that is comparable to any offense  
 34 as provided in this subsection.

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

39 (2) the full name of the defendant at the time of arrest, conviction or  
 40 diversion, if different than the defendant's current name;

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

42 (4) the crime for which the defendant was arrested, convicted or  
 43 diverted;

1 (5) the date of the defendant's arrest, conviction or diversion; and  
2 (6) the identity of the convicting court, arresting law enforcement  
3 authority or diverting authority. Except as provided further, there shall  
4 be no docket fee for filing a petition pursuant to this section. On and  
5 after July 1, 2009 through June 30, 2010, the supreme court may impose  
6 a charge, not to exceed \$10 per case, to fund the costs of non-judicial  
7 personnel. The charge established in this section shall be the only fee  
8 collected or moneys in the nature of a fee collected for the case. Such  
9 charge shall only be established by an act of the legislature and no other  
10 authority is established by law or otherwise to collect a fee. All petitions  
11 for expungement shall be docketed in the original criminal action. Any  
12 person who may have relevant information about the petitioner may tes-  
13 tify at the hearing. The court may inquire into the background of the  
14 petitioner and shall have access to any reports or records relating to the  
15 petitioner that are on file with the secretary of corrections or the Kansas  
16 parole board.

17 (e) At the hearing on the petition, the court shall order the peti-  
18 tioner's arrest record, conviction or diversion expunged if the court finds  
19 that:

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

23 (2) the circumstances and behavior of the petitioner warrant the  
24 expungement; and

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

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

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

38 (2) the petitioner shall disclose that the arrest, conviction or diversion  
39 occurred if asked about previous arrests, convictions or diversions:

40 (A) In any application for licensure as a private detective, private  
41 detective agency, certification as a firearms trainer pursuant to K.S.A.  
42 2009 Supp. 75-7b21, and amendments thereto, or employment as a de-  
43 tective with a private detective agency, as defined by K.S.A. 75-7b01, and

- 1 amendments thereto; as security personnel with a private patrol operator,  
2 as defined by K.S.A. 75-7b01, and amendments thereto; or with an insti-  
3 tution, as defined in K.S.A. 76-12a01, and amendments thereto, of the  
4 department of social and rehabilitation services;
- 5 (B) in any application for admission, or for an order of reinstatement,  
6 to the practice of law in this state;
- 7 (C) to aid in determining the petitioner's qualifications for employ-  
8 ment with the Kansas lottery or for work in sensitive areas within the  
9 Kansas lottery as deemed appropriate by the executive director of the  
10 Kansas lottery;
- 11 (D) to aid in determining the petitioner's qualifications for executive  
12 director of the Kansas racing and gaming commission, for employment  
13 with the commission or for work in sensitive areas in parimutuel racing  
14 as deemed appropriate by the executive director of the commission, or  
15 to aid in determining qualifications for licensure or renewal of licensure  
16 by the commission;
- 17 (E) to aid in determining the petitioner's qualifications for the fol-  
18 lowing under the Kansas expanded lottery act: (i) Lottery gaming facility  
19 manager or prospective manager, racetrack gaming facility manager or  
20 prospective manager, licensee or certificate holder; or (ii) an officer, di-  
21 rector, employee, owner, agent or contractor thereof;
- 22 (F) upon application for a commercial driver's license under K.S.A.  
23 8-2,125 through 8-2,142, and amendments thereto;
- 24 (G) to aid in determining the petitioner's qualifications to be an em-  
25 ployee of the state gaming agency;
- 26 (H) to aid in determining the petitioner's qualifications to be an em-  
27 ployee of a tribal gaming commission or to hold a license issued pursuant  
28 to a tribal-state gaming compact;
- 29 (I) in any application for registration as a broker-dealer, agent, in-  
30 vestment adviser or investment adviser representative all as defined in  
31 K.S.A. 17-12a102, and amendments thereto;
- 32 (J) in any application for employment as a law enforcement officer as  
33 defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; or
- 34 (K) for applications received on and after July 1, 2006, to aid in de-  
35 termining the petitioner's qualifications for a license to carry a concealed  
36 weapon pursuant to the personal and family protection act, K.S.A. 2009  
37 Supp. 75-7c01 et seq., and amendments thereto;
- 38 (3) the court, in the order of expungement, may specify other cir-  
39 cumstances under which the conviction is to be disclosed;
- 40 (4) the conviction may be disclosed in a subsequent prosecution for  
41 an offense which requires as an element of such offense a prior conviction  
42 of the type expunged; and
- 43 (5) upon commitment to the custody of the secretary of corrections,

1 any previously expunged record in the possession of the secretary of cor-  
2 rections may be reinstated and the expungement disregarded, and the  
3 record continued for the purpose of the new commitment.

4 (g) Whenever a person is convicted of a crime, pleads guilty and pays  
5 a fine for a crime, is placed on parole, postrelease supervision or proba-  
6 tion, is assigned to a community correctional services program, is granted  
7 a suspended sentence or is released on conditional release, the person  
8 shall be informed of the ability to expunge the arrest records or convic-  
9 tion. Whenever a person enters into a diversion agreement, the person  
10 shall be informed of the ability to expunge the diversion.

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

19 (i) Whenever the record of any arrest, conviction or diversion has  
20 been expunged under the provisions of this section or under the provi-  
21 sions of any other existing or former statute, the custodian of the records  
22 of arrest, conviction, diversion and incarceration relating to that crime  
23 shall not disclose the existence of such records, except when requested  
24 by:

- 25 (1) The person whose record was expunged;
- 26 (2) a private detective agency or a private patrol operator, and the  
27 request is accompanied by a statement that the request is being made in  
28 conjunction with an application for employment with such agency or op-  
29 erator by the person whose record has been expunged;
- 30 (3) a court, upon a showing of a subsequent conviction of the person  
31 whose record has been expunged;
- 32 (4) the secretary of social and rehabilitation services, or a designee of  
33 the secretary, for the purpose of obtaining information relating to em-  
34 ployment in an institution, as defined in K.S.A. 76-12a01, and amend-  
35 ments thereto, of the department of social and rehabilitation services of  
36 any person whose record has been expunged;
- 37 (5) a person entitled to such information pursuant to the terms of the  
38 expungement order;
- 39 (6) a prosecuting attorney, and such request is accompanied by a  
40 statement that the request is being made in conjunction with a prosecu-  
41 tion of an offense that requires a prior conviction as one of the elements  
42 of such offense;
- 43 (7) the supreme court, the clerk or disciplinary administrator thereof,



1 the state board for admission of attorneys or the state board for discipline  
2 of attorneys, and the request is accompanied by a statement that the  
3 request is being made in conjunction with an application for admission,  
4 or for an order of reinstatement, to the practice of law in this state by the  
5 person whose record has been expunged;

6 (8) 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 (9) the governor or the Kansas racing and gaming commission, or a  
12 designee of the commission, and the request is accompanied by a state-  
13 ment that the request is being made to aid in determining qualifications  
14 for executive director of the commission, for employment with the com-  
15 mission, for work in sensitive areas in parimutuel racing as deemed ap-  
16 propriate by the executive director of the commission or for licensure,  
17 renewal of licensure or continued licensure by the commission;

18 (10) the Kansas racing and gaming commission, or a designee of the  
19 commission, and the request is accompanied by a statement that the re-  
20 quest is being made to aid in determining qualifications of the following  
21 under the Kansas expanded lottery act: (A) Lottery gaming facility man-  
22 agers and prospective managers, racetrack gaming facility managers and  
23 prospective managers, licensees and certificate holders; and (B) their of-  
24 ficers, directors, employees, owners, agents and contractors;

25 (11) the Kansas sentencing commission;

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

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

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

41 (15) a law enforcement agency and the request is accompanied by a  
42 statement that the request is being made to aid in determining eligibility  
43 for employment as a law enforcement officer as defined by K.S.A. 22-

1 2202, and amendments thereto; or

2 (16) the attorney general and the request is accompanied by a state-  
3 ment that the request is being made to aid in determining qualifications  
4 for a license to carry a concealed weapon pursuant to the personal and  
5 family protection act.

6 Sec. 6. K.S.A. 21-4622 is hereby amended to read as follows: 21-  
7 4622. (a) Upon conviction of a defendant of ~~capital~~ *aggravated* murder  
8 and a finding that the defendant was less than 18 years of age at the time  
9 of the commission thereof, the court shall sentence the defendant as  
10 otherwise provided by law, and no sentence of ~~death or~~ life without the  
11 possibility of parole shall be imposed ~~hereunder~~.

12 (b) *This section shall be part of and supplemental to the Kansas crim-*  
13 *inal code.*

14 Sec. 7. K.S.A. 21-4634 is hereby amended to read as follows: 21-  
15 4634. (a) If a defendant is convicted of the crime of ~~capital murder and~~  
16 ~~a sentence of death is not imposed~~ *aggravated murder*, or if a defendant  
17 is convicted of the crime of murder in the first degree based upon the  
18 finding of premeditated murder, the defendant's counsel or the director  
19 of the correctional institution or sheriff having custody of the defendant  
20 may request a determination by the court of whether the defendant is  
21 mentally retarded. If the court determines that there is not sufficient  
22 reason to believe that the defendant is mentally retarded, the court shall  
23 so find and the defendant shall be sentenced in accordance with K.S.A.  
24 21-4635 through 21-4638, *and amendments thereto*. If the court deter-  
25 mines that there is sufficient reason to believe that the defendant is men-  
26 tally retarded, the court shall conduct a hearing to determine whether  
27 the defendant is mentally retarded.

28 (b) At the hearing, the court shall determine whether the defendant  
29 is mentally retarded. The court shall order a psychiatric or psychological  
30 examination of the defendant. For that purpose, the court shall appoint  
31 two licensed physicians or licensed psychologists, or one of each, qualified  
32 by training and practice to make such examination, to examine the de-  
33 fendant and report their findings in writing to the judge within 10 days  
34 after the order of examination is issued. The defendant shall have the  
35 right to present evidence and cross-examine any witnesses at the hearing.  
36 No statement made by the defendant in the course of any examination  
37 provided for by this section, whether or not the defendant consents to  
38 the examination, shall be admitted in evidence against the defendant in  
39 any criminal proceeding.

40 (c) If, at the conclusion of a hearing pursuant to this section, the court  
41 determines that the defendant is not mentally retarded, the defendant  
42 shall be sentenced in accordance with K.S.A. 21-4635 through 21-4638,  
43 *and amendments thereto*.

1 (d) If, at the conclusion of a hearing pursuant to this section, the court  
2 determines that the defendant is mentally retarded, the court shall sen-  
3 tence the defendant as otherwise provided by law, and no mandatory term  
4 of imprisonment shall be imposed hereunder.

5 ~~(e) Unless otherwise ordered by the court for good cause shown, the~~  
6 ~~provisions of this section shall not apply if it has been determined, pur-~~  
7 ~~suant to K.S.A. 21-4623 and amendments thereto, that the defendant is~~  
8 ~~not mentally retarded.~~

9 ~~(f)~~ As used in this section, “mentally retarded” means having signif-  
10 icantly subaverage general intellectual functioning, as defined by K.S.A.  
11 76-12b01 and amendments thereto, to an extent which substantially im-  
12 pairs one’s capacity to appreciate the criminality of one’s conduct or to  
13 conform one’s conduct to the requirements of law.

14 Sec. 8. K.S.A. 21-4635 is hereby amended to read as follows: 21-  
15 4635. (a) Except as provided in K.S.A. 21-4622, ~~21-4623~~ and 21-4634,  
16 and amendments thereto, if a defendant is convicted of the crime of  
17 ~~capital murder and a sentence of death is not imposed pursuant to sub-~~  
18 ~~section (c) of K.S.A. 21-4624, and amendments thereto, or requested~~  
19 ~~pursuant to subsection (a) or (b) of K.S.A. 21-4624, and amendments~~  
20 ~~thereto aggravated murder, the defendant shall be sentenced to life with-~~  
21 ~~out the possibility of parole pursuant to section 3, and amendments~~  
22 ~~thereto.~~

23 (b) If a defendant is convicted of murder in the first degree based  
24 upon the finding of premeditated murder, the court shall determine  
25 whether the defendant shall be required to serve a mandatory term of  
26 imprisonment of 40 years or for crimes committed on and after July 1,  
27 1999, a mandatory term of imprisonment of 50 years or sentenced as  
28 otherwise provided by law.

29 (c) In order to make such determination, the court may be presented  
30 evidence concerning any matter that the court deems relevant to the  
31 question of sentence and shall include matters relating to any of the ag-  
32 gravating circumstances enumerated in K.S.A. 21-4636, and amendments  
33 thereto, and any mitigating circumstances. Any such evidence which the  
34 court deems to have probative value may be received regardless of its  
35 admissibility under the rules of evidence, provided that the defendant is  
36 accorded a fair opportunity to rebut any hearsay statements. Only such  
37 evidence of aggravating circumstances as the state has made known to  
38 the defendant prior to the sentencing shall be admissible and no evidence  
39 secured in violation of the constitution of the United States or of the state  
40 of Kansas shall be admissible. No testimony by the defendant at the time  
41 of sentencing shall be admissible against the defendant at any subsequent  
42 criminal proceeding. At the conclusion of the evidentiary presentation,  
43 the court shall allow the parties a reasonable period of time in which to

1 present oral argument.

2 (d) If the court finds that one or more of the aggravating circum-  
3 stances enumerated in K.S.A. 21-4636, and amendments thereto exist  
4 and, further, that the existence of such aggravating circumstances is not  
5 outweighed by any mitigating circumstances which are found to exist, the  
6 defendant shall be sentenced pursuant to K.S.A. 21-4638, and amend-  
7 ments thereto; otherwise, the defendant shall be sentenced as provided  
8 by law. The court shall designate, in writing, the statutory aggravating  
9 circumstances which it found. ~~The court may make the findings required~~  
10 ~~by this subsection for the purpose of determining whether to sentence a~~  
11 ~~defendant pursuant to K.S.A. 21-4638 and amendments thereto notwith-~~  
12 ~~standing contrary findings made by the jury or court pursuant to subsec-~~  
13 ~~tion (c) of K.S.A. 21-4624 and amendments thereto for the purpose of~~  
14 ~~determining whether to sentence such defendant to death.~~

15 Sec. 9. K.S.A. 21-4641 is hereby amended to read as follows: 21-  
16 4641. ~~(1)~~ (a) K.S.A. 21-4633 through 21-4640, *and amendments thereto*,

17 shall be supplemental to and a part of the Kansas criminal code.

18 ~~(2)~~ (b) *The provisions of K.S.A. 21-4633 through 21-4640 as they*  
19 *existed immediately prior to July 1, 2010*, shall be applicable only to per-  
20 sons convicted of crimes committed on or after July 1, 1994, *and before*  
21 *July 1, 2010*.

22 (c) *The provisions of K.S.A. 21-4633 through 21-4640, as amended*  
23 *by this act, shall be applicable only to persons convicted of crimes com-*  
24 *mitted on or after July 1, 2010*.

25 Sec. 10. K.S.A. 21-4706 is hereby amended to read as follows: 21-  
26 4706. (a) For crimes committed on or after July 1, 1993, the sentences  
27 of imprisonment shall represent the time a person shall actually serve,  
28 subject to a reduction of up to 15% of the primary sentence for good  
29 time as authorized by law. For crimes committed on or after January 1,  
30 2008, the sentences of imprisonment shall represent the time a person  
31 shall actually serve, subject to a reduction of up to 20% of the primary  
32 sentence for good time for drug severity level 3 or 4 or nondrug severity  
33 level 7 through 10 crimes and a reduction for program credit as author-  
34 ized by K.S.A. 21-4722, and amendments thereto.

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

36 (c) Violations of K.S.A. 21-3401, ~~21-3439~~, 21-3449, 21-3450 and 21-  
37 3801, and amendments thereto, *and K.S.A. 21-3439, prior to its repeal*,  
38 are off-grid crimes for the purpose of sentencing. Except as otherwise  
39 provided by K.S.A. 21-4622 through 21-4627, and 21-4629 through 21-  
40 4631, and amendments thereto, the sentence shall be imprisonment for  
41 life and shall not be subject to statutory provisions for suspended sen-  
42 tence, community service or probation.

43 (d) As identified in K.S.A. 21-3447, 21-3502, 21-3504, 21-3506, 21-

1 3513 and 21-3516, and amendments thereto, if the offender is 18 years  
 2 of age or older and the victim is under 14 years of age, such violations  
 3 are off-grid crimes for the purposes of sentencing. Except as provided in  
 4 K.S.A. 21-4642, and amendments thereto, the sentence shall be impris-  
 5 onment for life pursuant to K.S.A. 21-4643, and amendments thereto.

6 *(e) Violation of section 2, and amendments thereto, is an off-grid*  
 7 *crime for the purposes of sentencing. Except as provided in K.S.A. 21-*  
 8 *4622 and 21-4634, and amendments thereto, the sentence shall be im-*  
 9 *prisonment for life without the possibility of parole pursuant to section 3,*  
 10 *and amendments thereto.*

11 Sec. 11. K.S.A. 22-3405 is hereby amended to read as follows: 22-  
 12 3405. (1) The defendant in a felony case shall be present at the arraign-  
 13 ment, at every stage of the trial including the impaneling of the jury and  
 14 the return of the verdict, and at the imposition of sentence, except as  
 15 otherwise provided by law. In prosecutions for crimes not punishable by  
 16 death *or life without the possibility of parole*, the defendant's voluntary  
 17 absence after the trial has been commenced in such person's presence  
 18 shall not prevent continuing the trial to and including the return of the  
 19 verdict. A corporation may appear by counsel for all purposes.

20 (2) The defendant must be present, either personally or by counsel,  
 21 at every stage of the trial of traffic infraction, cigarette or tobacco infrac-  
 22 tion and misdemeanor cases.

23 Sec. 12. K.S.A. 22-3705 is hereby amended to read as follows: 22-  
 24 3705. The governor may, when ~~he~~ *the governor* deems it proper or ad-  
 25 visable, commute a sentence in any criminal case by reducing the penalty  
 26 as follows:

27 (a) If the sentence is death, to imprisonment for life ~~or for any term~~  
 28 ~~not less than ten years~~ *without the possibility of parole or any lesser*  
 29 *sentence, but not to any term less than ten years;*

30 (b) *if the sentence is life without the possibility of parole, to impris-*  
 31 *onment for life or any term not less than ten years;*

32 ~~(b)~~ (c) *except as provided in subsection (b), if the sentence is to im-*  
 33 *prisonment, by reducing the duration of such imprisonment;*

34 ~~(c)~~ (d) *if the sentence is a fine, by reducing the amount thereof;*

35 ~~(d)~~ (e) *if the sentence is both imprisonment and fine, by reducing*  
 36 *either or both.*

37 Sec. 13. K.S.A. 2009 Supp. 22-3717 is hereby amended to read as  
 38 follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A.  
 39 1993 Supp. 21-4628 prior to its repeal; K.S.A. 21-4635 through 21-4638,  
 40 and amendments thereto; *section 3, and amendments thereto*; K.S.A. 8-  
 41 1567, and amendments thereto; K.S.A. 21-4642, and amendments  
 42 thereto; and K.S.A. 21-4624, and amendments thereto, an inmate, includ-  
 43 ing an inmate sentenced pursuant to K.S.A. 21-4618, and amendments

1 thereto, shall be eligible for parole after serving the entire minimum  
2 sentence imposed by the court, less good time credits.

3 (b) (1) Except as provided by K.S.A. 21-4635 through 21-4638, and  
4 amendments thereto, an inmate sentenced to imprisonment for the crime  
5 of capital murder, *K.S.A. 21-3439, prior to its repeal*, or an inmate sen-  
6 tenced for the crime of murder in the first degree based upon a finding  
7 of premeditated murder, *K.S.A. 21-3401, and amendments thereto*, com-  
8 mitted on or after July 1, 1994, shall be eligible for parole after serving  
9 25 years of confinement, without deduction of any good time credits.

10 (2) Except as provided by subsection (b)(1) ~~or, (b)(4), K.S.A. 1993~~  
11 ~~Supp. 21-4628 prior to its repeal~~ and (b)(6) and K.S.A. 21-4635 through  
12 21-4638, and amendments thereto, *and K.S.A. 1993 Supp. 21-4628, prior*  
13 *to its repeal*, an inmate sentenced to imprisonment for an off-grid offense  
14 committed on or after July 1, 1993, but prior to July 1, 1999, shall be  
15 eligible for parole after serving 15 years of confinement, without deduc-  
16 tion of any good time credits and an inmate sentenced to imprisonment  
17 for an off-grid offense committed on or after July 1, 1999, shall be eligible  
18 for parole after serving 20 years of confinement without deduction of any  
19 good time credits.

20 (3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its  
21 repeal, an inmate sentenced for a class A felony committed before July  
22 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, and  
23 amendments thereto, shall be eligible for parole after serving 15 years of  
24 confinement, without deduction of any good time credits.

25 (4) An inmate sentenced to imprisonment for a violation of subsec-  
26 tion (a) of K.S.A. 21-3402, and amendments thereto, committed on or  
27 after July 1, 1996, but prior to July 1, 1999, shall be eligible for parole  
28 after serving 10 years of confinement without deduction of any good time  
29 credits.

30 (5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-  
31 4643, and amendments thereto, committed on or after July 1, 2006, shall  
32 be eligible for parole after serving the mandatory term of imprisonment  
33 without deduction of any good time credits.

34 (6) *An inmate sentenced to imprisonment for life without the possi-*  
35 *bility of parole pursuant to section 3, and amendments thereto, shall not*  
36 *be eligible for parole.*

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

40 (A) The aggregate minimum sentences, as determined pursuant to  
41 K.S.A. 21-4608 and amendments thereto, less good time credits for those  
42 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) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-  
3 4643, and amendments thereto, for crimes committed on or after July 1,  
4 2006, the inmate shall be eligible for parole after serving the mandatory  
5 term of imprisonment.

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

11 (A) Except as provided in subparagraphs (D) and (E), persons sen-  
12 tenced for nondrug severity level 1 through 4 crimes and drug severity  
13 levels 1 and 2 crimes must serve 36 months, plus the amount of good  
14 time and program credit earned and retained pursuant to K.S.A. 21-4722,  
15 and amendments thereto, on postrelease supervision.

16 (B) Except as provided in subparagraphs (D) and (E), persons sen-  
17 tenced for nondrug severity levels 5 and 6 crimes and drug severity level  
18 3 crimes must serve 24 months, plus the amount of good time and pro-  
19 gram credit earned and retained pursuant to K.S.A. 21-4722, and amend-  
20 ments thereto, on postrelease supervision.

21 (C) Except as provided in subparagraphs (D) and (E), persons sen-  
22 tenced for nondrug severity level 7 through 10 crimes and drug severity  
23 level 4 crimes must serve 12 months, plus the amount of good time and  
24 program credit earned and retained pursuant to K.S.A. 21-4722, and  
25 amendments thereto, on postrelease supervision.

26 (D) (i) The sentencing judge shall impose the postrelease supervi-  
27 sion period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C),  
28 unless the judge finds substantial and compelling reasons to impose a  
29 departure based upon a finding that the current crime of conviction was  
30 sexually motivated. In that event, departure may be imposed to extend  
31 the postrelease supervision to a period of up to 60 months.

32 (ii) If the sentencing judge departs from the presumptive postrelease  
33 supervision period, the judge shall state on the record at the time of  
34 sentencing the substantial and compelling reasons for the departure. De-  
35 partures in this section are subject to appeal pursuant to K.S.A. 21-4721,  
36 and amendments thereto.

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

39 (a) Written briefs or oral arguments submitted by either the defend-  
40 ant or the state;

41 (b) any evidence received during the proceeding;

42 (c) the presentence report, the victim's impact statement and any  
43 psychological evaluation as ordered by the court pursuant to subsection

- 1 (e) of K.S.A. 21-4714, and amendments thereto; and  
2 (d) any other evidence the court finds trustworthy and reliable.
- 3 (iv) The sentencing judge may order that a psychological evaluation  
4 be prepared and the recommended programming be completed by the  
5 offender. The department of corrections or the parole board shall ensure  
6 that court ordered sex offender treatment be carried out.
- 7 (v) In carrying out the provisions of subparagraph (d)(1)(D), the court  
8 shall refer to K.S.A. 21-4718, and amendments thereto.
- 9 (vi) Upon petition, the parole board may provide for early discharge  
10 from the postrelease supervision period upon completion of court or-  
11 dered programs and completion of the presumptive postrelease super-  
12 vision period, as determined by the crime of conviction, pursuant to sub-  
13 paragraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from  
14 postrelease supervision is at the discretion of the parole board.
- 15 (vii) Persons convicted of crimes deemed sexually violent or sexually  
16 motivated, shall be registered according to the offender registration act,  
17 K.S.A. 22-4901 through 22-4910, and amendments thereto.
- 18 (viii) Persons convicted of K.S.A. 21-3510 or 21-3511, and amend-  
19 ments thereto, shall be required to participate in a treatment program  
20 for sex offenders during the postrelease supervision period.
- 21 (E) The period of postrelease supervision provided in subparagraphs  
22 (A) and (B) may be reduced by up to 12 months and the period of post-  
23 release supervision provided in subparagraph (C) may be reduced by up  
24 to six months based on the offender's compliance with conditions of su-  
25 pervision and overall performance while on postrelease supervision. The  
26 reduction in the supervision period shall be on an earned basis pursuant  
27 to rules and regulations adopted by the secretary of corrections.
- 28 (F) In cases where sentences for crimes from more than one severity  
29 level have been imposed, the offender shall serve the longest period of  
30 postrelease supervision as provided by this section available for any crime  
31 upon which sentence was imposed irrespective of the severity level of the  
32 crime. Supervision periods will not aggregate.
- 33 (G) Except as provided in subsection (u), persons convicted of a sex-  
34 ually violent crime committed on or after July 1, 2006, and who are re-  
35 leased from prison, shall be released to a mandatory period of postrelease  
36 supervision for the duration of the person's natural life.
- 37 (2) As used in this section, "sexually violent crime" means:
- 38 (A) Rape, K.S.A. 21-3502, and amendments thereto;
- 39 (B) indecent liberties with a child, K.S.A. 21-3503, and amendments  
40 thereto;
- 41 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, and  
42 amendments thereto;
- 43 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505,



1 and amendments thereto;

2 (E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments  
3 thereto;

4 (F) indecent solicitation of a child, K.S.A. 21-3510, and amendments  
5 thereto;

6 (G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and  
7 amendments thereto;

8 (H) sexual exploitation of a child, K.S.A. 21-3516, and amendments  
9 thereto;

10 (I) aggravated sexual battery, K.S.A. 21-3518, and amendments  
11 thereto;

12 (J) aggravated incest, K.S.A. 21-3603, and amendments thereto; or

13 (K) an attempt, conspiracy or criminal solicitation, as defined in  
14 K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of a sex-  
15 ually violent crime as defined in this section.

16 “Sexually motivated” means that one of the purposes for which the  
17 defendant committed the crime was for the purpose of the defendant’s  
18 sexual gratification.

19 (e) If an inmate is sentenced to imprisonment for a crime committed  
20 while on parole or conditional release, the inmate shall be eligible for  
21 parole as provided by subsection (c), except that the Kansas parole board  
22 may postpone the inmate’s parole eligibility date by assessing a penalty  
23 not exceeding the period of time which could have been assessed if the  
24 inmate’s parole or conditional release had been violated for reasons other  
25 than conviction of a crime.

26 (f) If a person is sentenced to prison for a crime committed on or  
27 after July 1, 1993, while on probation, parole, conditional release or in a  
28 community corrections program, for a crime committed prior to July 1,  
29 1993, and the person is not eligible for retroactive application of the  
30 sentencing guidelines and amendments thereto pursuant to K.S.A. 21-  
31 4724, and amendments thereto, the new sentence shall not be aggregated  
32 with the old sentence, but shall begin when the person is paroled or  
33 reaches the conditional release date on the old sentence. If the offender  
34 was past the offender’s conditional release date at the time the new of-  
35 fense was committed, the new sentence shall not be aggregated with the  
36 old sentence but shall begin when the person is ordered released by the  
37 Kansas parole board or reaches the maximum sentence expiration date  
38 on the old sentence, whichever is earlier. The new sentence shall then  
39 be served as otherwise provided by law. The period of postrelease su-  
40 pervision shall be based on the new sentence, except that those offenders  
41 whose old sentence is a term of imprisonment for life, imposed pursuant  
42 to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate  
43 sentence with a maximum term of life imprisonment, for which there is

1 no conditional release or maximum sentence expiration date, shall remain  
2 on postrelease supervision for life or until discharged from supervision  
3 by the Kansas parole board.

4 (g) Subject to the provisions of this section, the Kansas parole board  
5 may release on parole those persons confined in institutions who are el-  
6 igible for parole when: (1) The board believes that the inmate should be  
7 released for hospitalization, for deportation or to answer the warrant or  
8 other process of a court and is of the opinion that there is reasonable  
9 probability that the inmate can be released without detriment to the com-  
10 munity or to the inmate; or (2) the secretary of corrections has reported  
11 to the board in writing that the inmate has satisfactorily completed the  
12 programs required by any agreement entered under K.S.A. 75-5210a, and  
13 amendments thereto, or any revision of such agreement, and the board  
14 believes that the inmate is able and willing to fulfill the obligations of a  
15 law abiding citizen and is of the opinion that there is reasonable proba-  
16 bility that the inmate can be released without detriment to the community  
17 or to the inmate. Parole shall not be granted as an award of clemency and  
18 shall not be considered a reduction of sentence or a pardon.

19 (h) The Kansas parole board shall hold a parole hearing at least the  
20 month prior to the month an inmate will be eligible for parole under  
21 subsections (a), (b) and (c). At least the month preceding the parole hear-  
22 ing, the county or district attorney of the county where the inmate was  
23 convicted shall give written notice of the time and place of the public  
24 comment sessions for the inmate to any victim of the inmate's crime who  
25 is alive and whose address is known to the county or district attorney or,  
26 if the victim is deceased, to the victim's family if the family's address is  
27 known to the county or district attorney. Except as otherwise provided,  
28 failure to notify pursuant to this section shall not be a reason to postpone  
29 a parole hearing. In the case of any inmate convicted of an off-grid felony  
30 or a class A felony the secretary of corrections shall give written notice  
31 of the time and place of the public comment session for such inmate at  
32 least one month preceding the public comment session to any victim of  
33 such inmate's crime or the victim's family pursuant to K.S.A. 74-7338,  
34 and amendments thereto. If notification is not given to such victim or  
35 such victim's family in the case of any inmate convicted of an off-grid  
36 felony or a class A felony, the board shall postpone a decision on parole  
37 of the inmate to a time at least 30 days after notification is given as  
38 provided in this section. Nothing in this section shall create a cause of  
39 action against the state or an employee of the state acting within the scope  
40 of the employee's employment as a result of the failure to notify pursuant  
41 to this section. If granted parole, the inmate may be released on parole  
42 on the date specified by the board, but not earlier than the date the  
43 inmate is eligible for parole under subsections (a), (b) and (c). At each

1 parole hearing and, if parole is not granted, at such intervals thereafter  
2 as it determines appropriate, the Kansas parole board shall consider: (1)  
3 Whether the inmate has satisfactorily completed the programs required  
4 by any agreement entered under K.S.A. 75-5210a, and amendments  
5 thereto, or any revision of such agreement; and (2) all pertinent infor-  
6 mation regarding such inmate, including, but not limited to, the circum-  
7 stances of the offense of the inmate; the presentence report; the previous  
8 social history and criminal record of the inmate; the conduct, employ-  
9 ment, and attitude of the inmate in prison; the reports of such physical  
10 and mental examinations as have been made, including, but not limited  
11 to, risk factors revealed by any risk assessment of the inmate; comments  
12 of the victim and the victim's family including in person comments, con-  
13 temporaneous comments and prerecorded comments made by any tech-  
14 nological means; comments of the public; official comments; any rec-  
15 ommendation by the staff of the facility where the inmate is incarcerated;  
16 proportionality of the time the inmate has served to the sentence a person  
17 would receive under the Kansas sentencing guidelines for the conduct  
18 that resulted in the inmate's incarceration; and capacity of state correc-  
19 tional institutions.

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

30 (j) Before ordering the parole of any inmate, the Kansas parole board  
31 shall have the inmate appear ~~before~~ either in person or via a video con-  
32 ferencing format and shall interview the inmate unless impractical be-  
33 cause of the inmate's physical or mental condition or absence from the  
34 institution. Every inmate while on parole shall remain in the legal custody  
35 of the secretary of corrections and is subject to the orders of the secretary.  
36 Whenever the Kansas parole board formally considers placing an inmate  
37 on parole and no agreement has been entered into with the inmate under  
38 K.S.A. 75-5210a, and amendments thereto, the board shall notify the  
39 inmate in writing of the reasons for not granting parole. If an agreement  
40 has been entered under K.S.A. 75-5210a, and amendments thereto, and  
41 the inmate has not satisfactorily completed the programs specified in the  
42 agreement, or any revision of such agreement, the board shall notify the  
43 inmate in writing of the specific programs the inmate must satisfactorily

1 complete before parole will be granted. If parole is not granted only  
2 because of a failure to satisfactorily complete such programs, the board  
3 shall grant parole upon the secretary's certification that the inmate has  
4 successfully completed such programs. If an agreement has been entered  
5 under K.S.A. 75-5210a, and amendments thereto, and the secretary of  
6 corrections has reported to the board in writing that the inmate has sat-  
7 isfactorily completed the programs required by such agreement, or any  
8 revision thereof, the board shall not require further program participa-  
9 tion. However, if the board determines that other pertinent information  
10 regarding the inmate warrants the inmate's not being released on parole,  
11 the board shall state in writing the reasons for not granting the parole. If  
12 parole is denied for an inmate sentenced for a crime other than a class A  
13 or class B felony or an off-grid felony, the board shall hold another parole  
14 hearing for the inmate not later than one year after the denial unless the  
15 parole board finds that it is not reasonable to expect that parole would  
16 be granted at a hearing if held in the next three years or during the interim  
17 period of a deferral. In such case, the parole board may defer subsequent  
18 parole hearings for up to three years but any such deferral by the board  
19 shall require the board to state the basis for its findings. If parole is denied  
20 for an inmate sentenced for a class A or class B felony or an off-grid  
21 felony, the board shall hold another parole hearing for the inmate not  
22 later than three years after the denial unless the parole board finds that  
23 it is not reasonable to expect that parole would be granted at a hearing if  
24 held in the next 10 years or during the interim period of a deferral. In  
25 such case, the parole board may defer subsequent parole hearings for up  
26 to 10 years but any such deferral shall require the board to state the basis  
27 for its findings.

28 (k) Parolees and persons on postrelease supervision shall be assigned,  
29 upon release, to the appropriate level of supervision pursuant to the cri-  
30 teria established by the secretary of corrections.

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

39 (m) Whenever the Kansas parole board orders the parole of an in-  
40 mate or establishes conditions for an inmate placed on postrelease su-  
41 pervision, the board:

42 (1) Unless it finds compelling circumstances which would render a  
43 plan of payment unworkable, shall order as a condition of parole or post-

1 release supervision that the parolee or the person on postrelease super-  
2 vision pay any transportation expenses resulting from returning the pa-  
3 rolee or the person on postrelease supervision to this state to answer  
4 criminal charges or a warrant for a violation of a condition of probation,  
5 assignment to a community correctional services program, parole, con-  
6 ditional release or postrelease supervision;

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

12 (3) may order that the parolee or person on postrelease supervision  
13 perform community or public service work for local governmental agen-  
14 cies, private corporations organized not-for-profit or charitable or social  
15 service organizations performing services for the community;

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

20 (5) unless it finds compelling circumstances which would render a  
21 plan of payment unworkable, shall order that the parolee or person on  
22 postrelease supervision reimburse the state for all or part of the expend-  
23 itures by the state board of indigents' defense services to provide counsel  
24 and other defense services to the person. In determining the amount and  
25 method of payment of such sum, the parole board shall take account of  
26 the financial resources of the person and the nature of the burden that  
27 the payment of such sum will impose. Such amount shall not exceed the  
28 amount claimed by appointed counsel on the payment voucher for indi-  
29 gents' defense services or the amount prescribed by the board of indi-  
30 gents' defense services reimbursement tables as provided in K.S.A. 22-  
31 4522, and amendments thereto, whichever is less, minus any previous  
32 payments for such services.

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

40 (o) Whenever the Kansas parole board grants the parole of an inmate,  
41 the board, within 10 days of the date of the decision to grant parole, shall  
42 give written notice of the decision to the county or district attorney of the  
43 county where the inmate was sentenced.

- 1 (p) When an inmate is to be released on postrelease supervision, the  
2 secretary, within 30 days prior to release, shall provide the county or  
3 district attorney of the county where the inmate was sentenced written  
4 notice of the release date.
- 5 (q) Inmates shall be released on postrelease supervision upon the  
6 termination of the prison portion of their sentence. Time served while  
7 on postrelease supervision will vest.
- 8 (r) An inmate who is allocated regular good time credits as provided  
9 in K.S.A. 22-3725, and amendments thereto, may receive meritorious  
10 good time credits in increments of not more than 90 days per meritorious  
11 act. These credits may be awarded by the secretary of corrections when  
12 an inmate has acted in a heroic or outstanding manner in coming to the  
13 assistance of another person in a life threatening situation, preventing  
14 injury or death to a person, preventing the destruction of property or  
15 taking actions which result in a financial savings to the state.
- 16 (s) The provisions of subsections (d)(1)(A), (d)(1)(B), (d)(1)(C) and  
17 (d)(1)(E) shall be applied retroactively as provided in subsection (t).
- 18 (t) For offenders sentenced prior to the effective date of this act who  
19 are eligible for modification of their postrelease supervision obligation,  
20 the department of corrections shall modify the period of postrelease su-  
21 pervision as provided for by this section for offenders convicted of severity  
22 level 9 and 10 crimes on the sentencing guidelines grid for nondrug  
23 crimes and severity level 4 crimes on the sentencing guidelines grid for  
24 drug crimes on or before September 1, 2000; for offenders convicted of  
25 severity level 7 and 8 crimes on the sentencing guidelines grid for nondrug  
26 crimes on or before November 1, 2000; and for offenders convicted of  
27 severity level 5 and 6 crimes on the sentencing guidelines grid for nondrug  
28 crimes and severity level 3 crimes on the sentencing guidelines grid for  
29 drug crimes on or before January 1, 2001.
- 30 (u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-  
31 4643, and amendments thereto, for crimes committed on or after July 1,  
32 2006, shall be placed on parole for life and shall not be discharged from  
33 supervision by the Kansas parole board. When the board orders the parole  
34 of an inmate pursuant to this subsection, the board shall order as a con-  
35 dition of parole that the inmate be electronically monitored for the du-  
36 ration of the inmate's natural life.
- 37 (v) Whenever the Kansas parole board or the court orders a person  
38 to be electronically monitored, the board or court shall order the person  
39 to reimburse the state for all or part of the cost of such monitoring. In  
40 determining the amount and method of payment of such sum, the board  
41 or court shall take account of the financial resources of the person and  
42 the nature of the burden that the payment of such sum will impose.
- 43 Sec. 14. K.S.A. 22-4210 is hereby amended to read as follows: 22-

1 4210. If a person confined in a penal institution in any other state may  
2 be a material witness in a criminal action pending in a court of record or  
3 in a grand jury investigation in this state, a judge of the court may certify  
4 (1) that there is a criminal proceeding or investigation by a grand jury or  
5 a criminal action pending in the court, (2) that a person who is confined  
6 in a penal institution in the other state may be a material witness in the  
7 proceeding, investigation, or action, and (3) that his presence will be re-  
8 quired during a specified time. The certificate shall be presented to a  
9 judge of a court of record in the other state having jurisdiction over the  
10 prisoner confined, and a notice shall be given to the attorney general of  
11 the state in which the prisoner is confined.

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

15 Sec. 15. K.S.A. 2009 Supp. 22-4902 is hereby amended to read as  
16 follows: 22-4902. As used in ~~this~~ *the Kansas offender registration act*,  
17 unless the context otherwise requires:

- 18 (a) "Offender" means: (1) A sex offender as defined in subsection (b);  
19 (2) a violent offender as defined in subsection (d);  
20 (3) a sexually violent predator as defined in subsection (f);  
21 (4) any person who, on and after ~~the effective date of this act~~ *May*  
22 *29, 1997*, is convicted of any of the following crimes when the victim is  
23 less than 18 years of age:  
24 (A) Kidnapping as defined in K.S.A. 21-3420, and amendments  
25 thereto, except by a parent;  
26 (B) aggravated kidnapping as defined in K.S.A. 21-3421, and amend-  
27 ments thereto; or  
28 (C) criminal restraint as defined in K.S.A. 21-3424, and amendments  
29 thereto, except by a parent;  
30 (5) any person convicted of any of the following criminal sexual con-  
31 duct if one of the parties involved is less than 18 years of age:  
32 (A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;  
33 (B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-  
34 3505, and amendments thereto;  
35 (C) promoting prostitution as defined by K.S.A. 21-3513, and amend-  
36 ments thereto;  
37 (D) patronizing a prostitute as defined by K.S.A. 21-3515, and  
38 amendments thereto;  
39 (E) lewd and lascivious behavior as defined by K.S.A. 21-3508, and  
40 amendments thereto; or  
41 (F) unlawful sexual relations as defined by K.S.A. 21-3520, and  
42 amendments thereto;  
43 (6) any person who has been required to register under any federal,

- 1 military or other state's law or is otherwise required to be registered;
- 2 (7) any person who, on or after July 1, 2006, is convicted of any person  
3 felony and the court makes a finding on the record that a deadly weapon  
4 was used in the commission of such person felony;
- 5 (8) any person who has been convicted of an offense in effect at any  
6 time prior to ~~the effective date of this act~~ *May 29, 1997*, that is compa-  
7 rable to any crime defined in subsection (4), (5), (7) or (11), or any federal,  
8 military or other state conviction for an offense that under the laws of  
9 this state would be an offense defined in subsection (4), (5), (7) or (11);
- 10 (9) any person who has been convicted of an attempt, conspiracy or  
11 criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303,  
12 and amendments thereto, of an offense defined in subsection (4), (5), (7)  
13 or (10);
- 14 (10) any person who has been convicted of aggravated trafficking as  
15 defined in K.S.A. 21-3447, and amendments thereto; or
- 16 (11) any person who has been convicted of: (A) Unlawful manufac-  
17 ture or attempting such of any controlled substance or controlled sub-  
18 stance analog as defined by K.S.A. 65-4159, prior to its repeal, or K.S.A.  
19 2009 Supp. 21-36a03, and amendments thereto, unless the court makes  
20 a finding on the record that the manufacturing or attempting to manu-  
21 facture such controlled substance was for such person's personal use;
- 22 (B) possession of ephedrine, pseudoephedrine, red phosphorus, lith-  
23 ium metal, sodium metal, iodine, anhydrous ammonia, pressurized am-  
24 monia or phenylpropanolamine, or their salts, isomers or salts of isomers  
25 with intent to use the product to manufacture a controlled substance as  
26 defined by K.S.A. 65-7006, prior to its repeal, or K.S.A. 2009 Supp. 21-  
27 36a09 or 21-36a10, and amendments thereto, unless the court makes a  
28 finding on the record that the possession of such product was intended  
29 to be used to manufacture a controlled substance for such person's per-  
30 sonal use; or
- 31 (C) K.S.A. 65-4161, prior to its repeal, or K.S.A. 2009 Supp. 21-  
32 36a05, and amendments thereto.
- 33 Convictions which result from or are connected with the same act, or  
34 result from crimes committed at the same time, shall be counted for the  
35 purpose of this section as one conviction. Any conviction set aside pur-  
36 suant to law is not a conviction for purposes of this section. A conviction  
37 from another state shall constitute a conviction for purposes of this  
38 section.
- 39 (b) "Sex offender" includes any person who, ~~after the effective date~~  
40 ~~of this act~~ *on or after April 14, 1994*, is convicted of any sexually violent  
41 crime set forth in subsection (c) or is adjudicated as a juvenile offender  
42 for an act which if committed by an adult would constitute the commis-  
43 sion of a sexually violent crime set forth in subsection (c).



- 1 (c) “Sexually violent crime” means:
- 2 (1) Rape as defined in K.S.A. 21-3502, and amendments thereto;
- 3 (2) indecent liberties with a child as defined in K.S.A. 21-3503, and  
4 amendments thereto;
- 5 (3) aggravated indecent liberties with a child as defined in K.S.A. 21-  
6 3504, and amendments thereto;
- 7 (4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of  
8 K.S.A. 21-3505, and amendments thereto;
- 9 (5) aggravated criminal sodomy as defined in K.S.A. 21-3506, and  
10 amendments thereto;
- 11 (6) indecent solicitation of a child as defined by K.S.A. 21-3510, and  
12 amendments thereto;
- 13 (7) aggravated indecent solicitation of a child as defined by K.S.A.  
14 21-3511, and amendments thereto;
- 15 (8) sexual exploitation of a child as defined by K.S.A. 21-3516, and  
16 amendments thereto;
- 17 (9) sexual battery as defined by K.S.A. 21-3517, and amendments  
18 thereto;
- 19 (10) aggravated sexual battery as defined by K.S.A. 21-3518, and  
20 amendments thereto;
- 21 (11) aggravated incest as defined by K.S.A. 21-3603, and amend-  
22 ments thereto; or
- 23 (12) electronic solicitation as defined by K.S.A. 21-3523, and amend-  
24 ments thereto, committed on and after ~~the effective date of this act~~ *April*  
25 *17, 2008*;
- 26 (13) any conviction for an offense in effect at any time prior to ~~the~~  
27 ~~effective date of this act~~ *April 29, 1993*, that is comparable to a sexually  
28 violent crime as defined in subparagraphs (1) through (11), or any federal,  
29 military or other state conviction for an offense that under the laws of  
30 this state would be a sexually violent crime as defined in this section;
- 31 (14) an attempt, conspiracy or criminal solicitation, as defined in  
32 K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of a sex-  
33 ually violent crime, as defined in this section; or
- 34 (15) any act which at the time of sentencing for the offense has been  
35 determined beyond a reasonable doubt to have been sexually motivated.  
36 As used in this subparagraph, “sexually motivated” means that one of the  
37 purposes for which the defendant committed the crime was for the pur-  
38 pose of the defendant’s sexual gratification.
- 39 (d) “Violent offender” includes any person who, after ~~the effective~~  
40 ~~date of this act~~ *May 29, 1997*, is convicted of any of the following crimes:
- 41 (1) Capital murder as defined by K.S.A. 21-3439 ~~and amendments~~  
42 ~~thereto, prior to its repeal~~;
- 43 (2) *aggravated murder as defined by section 2, and amendments*

1 *thereto*;

2 ~~(2)~~ (3) murder in the first degree as defined by K.S.A. 21-3401, and  
3 amendments thereto;

4 ~~(3)~~ (4) murder in the second degree as defined by K.S.A. 21-3402,  
5 and amendments thereto;

6 ~~(4)~~ (5) voluntary manslaughter as defined by K.S.A. 21-3403, and  
7 amendments thereto;

8 ~~(5)~~ (6) involuntary manslaughter as defined by K.S.A. 21-3404, and  
9 amendments thereto; or

10 ~~(6)~~ (7) any conviction for an offense in effect at any time prior to ~~the~~  
11 ~~effective date of this act~~ *May 29, 1997*, that is comparable to any crime  
12 defined in this subsection, or any federal, military or other state conviction  
13 for an offense that under the laws of this state would be an offense defined  
14 in this subsection; or

15 ~~(7)~~ (8) an attempt, conspiracy or criminal solicitation, as defined in  
16 K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of an of-  
17 fense defined in this subsection.

18 (e) “Law enforcement agency having jurisdiction” means the sheriff  
19 of the county in which the offender expects to reside upon the offender’s  
20 discharge, parole or release.

21 (f) “Sexually violent predator” means any person who, on or after July  
22 1, 2001, is found to be a sexually violent predator pursuant to K.S.A. 59-  
23 29a01 et seq., and amendments thereto.

24 (g) “Nonresident student or worker” includes any offender who  
25 crosses into the state or county for more than 14 days, or for an aggregate  
26 period exceeding 30 days in a calendar year, for the purposes of employ-  
27 ment, with or without compensation, or to attend school as a student.

28 (h) “Aggravated offenses” means engaging in sexual acts involving  
29 penetration with victims of any age through the use of force or the threat  
30 of serious violence, or engaging in sexual acts involving penetration with  
31 victims less than 14 years of age, and includes the following offenses:

32 (1) Rape as defined in subsection (a)(1)(A) and subsection (a)(2) of  
33 K.S.A. 21-3502, and amendments thereto;

34 (2) aggravated criminal sodomy as defined in subsection (a)(1) and  
35 subsection (a)(3)(A) of K.S.A. 21-3506, and amendments thereto; and

36 (3) any attempt, conspiracy or criminal solicitation, as defined in  
37 K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of an of-  
38 fense defined in this subsection.

39 (i) “Institution of higher education” means any post-secondary school  
40 under the supervision of the Kansas board of regents.

41 Sec. 16. K.S.A. 2009 Supp. 38-2255 is hereby amended to read as  
42 follows: 38-2255. (a) *Considerations*. Prior to entering an order of dis-  
43 position, the court shall give consideration to:

- 1 (1) The child's physical, mental and emotional condition;
- 2 (2) the child's need for assistance;
- 3 (3) the manner in which the parent participated in the abuse, neglect
- 4 or abandonment of the child;
- 5 (4) any relevant information from the intake and assessment process;
- 6 and
- 7 (5) the evidence received at the dispositional hearing.
- 8 (b) *Placement with a parent.* The court may place the child in the
- 9 custody of either of the child's parents subject to terms and conditions
- 10 which the court prescribes to assure the proper care and protection of
- 11 the child, including, but not limited to:
- 12 (1) Supervision of the child and the parent by a court services officer;
- 13 (2) participation by the child and the parent in available programs
- 14 operated by an appropriate individual or agency; and
- 15 (3) any special treatment or care which the child needs for the child's
- 16 physical, mental or emotional health and safety.
- 17 (c) *Removal of a child from custody of a parent.* The court shall not
- 18 enter an order removing a child from the custody of a parent pursuant
- 19 to this section unless the court first finds probable cause that: (1)(A) The
- 20 child is likely to sustain harm if not immediately removed from the home;
- 21 (B) allowing the child to remain in home is contrary to the welfare
- 22 of the child; or
- 23 (C) immediate placement of the child is in the best interest of the
- 24 child; and
- 25 (2) reasonable efforts have been made to maintain the family unit
- 26 and prevent the unnecessary removal of the child from the child's home
- 27 or that an emergency exists which threatens the safety to the child.
- 28 (d) *Custody of a child removed from the custody of a parent.* If the
- 29 court has made the findings required by subsection (c), the court shall
- 30 enter an order awarding custody to a relative of the child or to a person
- 31 with whom the child has close emotional ties, to any other suitable person,
- 32 to a shelter facility, to a youth residential facility or, if the child is 15 years
- 33 of age or younger, or 16 or 17 years of age if the child has no identifiable
- 34 parental or family resources or shows signs of physical, mental, emotional
- 35 or sexual abuse, to the secretary. Custody awarded under this subsection
- 36 shall continue until further order of the court.
- 37 (1) When custody is awarded to the secretary, the secretary shall con-
- 38 sider any placement recommendation by the court and notify the court
- 39 of the placement or proposed placement of the child within 10 days of
- 40 the order awarding custody.
- 41 (A) After providing the parties or interested parties notice and op-
- 42 portunity to be heard, the court may determine whether the secretary's
- 43 placement or proposed placement is contrary to the welfare or in the best

1 interests of the child. In making that determination the court shall con-  
2 sider the health and safety needs of the child and the resources available  
3 to meet the needs of children in the custody of the secretary. If the court  
4 determines that the placement or proposed placement is contrary to the  
5 welfare or not in the best interests of the child, the court shall notify the  
6 secretary, who shall then make an alternative placement.

7 (B) The secretary may propose and the court may order the child to  
8 be placed in the custody of a parent or parents if the secretary has pro-  
9 vided and the court has approved an appropriate safety action plan which  
10 includes services to be provided. The court may order the parent or par-  
11 ents and the child to perform tasks as set out in the safety action plan.

12 (2) The custodian designated under this subsection shall notify the  
13 court in writing at least 10 days prior to any planned placement with a  
14 parent. The written notice shall state the basis for the custodian's belief  
15 that placement with a parent is no longer contrary to the welfare or best  
16 interest of the child. Upon reviewing the notice, the court may allow the  
17 custodian to proceed with the planned placement or may set the date for  
18 a hearing to determine if the child shall be allowed to return home. If  
19 the court sets a hearing on the matter, the custodian shall not return the  
20 child home without written consent of the court.

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

24 (4) The court may enter an order restraining any alleged perpetrator  
25 of physical, mental or emotional abuse or sexual abuse of the child from  
26 residing in the child's home; visiting, contacting, harassing or intimidating  
27 the child, other family member or witness; or attempting to visit, contact,  
28 harass or intimidate the child, other family member or witness. Such  
29 restraining order shall be served by personal service pursuant to subsec-  
30 tion (a) of K.S.A. 2009 Supp. 38-2237, and amendments thereto, on any  
31 alleged perpetrator to whom the order is directed.

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

35 (e) *Further determinations regarding a child removed from the home.*  
36 If custody has been awarded under subsection (d) to a person other than  
37 a parent, a permanency plan shall be provided or prepared pursuant to  
38 K.S.A. 2009 Supp. 38-2264, and amendments thereto. If a permanency  
39 plan is provided at the dispositional hearing, the court may determine  
40 whether reintegration is a viable alternative or, if reintegration is not a  
41 viable alternative, whether the child should be placed for adoption or a  
42 permanent custodian appointed. In determining whether reintegration is  
43 a viable alternative, the court shall consider:

- 1 (1) Whether a parent has been found by a court to have committed  
2 one of the following crimes or to have violated the law of another state  
3 prohibiting such crimes or to have aided and abetted, attempted, con-  
4 spired or solicited the commission of one of these crimes: *Capital murder,*  
5 *K.S.A. 21-3439, prior to its repeal, aggravated murder, section 2, and*  
6 *amendments thereto,* murder in the first degree, K.S.A. 21-3401, and  
7 amendments thereto, murder in the second degree, K.S.A. 21-3402, and  
8 amendments thereto, ~~capital murder, K.S.A. 21-3439, and amendments~~  
9 ~~thereto,~~ voluntary manslaughter, K.S.A. 21-3403, and amendments  
10 thereto, or a felony battery that resulted in bodily injury;
- 11 (2) whether a parent has subjected the child or another child to ag-  
12 gravated circumstances;
- 13 (3) whether a parent has previously been found to be an unfit parent  
14 in proceedings under this code or in comparable proceedings under the  
15 laws of another state or the federal government;
- 16 (4) whether the child has been in extended out of home placement;
- 17 (5) whether the parents have failed to work diligently toward  
18 reintegration;
- 19 (6) whether the secretary has provided the family with services nec-  
20 essary for the safe return of the child to the home; and
- 21 (7) whether it is reasonable to expect reintegration to occur within a  
22 time frame consistent with the child's developmental needs.
- 23 (f) *Proceedings if reintegration is not a viable alternative.* If the court  
24 determines that reintegration is not a viable alternative, proceedings to  
25 terminate parental rights and permit placement of the child for adoption  
26 or appointment of a permanent custodian shall be initiated unless the  
27 court finds that compelling reasons have been documented in the case  
28 plan why adoption or appointment of a permanent custodian would not  
29 be in the best interests of the child. If compelling reasons have not been  
30 documented, the county or district attorney shall file a motion within 30  
31 days to terminate parental rights or a motion to appoint a permanent  
32 custodian within 30 days and the court shall hold a hearing on the motion  
33 within 90 days of its filing. No hearing is required when the parents  
34 voluntarily relinquish parental rights or consent to the appointment of a  
35 permanent custodian.
- 36 (g) *Additional Orders.* In addition to or in lieu of any other order  
37 authorized by this section:
- 38 (1) The court may order the child and the parents of any child who  
39 has been adjudicated a child in need of care to attend counseling sessions  
40 as the court directs. The expense of the counseling may be assessed as  
41 an expense in the case. No mental health provider shall charge a greater  
42 fee for court-ordered counseling than the provider would have charged  
43 to the person receiving counseling if the person had requested counseling

1 on the person's own initiative.

2 (2) If the court has reason to believe that a child is before the court  
3 due, in whole or in part, to the use or misuse of alcohol or a violation of  
4 K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto,  
5 by the child, a parent of the child, or another person responsible for the  
6 care of the child, the court may order the child, parent of the child or  
7 other person responsible for the care of the child to submit to and com-  
8 plete an alcohol and drug evaluation by a qualified person or agency and  
9 comply with any recommendations. If the evaluation is performed by a  
10 community-based alcohol and drug safety program certified pursuant to  
11 K.S.A. 8-1008, and amendments thereto, the child, parent of the child or  
12 other person responsible for the care of the child shall pay a fee not to  
13 exceed the fee established by that statute. If the court finds that the child  
14 and those legally liable for the child's support are indigent, the fee may  
15 be waived. In no event shall the fee be assessed against the secretary.

16 (3) If child support has been requested and the parent or parents  
17 have a duty to support the child, the court may order one or both parents  
18 to pay child support and, when custody is awarded to the secretary, the  
19 court shall order one or both parents to pay child support. The court shall  
20 determine, for each parent separately, whether the parent is already sub-  
21 ject to an order to pay support for the child. If the parent is not presently  
22 ordered to pay support for any child who is subject to the jurisdiction of  
23 the court and the court has personal jurisdiction over the parent, the court  
24 shall order the parent to pay child support in an amount determined  
25 under K.S.A. 2009 Supp. 38-2277, and amendments thereto. Except for  
26 good cause shown, the court shall issue an immediate income withholding  
27 order pursuant to K.S.A. 23-4,105 et seq., and amendments thereto, for  
28 each parent ordered to pay support under this subsection, regardless of  
29 whether a payor has been identified for the parent. A parent ordered to  
30 pay child support under this subsection shall be notified, at the hearing  
31 or otherwise, that the child support order may be registered pursuant to  
32 K.S.A. 2009 Supp. 38-2279, and amendments thereto. The parent shall  
33 also be informed that, after registration, the income withholding order  
34 may be served on the parent's employer without further notice to the  
35 parent and the child support order may be enforced by any method al-  
36 lowed by law. Failure to provide this notice shall not affect the validity of  
37 the child support order.

38 Sec. 17. K.S.A. 2009 Supp. 38-2271 is hereby amended to read as  
39 follows: 38-2271. (a) It is presumed in the manner provided in K.S.A. 60-  
40 414, and amendments thereto, that a parent is unfit by reason of conduct  
41 or condition which renders the parent unable to fully care for a child, if  
42 the state establishes, by clear and convincing evidence, that:

43 (1) A parent has previously been found to be an unfit parent in pro-

- 1 ceedings under K.S.A. 2009 Supp. 38-2266 et seq., and amendments  
2 thereto, or comparable proceedings under the laws of another  
3 jurisdiction;
- 4 (2) a parent has twice before been convicted of a crime specified in  
5 article 34, 35, or 36 of chapter 21 of the Kansas Statutes Annotated, and  
6 amendments thereto, or comparable offenses under the laws of another  
7 jurisdiction, or an attempt or attempts to commit such crimes and the  
8 victim was under the age of 18 years;
- 9 (3) on two or more prior occasions a child in the physical custody of  
10 the parent has been adjudicated a child in need of care as defined by  
11 subsection (d)(1),(d)(3), (d)(5) or (d)(11) of K.S.A. 2009 Supp. 38-2202,  
12 and amendments thereto, or comparable proceedings under the laws of  
13 another jurisdiction.
- 14 (4) the parent has been convicted of causing the death of another  
15 child or stepchild of the parent;
- 16 (5) the child has been in an out-of-home placement, under court  
17 order for a cumulative total period of one year or longer and the parent  
18 has substantially neglected or willfully refused to carry out a reasonable  
19 plan, approved by the court, directed toward reintegration of the child  
20 into the parental home;
- 21 (6) (A) the child has been in an out-of-home placement, under court  
22 order for a cumulative total period of two years or longer; (B) the parent  
23 has failed to carry out a reasonable plan, approved by the court, directed  
24 toward reintegration of the child into the parental home; and (C) there  
25 is a substantial probability that the parent will not carry out such plan in  
26 the near future;
- 27 (7) a parent has been convicted of capital murder, K.S.A. 21-3439,  
28 *prior to its repeal, aggravated murder, section 2*, and amendments  
29 thereto, murder in the first degree, K.S.A. 21-3401, and amendments  
30 thereto, murder in the second degree, K.S.A. 21-3402, and amendments  
31 thereto, or voluntary manslaughter, K.S.A. 21-3403, and amendments  
32 thereto, or comparable proceedings under the laws of another jurisdiction  
33 or, has been adjudicated a juvenile offender because of an act which if  
34 committed by an adult would be an offense as provided in this subsection,  
35 and the victim of such murder was the other parent of the child;
- 36 (8) a parent abandoned or neglected the child after having knowledge  
37 of the child's birth or either parent has been granted immunity from  
38 prosecution for abandonment of the child under subsection (b) of K.S.A.  
39 21-3604, and amendments thereto; or
- 40 (9) a parent has made no reasonable efforts to support or commu-  
41 nicate with the child after having knowledge of the child's birth;
- 42 (10) a father, after having knowledge of the pregnancy, failed without  
43 reasonable cause to provide support for the mother during the six months

1 prior to the child's birth;

2 (11) a father abandoned the mother after having knowledge of the  
3 pregnancy;

4 (12) a parent has been convicted of rape, K.S.A. 21-3502, and amend-  
5 ments thereto, or comparable proceedings under the laws of another ju-  
6 risdiction resulting in the conception of the child; or

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

11 (b) The burden of proof is on the parent to rebut the presumption  
12 of unfitness by a preponderance of the evidence. In the absence of proof  
13 that the parent is presently fit and able to care for the child or that the  
14 parent will be fit and able to care for the child in the foreseeable future,  
15 the court shall terminate parental rights in proceedings pursuant to K.S.A.  
16 2009 Supp. 38-2266 et seq., and amendments thereto.

17 Sec. 18. K.S.A. 2009 Supp. 38-2312 is hereby amended to read as  
18 follows: 38-2312. (a) Except as provided in subsection (b), any records or  
19 files specified in this code concerning a juvenile may be expunged upon  
20 application to a judge of the court of the county in which the records or  
21 files are maintained. The application for expungement may be made by  
22 the juvenile, if 18 years of age or older or, if the juvenile is less than 18  
23 years of age, by the juvenile's parent or next friend.

24 (b) There shall be no expungement of records or files concerning acts  
25 committed by a juvenile which, if committed by an adult, would constitute  
26 a violation of *K.S.A. 21-3439, prior to its repeal, capital murder, section*  
27 *2, and amendments thereto, aggravated murder*, K.S.A. 21-3401, and  
28 amendments thereto, murder in the first degree, K.S.A. 21-3402, and  
29 amendments thereto, murder in the second degree, K.S.A. 21-3403, and  
30 amendments thereto, voluntary manslaughter, K.S.A. 21-3404, and  
31 amendments thereto, involuntary manslaughter, ~~K.S.A. 21-3439, and~~  
32 ~~amendments thereto, capital murder~~, K.S.A. 21-3442, and amendments  
33 thereto, involuntary manslaughter while driving under the influence of  
34 alcohol or drugs, K.S.A. 21-3502, and amendments thereto, rape, K.S.A.  
35 21-3503, and amendments thereto, indecent liberties with a child, K.S.A.  
36 21-3504, and amendments thereto, aggravated indecent liberties with a  
37 child, K.S.A. 21-3506, and amendments thereto, aggravated criminal sod-  
38 omy, K.S.A. 21-3510, and amendments thereto, indecent solicitation of a  
39 child, K.S.A. 21-3511, and amendments thereto, aggravated indecent so-  
40 licitation of a child, K.S.A. 21-3516, and amendments thereto, sexual ex-  
41 ploitation, K.S.A. 21-3603, and amendments thereto, aggravated incest,  
42 K.S.A. 21-3608, and amendments thereto, endangering a child, K.S.A.  
43 21-3609, and amendments thereto, abuse of a child, or which would con-



1   stitute an attempt to commit a violation of any of the offenses specified  
2   in this subsection.

3   (c) When a petition for expungement is filed, the court shall set a  
4   date for a hearing on the petition and shall give notice thereof to the  
5   county or district attorney. The petition shall state: (1) The juvenile's full  
6   name; (2) the full name of the juvenile as reflected in the court record,  
7   if different than (1); (3) the juvenile's sex and date of birth; (4) the offense  
8   for which the juvenile was adjudicated; (5) the date of the trial; and (6)  
9   the identity of the trial court. There shall be no docket fee for filing a  
10   petition pursuant to this section. All petitions for expungement shall be  
11   docketed in the original action. Any person who may have relevant infor-  
12   mation about the petitioner may testify at the hearing. The court may  
13   inquire into the background of the petitioner.

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

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

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

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

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

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

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

- 1 (g) The court shall inform any juvenile who has been adjudicated a  
2 juvenile offender of the provisions of this section.
- 3 (h) Nothing in this section shall be construed to prohibit the main-  
4 tenance of information relating to an offense after records or files con-  
5 cerning the offense have been expunged if the information is kept in a  
6 manner that does not enable identification of the juvenile.
- 7 (i) Nothing in this section shall be construed to permit or require  
8 expungement of files or records related to a child support order registered  
9 pursuant to the revised Kansas juvenile justice code.
- 10 (j) Whenever the records or files of any adjudication have been ex-  
11 punged under the provisions of this section, the custodian of the records  
12 or files of adjudication relating to that offense shall not disclose the ex-  
13 istence of such records or files, except when requested by:
- 14 (1) The person whose record was expunged;
- 15 (2) a private detective agency or a private patrol operator, and the  
16 request is accompanied by a statement that the request is being made in  
17 conjunction with an application for employment with such agency or op-  
18 erator by the person whose record has been expunged;
- 19 (3) a court, upon a showing of a subsequent conviction of the person  
20 whose record has been expunged;
- 21 (4) the secretary of social and rehabilitation services, or a designee of  
22 the secretary, for the purpose of obtaining information relating to em-  
23 ployment in an institution, as defined in K.S.A. 76-12a01, and amend-  
24 ments thereto, of the department of social and rehabilitation services of  
25 any person whose record has been expunged;
- 26 (5) a person entitled to such information pursuant to the terms of the  
27 expungement order;
- 28 (6) the Kansas lottery, and the request is accompanied by a statement  
29 that the request is being made to aid in determining qualifications for  
30 employment with the Kansas lottery or for work in sensitive areas within  
31 the Kansas lottery as deemed appropriate by the executive director of the  
32 Kansas lottery;
- 33 (7) the governor or the Kansas racing commission, or a designee of  
34 the commission, and the request is accompanied by a statement that the  
35 request is being made to aid in determining qualifications for executive  
36 director of the commission, for employment with the commission, for  
37 work in sensitive areas in parimutuel racing as deemed appropriate by  
38 the executive director of the commission or for licensure, renewal of  
39 licensure or continued licensure by the commission; or
- 40 (8) the Kansas sentencing commission.
- 41 Sec. 19. K.S.A. 2009 Supp. 38-2365 is hereby amended to read as  
42 follows: 38-2365. (a) When a juvenile offender has been placed in the  
43 custody of the commissioner, the commissioner shall have a reasonable

1 time to make a placement. If the juvenile offender has not been placed,  
2 any party who believes that the amount of time elapsed without place-  
3 ment has exceeded a reasonable time may file a motion for review with  
4 the court. In determining what is a reasonable amount of time, matters  
5 considered by the court shall include, but not be limited to, the nature  
6 of the underlying offense, efforts made for placement of the juvenile  
7 offender and the availability of a suitable placement. The commissioner  
8 shall notify the court and the juvenile offender's parent, in writing, of the  
9 initial placement and any subsequent change of placement as soon as the  
10 placement has been accomplished. The notice to the juvenile offender's  
11 parent shall be sent to such parent's last known address or addresses. The  
12 court shall have no power to direct a specific placement by the commis-  
13 sioner, but may make recommendations to the commissioner. The com-  
14 missioner may place the juvenile offender in an institution operated by  
15 the commissioner, a youth residential facility or any other appropriate  
16 placement. If the court has recommended an out-of-home placement,  
17 the commissioner may not return the juvenile offender to the home from  
18 which removed without first notifying the court of the plan.

19 (b) If a juvenile is in the custody of the commissioner, the commis-  
20 sioner shall prepare and present a permanency plan at sentencing or  
21 within 30 days thereafter. If a permanency plan is already in place under  
22 a child in need of care proceeding, the court may adopt the plan under  
23 the present proceeding. The written permanency plan shall provide for  
24 reintegration of the juvenile into such juvenile's family or, if reintegration  
25 is not a viable alternative, for other permanent placement of the juvenile.  
26 Reintegration may not be a viable alternative when: (1) The parent has  
27 been found by a court to have committed *capital murder*, K.S.A. 21-3439,  
28 *prior to its repeal, aggravated murder, section 2, and amendments thereto*,  
29 murder in the first degree, K.S.A. 21-3401, and amendments thereto,  
30 murder in the second degree, K.S.A. 21-3402, and amendments thereto,  
31 ~~capital murder, K.S.A. 21-3439, and amendments thereto~~, voluntary man-  
32 slaughtering, K.S.A. 21-3403, and amendments thereto, of a child or violated  
33 a law of another state which prohibits such murder or manslaughter of a  
34 child;

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

37 (3) the parent committed a felony battery that resulted in bodily in-  
38 jury to the juvenile who is the subject of this proceeding or another child;

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

42 (5) the parental rights of the parent to another child have been ter-  
43 minated involuntarily; or

1 (6) the juvenile has been in extended out-of-home placement as de-  
2 fined in K.S.A. 2009 Supp. 38-2202, and amendments thereto.

3 (c) If the juvenile is placed in the custody of the commissioner, the  
4 plan shall be prepared and submitted by the commissioner. If the juvenile  
5 is placed in the custody of a facility or person other than the commis-  
6 sioner, the plan shall be prepared and submitted by a court services of-  
7 ficer. If the permanency goal is reintegration into the family, the per-  
8 manency plan shall include measurable objectives and time schedules for  
9 reintegration.

10 (d) During the time a juvenile remains in the custody of the com-  
11 missioner, the commissioner shall submit to the court, at least every six  
12 months, a written report of the progress being made toward the goals of  
13 the permanency plan submitted pursuant to subsections (b) and (c) and  
14 the specific actions taken to achieve the goals of the permanency plan. If  
15 the juvenile is placed in foster care, the court may request the foster  
16 parent to submit to the court, at least every six months, a report in regard  
17 to the juvenile's adjustment, progress and condition. Such report shall be  
18 made a part of the juvenile's court social file. The court shall review the  
19 plan submitted by the commissioner and the report, if any, submitted by  
20 the foster parent and determine whether reasonable efforts and progress  
21 have been made to achieve the goals of the permanency plan. If the court  
22 determines that progress is inadequate or that the permanency plan is no  
23 longer viable, the court shall hold a hearing pursuant to subsection (e).

24 (e) When the commissioner has custody of the juvenile, a perma-  
25 nency hearing shall be held no more than 12 months after the juvenile is  
26 first placed outside such juvenile's home and at least every 12 months  
27 thereafter. Juvenile offenders who have been in extended out-of-home  
28 placement shall be provided a permanency hearing within 30 days of a  
29 request from the commissioner. The court may appoint a *guardian ad*  
30 *litem* to represent the juvenile offender at the permanency hearing. At  
31 each hearing, the court shall make a written finding whether reasonable  
32 efforts have been made to accomplish the permanency goal and whether  
33 continued out-of-home placement is necessary for the juvenile's safety.

34 (f) Whenever a hearing is required under subsection (e), the court  
35 shall notify all interested parties of the hearing date, the commissioner,  
36 foster parent and preadoptive parent or relatives providing care for the  
37 juvenile and hold a hearing. Individuals receiving notice pursuant to this  
38 subsection shall not be made a party to the action solely on the basis of  
39 this notice and opportunity to be heard. After providing the persons re-  
40 ceiving notice an opportunity to be heard, the court shall determine  
41 whether the juvenile's needs are being adequately met; whether services  
42 set out in the permanency plan necessary for the safe return of the ju-  
43 venile have been made available to the parent with whom reintegration

1 is planned; and whether reasonable efforts and progress have been made  
2 to achieve the goals of the permanency plan.

3 (g) If the court finds reintegration continues to be a viable alternative,  
4 the court shall determine whether and, if applicable, when the juvenile  
5 will be returned to the parent. The court may rescind any of its prior  
6 dispositional orders and enter any dispositional order authorized by this  
7 code or may order that a new plan for the reintegration be prepared and  
8 submitted to the court. If reintegration cannot be accomplished as ap-  
9 proved by the court, the court shall be informed and shall schedule a  
10 hearing pursuant to subsection (h). No such hearing is required when the  
11 parent voluntarily relinquishes parental rights or agree to appointment of  
12 a permanent guardian.

13 (h) When the court finds any of the following conditions exist, the  
14 county or district attorney or the county or district attorney's designee  
15 shall file a petition alleging the juvenile to be a child in need of care and  
16 requesting termination of parental rights pursuant to the Kansas code for  
17 care of children: (1) The court determines that reintegration is not a viable  
18 alternative and either adoption or permanent guardianship might be in  
19 the best interests of the juvenile;

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

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

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

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

31 (2) services set out in the case plan necessary for the safe return of  
32 the juvenile have not been made available to the parent with whom re-  
33 integration is planned; or

34 (3) there are one or more documented reasons why such filing would  
35 not be in the best interests of the juvenile. Documented reasons may  
36 include, but are not limited to: The juvenile has close emotional bonds  
37 with a parent which should not be broken; the juvenile is 14 years of age  
38 or older and, after advice and counsel, refuses to be adopted; insufficient  
39 grounds exist for termination of parental rights; the juvenile is an unac-  
40 companied refugee minor; or there are international legal or compelling  
41 foreign policy reasons precluding termination of parental rights.

42 Sec. 20. K.S.A. 2009 Supp. 39-970 is hereby amended to read as  
43 follows: 39-970. (a) (1) No person shall knowingly operate an adult care

1 home if, in the adult care home, there works any person who has been  
2 convicted of or has been adjudicated a juvenile offender because of having  
3 committed an act which if done by an adult would constitute the com-  
4 mission of capital murder, pursuant to K.S.A. 21-3439, *prior to its repeal*,  
5 *aggravated murder, pursuant to section 2*, and amendments thereto, first  
6 degree murder, pursuant to K.S.A. 21-3401 and amendments thereto,  
7 second degree murder, pursuant to subsection (a) of K.S.A. 21-3402 and  
8 amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-  
9 3403 and amendments thereto, assisting suicide pursuant to K.S.A. 21-  
10 3406 and amendments thereto, mistreatment of a dependent adult, pur-  
11 suant to K.S.A. 21-3437 and amendments thereto, rape, pursuant to  
12 K.S.A. 21-3502 and amendments thereto, indecent liberties with a child,  
13 pursuant to K.S.A. 21-3503 and amendments thereto, aggravated inde-  
14 cent liberties with a child, pursuant to K.S.A. 21-3504 and amendments  
15 thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506 and  
16 amendments thereto, indecent solicitation of a child, pursuant to K.S.A.  
17 21-3510 and amendments thereto, aggravated indecent solicitation of a  
18 child, pursuant to K.S.A. 21-3511 and amendments thereto, sexual ex-  
19 ploitation of a child, pursuant to K.S.A. 21-3516 and amendments thereto,  
20 sexual battery, pursuant to K.S.A. 21-3517 and amendments thereto, or  
21 aggravated sexual battery, pursuant to K.S.A. 21-3518 and amendments  
22 thereto, an attempt to commit any of the crimes listed in this subsection  
23 (a)(1), pursuant to K.S.A. 21-3301, and amendments thereto, a conspiracy  
24 to commit any of the crimes listed in this subsection (a)(1), pursuant to  
25 K.S.A. 21-3302, and amendments thereto, or criminal solicitation of any  
26 of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303,  
27 and amendments thereto, or similar statutes of other states or the federal  
28 government.

29 (2) A person operating an adult care home may employ an applicant  
30 who has been convicted of any of the following if five or more years have  
31 elapsed since the applicant satisfied the sentence imposed or was dis-  
32 charged from probation, a community correctional services program, pa-  
33 role, postrelease supervision, conditional release or a suspended sentence;  
34 or if five or more years have elapsed since the applicant has been finally  
35 discharged from the custody of the commissioner of juvenile justice or  
36 from probation or has been adjudicated a juvenile offender, whichever  
37 time is longer: (A) a felony conviction for a crime which is described in: (A)  
38 Article 34 of chapter 21 of the Kansas Statutes Annotated and amend-  
39 ments thereto, except those crimes listed in subsection (a)(1); (B) articles  
40 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments  
41 thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-  
42 3605 and amendments thereto; (C) an attempt to commit any of the  
43 crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, and

1 amendments thereto; (D) a conspiracy to commit any of the crimes listed  
2 in subsection (a)(2) pursuant to K.S.A. 21-3302, and amendments thereto;  
3 (E) criminal solicitation of any of the crimes listed in subsection (a)(2)  
4 pursuant to K.S.A. 21-3303, and amendments thereto; or (F) similar stat-  
5 utes of other states or the federal government.

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

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

24 (d) For the purpose of complying with this section, the operator of  
25 an adult care home shall request from the department of health and  
26 environment information regarding only felony convictions, convictions  
27 under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto,  
28 adjudications of a juvenile offender which if committed by an adult would  
29 have been a felony conviction, and adjudications of a juvenile offender  
30 for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and  
31 amendments thereto, and which relates to a person who works in the  
32 adult care home, or is being considered for employment by the adult care  
33 home, for the purpose of determining whether such person is subject to  
34 the provision of this section. For the purpose of complying with this sec-  
35 tion, the operator of an adult care home shall receive from any employ-  
36 ment agency which provides employees to work in the adult care home  
37 written certification that such employees are not prohibited from working  
38 in the adult care home under this section. For the purpose of complying  
39 with this section, information relating to convictions and adjudications by  
40 the federal government or to convictions and adjudications in states other  
41 than Kansas shall not be required until such time as the secretary of health  
42 and environment determines the search for such information could rea-  
43 sonably be performed and the information obtained within a two-week

1 period. For the purpose of complying with this section, a person who  
2 operates an adult care home may hire an applicant for employment on a  
3 conditional basis pending the results from the department of health and  
4 environment of a request for information under this subsection. No adult  
5 care home, the operator or employees of an adult care home or an em-  
6 ployment agency, or the operator or employees of an employment agency,  
7 shall be liable for civil damages resulting from any decision to employ, to  
8 refuse to employ or to discharge from employment any person based on  
9 such adult care home's compliance with the provisions of this section if  
10 such adult care home or employment agency acts in good faith to comply  
11 with this section.

12 (e) The secretary of health and environment shall charge each person  
13 requesting information under this section a fee equal to cost, not to ex-  
14 ceed \$10, for each name about which an information request has been  
15 submitted to the department under this section.

16 (f) (1) The secretary of health and environment shall provide each  
17 operator requesting information under this section with the criminal his-  
18 tory record information concerning felony convictions and convictions  
19 under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto,  
20 in writing and within three working days of receipt of such information  
21 from the Kansas bureau of investigation. The criminal history record in-  
22 formation shall be provided regardless of whether the information dis-  
23 closes that the subject of the request has been convicted of an offense  
24 enumerated in subsection (a).

25 (2) When an offense enumerated in subsection (a) exists in the crim-  
26 inal history record information, and when further confirmation regarding  
27 criminal history record information is required from the appropriate court  
28 of jurisdiction or Kansas department of corrections, the secretary shall  
29 notify each operator that requests information under this section in writ-  
30 ing and within three working days of receipt from the Kansas bureau of  
31 investigation that further confirmation is required. The secretary shall  
32 provide to the operator requesting information under this section infor-  
33 mation in writing and within three working days of receipt of such infor-  
34 mation from the appropriate court of jurisdiction or Kansas department  
35 of corrections regarding confirmation regarding the criminal history rec-  
36 ord information.

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

42 (4) The secretary of health and environment shall not provide each  
43 operator requesting information under this section with the juvenile crim-



1 inal history record information which relates to a person subject to a  
2 background check as is provided by K.S.A. 2009 Supp. 38-2326, and  
3 amendments thereto, except for adjudications of a juvenile offender for  
4 an offense described in K.S.A. 21-3701, and amendments thereto. The  
5 secretary shall notify the operator that requested the information, in writ-  
6 ing and within three working days of receipt of such information from  
7 the Kansas bureau of investigation, whether juvenile criminal history rec-  
8 ord information received pursuant to this section reveals that the operator  
9 would or would not be prohibited by this section from employing the  
10 subject of the request for information and whether such information con-  
11 tains adjudications of a juvenile offender for an offense described in  
12 K.S.A. 21-3701, and amendments thereto.

13 (5) An operator who receives criminal history record information un-  
14 der this subsection (f) shall keep such information confidential, except  
15 that the operator may disclose such information to the person who is the  
16 subject of the request for information. A violation of this paragraph (5)  
17 shall be an unclassified misdemeanor punishable by a fine of \$100.

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

23 (h) A person who volunteers in an adult care home shall not be sub-  
24 ject to the provisions of this section because of such volunteer activity.

25 (i) No person who has been employed by the same adult care home  
26 for five consecutive years immediately prior to the effective date of this  
27 act shall be subject to the provisions of this section while employed by  
28 such adult care home.

29 (j) The operator of an adult care home shall not be required under  
30 this section to conduct a background check on an applicant for employ-  
31 ment with the adult care home if the applicant has been the subject of a  
32 background check under this act within one year prior to the application  
33 for employment with the adult care home. The operator of an adult care  
34 home where the applicant was the subject of such background check may  
35 release a copy of such background check to the operator of an adult care  
36 home where the applicant is currently applying.

37 (k) No person who is in the custody of the secretary of corrections  
38 and who provides services, under direct supervision in nonpatient areas,  
39 on the grounds or other areas designated by the superintendent of the  
40 Kansas soldiers' home or the Kansas veterans' home shall be subject to  
41 the provisions of this section while providing such services.

42 (l) For purposes of this section, the Kansas bureau of investigation  
43 shall only report felony convictions, convictions under K.S.A. 21-3437,

1 21-3517 and 21-3701, and amendments thereto, adjudications of a juve-  
2 nile offender which if committed by an adult would have been a felony  
3 conviction, and adjudications of a juvenile offender for an offense de-  
4 scribed in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments  
5 thereto, to the secretary of health and environment when a background  
6 check is requested.

7 (m) This section shall be part of and supplemental to the adult care  
8 home licensure act.

9 Sec. 21. K.S.A. 2009 Supp. 65-5117 is hereby amended to read as  
10 follows: 65-5117. (a) (1) No person shall knowingly operate a home health  
11 agency if, for the home health agency, there works any person who has  
12 been convicted of or has been adjudicated a juvenile offender because of  
13 having committed an act which if done by an adult would constitute the  
14 commission of capital murder, pursuant to K.S.A. 21-3439 *prior to its*  
15 *repeal, aggravated murder, pursuant to section 2*, and amendments  
16 thereto, first degree murder, pursuant to K.S.A. 21-3401 and amend-  
17 ments thereto, second degree murder, pursuant to subsection (a) of  
18 K.S.A. 21-3402 and amendments thereto, voluntary manslaughter, pur-  
19 suant to K.S.A. 21-3403 and amendments thereto, assisting suicide, pur-  
20 suant to K.S.A. 21-3406 and amendments thereto, mistreatment of a de-  
21 pendent adult, pursuant to K.S.A. 21-3437 and amendments thereto,  
22 rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent lib-  
23 erties with a child, pursuant to K.S.A. 21-3503 and amendments thereto,  
24 aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and  
25 amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-  
26 3506 and amendments thereto, indecent solicitation of a child, pursuant  
27 to K.S.A. 21-3510 and amendments thereto, aggravated indecent solici-  
28 tation of a child, pursuant to K.S.A. 21-3511 and amendments thereto,  
29 sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amend-  
30 ments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amend-  
31 ments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518  
32 and amendments thereto, an attempt to commit any of the crimes listed  
33 in this subsection (a)(1), pursuant to K.S.A. 21-3301, and amendments  
34 thereto, a conspiracy to commit any of the crimes listed in this subsection  
35 (a)(1), pursuant to K.S.A. 21-3302, and amendments thereto, or criminal  
36 solicitation of any of the crimes listed in this subsection (a)(1), pursuant  
37 to K.S.A. 21-3303, and amendments thereto, or similar statutes of other  
38 states or the federal government.

39 (2) A person operating a home health agency may employ an appli-  
40 cant who has been convicted of any of the following if five or more years  
41 have 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 sen-

1 tence; or if five or more years have elapsed since the applicant has been  
2 finally discharged from the custody of the commissioner of juvenile justice  
3 or from probation or has been adjudicated a juvenile offender, whichever  
4 time is longer: A felony conviction for a crime which is described in: (A)  
5 Article 34 of chapter 21 of the Kansas Statutes Annotated and amend-  
6 ments thereto, except those crimes listed in subsection (a)(1); (B) articles  
7 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments  
8 thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-  
9 3605 and amendments thereto; (C) an attempt to commit any of the  
10 crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, and  
11 amendments thereto; (D) a conspiracy to commit any of the crimes listed  
12 in subsection (a)(2) pursuant to K.S.A. 21-3302, and amendments thereto;  
13 (E) criminal solicitation of any of the crimes listed in subsection (a)(2)  
14 pursuant to K.S.A. 21-3303, and amendments thereto; or (F) similar stat-  
15 utes of other states or the federal government.

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

21 (c) The secretary of health and environment shall have access to any  
22 criminal history record information in the possession of the Kansas bureau  
23 of investigation regarding felony convictions, convictions under K.S.A. 21-  
24 3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a  
25 juvenile offender which if committed by an adult would have been a  
26 felony conviction, and adjudications of a juvenile offender for an offense  
27 described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments  
28 thereto, concerning persons working for a home health agency. The sec-  
29 retary shall have access to these records for the purpose of determining  
30 whether or not the home health agency meets the requirements of this  
31 section. The Kansas bureau of investigation may charge to the department  
32 of health and environment a reasonable fee for providing criminal history  
33 record information under this subsection.

34 (d) For the purpose of complying with this section, the operator of a  
35 home health agency shall request from the department of health and  
36 environment information regarding only felony convictions, convictions  
37 under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto,  
38 adjudications of a juvenile offender which if committed by an adult would  
39 have been a felony conviction, and adjudications of a juvenile offender  
40 for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and  
41 amendments thereto, and which relates to a person who works for the  
42 home health agency or is being considered for employment by the home  
43 health agency, for the purpose of determining whether such person is

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

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

27 (f) (1) The secretary of health and environment shall provide each  
28 operator requesting information under this section with the criminal his-  
29 tory record information concerning felony convictions and convictions  
30 under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto,  
31 in writing and within three working days of receipt of such information  
32 from the Kansas bureau of investigation. The criminal history record in-  
33 formation shall be provided regardless of whether the information dis-  
34 closes that the subject of the request has been convicted of an offense  
35 enumerated in subsection (a).

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

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

5 (3) Whenever the criminal history record information reveals that the  
6 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 crim-  
12 inal history record information which relates to a person subject to a  
13 background check as is provided by K.S.A. 2009 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, and amendments thereto. The  
16 secretary shall notify the operator that requested the information, in writ-  
17 ing and within three working days of receipt of such information from  
18 the Kansas bureau of investigation, whether juvenile criminal history rec-  
19 ord information received pursuant to this section reveals that the operator  
20 would or would not be prohibited by this section from employing the  
21 subject of the request for information and whether such information con-  
22 tains adjudications of a juvenile offender for an offense described in  
23 K.S.A. 21-3701, and amendments thereto.

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

29 (g) No person who works for a home health agency and who is cur-  
30 rently licensed or registered by an agency of this state to provide profes-  
31 sional services in this state and who provides such services as part of the  
32 work which such person performs for the home health agency shall be  
33 subject to the provisions of this section.

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

37 (i) No person who has been employed by the same home health  
38 agency for five consecutive years immediately prior to the effective date  
39 of this act shall be subject to the requirements of this section while em-  
40 ployed by such home health agency.

41 (j) The operator of a home health agency shall not be required under  
42 this section to conduct a background check on an applicant for employ-  
43 ment with the home health agency if the applicant has been the subject

1 of a background check under this act within one year prior to the appli-  
2 cation for employment with the home health agency. The operator of a  
3 home health agency where the applicant was the subject of such back-  
4 ground check may release a copy of such background check to the op-  
5 erator of a home health agency where the applicant is currently applying.

6 (k) For purposes of this section, the Kansas bureau of investigation  
7 shall only report felony convictions, convictions under K.S.A. 21-3437,  
8 21-3517 and 21-3701, and amendments thereto, adjudications of a juve-  
9 nile offender which if committed by an adult would have been a felony  
10 conviction, and adjudications of a juvenile offender for an offense de-  
11 scribed in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments  
12 thereto, to the secretary of health and environment when a background  
13 check is requested.

14 (l) This section shall be part of and supplemental to the provisions of  
15 article 51 of chapter 65 of the Kansas Statutes Annotated and acts amen-  
16 datory thereof or supplemental thereto.

17 Sec. 22. K.S.A. 2009 Supp. 72-1397 is hereby amended to read as  
18 follows: 72-1397. (a) The state board of education shall not knowingly  
19 issue a license to or renew the license of any person who has been con-  
20 victed of:

- 21 (1) Rape, as defined in K.S.A. 21-3502, and amendments thereto;
- 22 (2) indecent liberties with a child, as defined in K.S.A. 21-3503, and  
23 amendments thereto;
- 24 (3) aggravated indecent liberties with a child, as defined in K.S.A. 21-  
25 3504, and amendments thereto;
- 26 (4) criminal sodomy, as defined in subsection (a)(2) or (a)(3) of K.S.A.  
27 21-3505, and amendments thereto;
- 28 (5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, and  
29 amendments thereto;
- 30 (6) indecent solicitation of a child, as defined in K.S.A. 21-3510, and  
31 amendments thereto;
- 32 (7) aggravated indecent solicitation of a child, as defined in K.S.A.  
33 21-3511, and amendments thereto;
- 34 (8) sexual exploitation of a child, as defined in K.S.A. 21-3516, and  
35 amendments thereto;
- 36 (9) aggravated incest, as defined in K.S.A. 21-3603, and amendments  
37 thereto;
- 38 (10) aggravated endangering a child, as defined in K.S.A. 21-3608a,  
39 and amendments thereto;
- 40 (11) abuse of a child, as defined in K.S.A. 21-3609, and amendments  
41 thereto;
- 42 (12) capital murder, as defined in K.S.A. 21-3439, ~~and amendments~~  
43 ~~thereto prior to its repeal;~~

- 1     ~~(13)~~ *aggravated murder, as defined in section 2, and amendments*  
2 *thereto;*
- 3     ~~(13)~~ *(14) murder in the first degree, as defined in K.S.A. 21-3401,*  
4 *and amendments thereto;*
- 5     ~~(14)~~ *(15) murder in the second degree, as defined in K.S.A. 21-3402,*  
6 *and amendments thereto;*
- 7     ~~(15)~~ *(16) voluntary manslaughter, as defined in K.S.A. 21-3403, and*  
8 *amendments thereto;*
- 9     ~~(16)~~ *(17) involuntary manslaughter, as defined in K.S.A. 21-3404, and*  
10 *amendments thereto;*
- 11     ~~(17)~~ *(18) involuntary manslaughter while driving under the influence*  
12 *of alcohol or drugs, as defined in K.S.A. 21-3442, and amendments*  
13 *thereto;*
- 14     ~~(18)~~ *(19) sexual battery, as defined in K.S.A. 21-3517, and amend-*  
15 *ments thereto, when, at the time the crime was committed, the victim*  
16 *was less than 18 years of age or a student of the person committing such*  
17 *crime;*
- 18     ~~(19)~~ *(20) aggravated sexual battery, as defined in K.S.A. 21-3518, and*  
19 *amendments thereto;*
- 20     ~~(20)~~ *(21) attempt under K.S.A. 21-3301, and amendments thereto, to*  
21 *commit any act specified in this subsection;*
- 22     ~~(21)~~ *(22) conspiracy under K.S.A. 21-3302, and amendments thereto,*  
23 *to commit any act specified in this subsection;*
- 24     ~~(22)~~ *(23) an act in another state or by the federal government that is*  
25 *comparable to any act described in this subsection; or*
- 26     ~~(23)~~ *(24) an offense in effect at any time prior to the effective date*  
27 *of this act that is comparable to an offense as provided in this subsection.*
- 28     (b) Except as provided in subsection (c), the state board of education  
29 shall not knowingly issue a license to or renew the license of any person  
30 who has been convicted of, or has entered into a criminal diversion agree-  
31 ment after having been charged with:
- 32         (1) A felony under K.S.A. 2009 Supp. 21-36a01 through 21-36a17,  
33 and amendments thereto;
- 34         (2) a felony described in any section of article 34 of chapter 21 of the  
35 Kansas Statutes Annotated, other than an act specified in subsection (a),  
36 or a battery, as described in K.S.A. 21-3412, and amendments thereto,  
37 or domestic battery, as described in K.S.A. 21-3412a, and amendments  
38 thereto, if the victim is a minor or student;
- 39         (3) a felony described in any section of article 35 of chapter 21 of the  
40 Kansas Statutes Annotated, other than an act specified in subsection (a);
- 41         (4) any act described in any section of article 36 of chapter 21 of the  
42 Kansas Statutes Annotated, other than an act specified in subsection (a);
- 43         (5) a felony described in article 37 of chapter 21 of the Kansas Stat-

1   utes Annotated;

2       (6) promoting obscenity, as described in K.S.A. 21-4301, and amend-  
3   ments thereto, promoting obscenity to minors, as described in K.S.A. 21-  
4   4301a, and amendments thereto, or promoting to minors obscenity harm-  
5   ful to minors, as described in K.S.A. 21-4301c, and amendments thereto;

6       (7) endangering a child, as defined in K.S.A. 21-3608, and amend-  
7   ments thereto;

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

11      (9) attempt under K.S.A. 21-3301, and amendments thereto, to com-  
12  mit any act specified in this subsection;

13      (10) conspiracy under K.S.A. 21-3302, and amendments thereto, to  
14  commit any act specified in this subsection; or

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

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

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

30      (2) the conduct of the person subsequent to commission of the of-  
31  fense or act;

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

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

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

35  and

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

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

41      (e) The county or district attorney shall file a report with the state  
42  board of education indicating the name, address and social security num-  
43  ber of any person who has been determined to have committed any of-



1 fense or act specified in subsection (a) or (b) or to have entered into a  
2 criminal diversion agreement after having been charged with any offense  
3 or act specified in subsection (b). Such report shall be filed within 30  
4 days of the date of the determination that the person has committed any  
5 such act or entered into any such diversion agreement.

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

9 Sec. 23. K.S.A. 2009 Supp. 75-52,148 is hereby amended to read as  
10 follows: 75-52,148. (a) The department of corrections shall be required  
11 to review and report on the following serious offenses committed by sex  
12 offenders, as defined by K.S.A. 22-4902, and amendments thereto, while  
13 such offenders are in the custody of the secretary of corrections:

14 (1) Murder in the first degree, as provided in K.S.A. 21-3401, and  
15 amendments thereto;

16 (2) murder in the second degree, as provided in K.S.A. 21-3402, and  
17 amendments thereto;

18 (3) capital murder, as provided in K.S.A. 21-3439, ~~and amendments~~  
19 ~~thereto prior to its repeal~~;

20 (4) *aggravated murder, as provided in section 2, and amendments*  
21 *thereto*;

22 ~~(4)~~ (5) rape, as provided in K.S.A. 21-3502, and amendments thereto;

23 ~~(5)~~ (6) aggravated criminal sodomy, as provided in K.S.A. 21-3506,  
24 and amendments thereto;

25 ~~(6)~~ (7) sexual exploitation of a child, as provided in K.S.A. 21-3516,  
26 and amendments thereto;

27 ~~(7)~~ (8) kidnapping as provided in K.S.A. 21-3420, and amendments  
28 thereto;

29 ~~(8)~~ (9) aggravated kidnapping, as provided in K.S.A. 21-3421, and  
30 amendments thereto;

31 ~~(9)~~ (10) criminal restraint, as provided in K.S.A. 21-3424, and amend-  
32 ments thereto;

33 ~~(10)~~ (11) indecent solicitation of a child, as provided in K.S.A. 21-  
34 3510, and amendments thereto;

35 ~~(11)~~ (12) aggravated indecent solicitation of a child, as provided in  
36 K.S.A. 21-3511, and amendments thereto;

37 ~~(12)~~ (13) indecent liberties with a child, as provided in K.S.A. 21-  
38 3503, and amendments thereto;

39 ~~(13)~~ (14) aggravated indecent liberties with a child, as provided in  
40 K.S.A. 21-3504, and amendments thereto;

41 ~~(14)~~ (15) criminal sodomy, as provided in K.S.A. 21-3505, and  
42 amendments thereto;

43 ~~(15)~~ (16) aggravated child abuse, as provided in K.S.A. 21-3609, and

1 amendments thereto;  
2 ~~(16)~~ (17) aggravated robbery, as provided in K.S.A. 21-3427, and  
3 amendments thereto;  
4 ~~(17)~~ (18) burglary, as provided in K.S.A. 21-3715, and amendments  
5 thereto;  
6 ~~(18)~~ (19) aggravated burglary, as provided in K.S.A. 21-3716, and  
7 amendments thereto;  
8 ~~(19)~~ (20) theft, as provided in K.S.A. 21-3701, and amendments  
9 thereto;  
10 ~~(20)~~ (21) vehicular homicide, as provided in K.S.A. 21-3405, and  
11 amendments thereto;  
12 ~~(21)~~ (22) involuntary manslaughter while driving under the influence,  
13 as provided in K.S.A. 21-3442, and amendments thereto; or  
14 ~~(22)~~ (23) stalking, as provided in K.S.A. 21-3438, and amendments  
15 thereto.  
16 (b) The secretary of corrections shall submit such report to the  
17 speaker of the house of representatives and the president of the senate  
18 annually, beginning January 1, 2007.  
19 Sec. 24. K.S.A. 21-3439, 21-3452, 21-4622, 21-4623, 21-4624, 21-  
20 4625, 21-4626, 21-4627, 21-4629, 21-4630, 21-4631, 21-4634, 21-4635,  
21 21-4641, 21-4706, 22-3405, 22-3705 and 22-4210 and K.S.A. 2009 Supp.  
22 21-4619, 22-3717, 22-4902, 38-2255, 38-2271, 38-2312, 38-2365, 39-970,  
23 65-5117, 72-1397 and 75-52,148 are hereby repealed.  
24 Sec. 25. This act shall take effect and be in force from and after its  
25 publication in the statute book.