

**REPORT OF THE JUDICIAL  
COUNCIL DEATH PENALTY  
ADVISORY COMMITTEE**

Approved by the Judicial Council  
December 4, 2009

## BACKGROUND

On May 4, 2009, Senator Tim Owens requested that the Kansas Judicial Council review 2009 Senate Bill 208, which would abolish the death penalty in Kansas. Senator Owens asked that the Council draft a workable bill to address the technical problems that were apparent when the bill was debated by the Senate earlier in 2009. In addition, Senator Owens asked the Council to review questions of cost, constitutionality and the effect of repeal. At its June 2009 meeting, the Judicial Council agreed to undertake the study and assigned the study to its Death Penalty Advisory Committee.

## COMMITTEE MEMBERSHIP

The following persons served on the Judicial Council Death Penalty Advisory Committee during the study:

**Hon. Donald R. Noland**, Chair, Girard, District Court Judge in 11th Judicial District.

**Ron Evans**, Topeka, Chief Defender, Kansas Death Penalty Defense Unit.

**Jeffrey D. Jackson**, Lawrence, Professor at Washburn University School of Law and former consultant on death penalty issues to the Kansas Supreme Court.

**Michael Kaye**, Topeka, Professor at Washburn University School of Law.

**Stephen Morris**, Hugoton, State Senator from the 39th District and Senate President.

**Steven Obermeier**, Olathe, Assistant District Attorney in Johnson County.

**Thomas (Tim) Owens**, Overland Park, State Senator from the 8<sup>th</sup> District, Chair of the Senate Judiciary Committee and member of the Judicial Council.

**Kim T. Parker**, Wichita, Deputy District Attorney in Sedgwick County.

**Patricia Scalia**, Topeka, Executive Director of Kansas Board of Indigents' Defense Services.

**Jason Thompson**, Topeka, Assistant Revisor of Statutes.

**Ron Wurtz**, Topeka, Deputy Federal Public Defender and former Chief Defender, Kansas Death Penalty Defense Unit.

## **SUMMARY**

The Death Penalty Advisory Committee's primary assignment was to review and make recommendations on 2009 SB 208 (Appendix A). The Committee agreed that SB 208 presented a number of technical problems which could not be resolved simply by amending the bill. Instead, the Committee drafted a new bill, which is attached to this report as Appendix B. A discussion of the issues identified and resolved in the redraft of the bill is contained in Section I of this report.

In addition to reviewing SB 208, Senator Owens asked the Advisory Committee to review any constitutional questions relating to those currently awaiting execution versus those convicted of the same offense after abolition of the death penalty. The Committee concluded that prospective repeal of the death penalty would not violate equal protection or the prohibition against ex post facto laws. These issues are addressed in Section II and Appendix D of this report.

Finally, Senator Owens asked the Advisory Committee to review the cost of a death sentence compared to the cost of life in prison without parole. Costs are discussed in Section III of this report.

### **I. Review and Redraft of SB 208**

In reviewing 2009 SB 208 (see Appendix A), the Advisory Committee acknowledged that its role was not to make a policy recommendation about whether the death penalty should be repealed. Rather, the Committee's role was to draft a workable bill that would effectively repeal the death penalty if the legislature decides that is the appropriate policy.

The Committee first reviewed 2009 SB 208, its fiscal note, and written testimony from both proponents and opponents that was submitted during legislative hearings on the bill, including testimony offered by the Attorney General. The Committee also reviewed correspondence from Senator Derek Schmidt setting out his concerns about the bill. A copy of Senator Schmidt's letter and the Committee's specific responses to questions and issues he raised are attached as Appendix C.

The Committee identified a number of technical problems with SB 208 which it attempted to address by drafting a new bill, which is attached to this report as Appendix B. What follows is a discussion of how those technical problems were resolved in the new bill and a description of those issues which present a policy choice for the legislature.

#### **Effective Date of Repeal: New bill, New Section 1.**

The Committee believes that, as originally drafted, Section 1 of 2009 SB 208 is problematic because it would make the effective date of the death penalty repeal dependent on the date of sentencing rather than the date the offense was committed. In other words, if a person has been convicted of capital murder but not yet sentenced before the bill's effective date, that person could not be sentenced to death. Under this framework, a judge would have a great deal of discretion to determine whether a case was death penalty eligible, simply by setting the date of the sentencing hearing. Also, there would inevitably be legal maneuvering by both the prosecution and defense about setting that date.

For these reasons, in the redraft, the Committee changed Section 1 to make the date of the offense the controlling date. This is consistent with the historical practice of making new sentencing laws applicable only to crimes committed on or after their effective date. Under this approach, defendants who are already under a death sentence will remain under a death sentence. In addition, any defendant who is charged with capital murder occurring before July 1, 2010, will still be eligible to receive a death sentence.



## **New crime of “aggravated murder”: New bill, New Section 2.**

The primary concern expressed in Senator Schmidt’s letter was that SB 208 repeals the capital murder statute but fails to clearly define when a defendant may be sentenced to life imprisonment without the possibility of parole. The Committee’s redraft of the bill solves this problem by defining the new crime of “aggravated murder” for which the penalty is imprisonment for life without the possibility of parole. The definition of aggravated murder in Section 2 is identical to the current definition of capital murder found in K.S.A. 21-3439. This means that any crime which was eligible for the death penalty prior to July 1, 2010, would carry a penalty of life imprisonment without the possibility of parole if committed after July 1, 2010.

## **Multiplicity and *State v. Scott*: New bill, New Section 2**

In drafting Section 2, the Committee included language which is intended to directly address the Kansas Supreme Court’s decision in *State v. Scott*, 286 Kan. 54, 183 P.3d 801 (2008). In that case, the court held that two convictions arising out of a double homicide, one for capital murder for the intentional and premeditated killing of more than one person, and the other for premeditated first-degree murder, were improperly multiplicitous. In other words, a defendant could not be convicted of capital murder on the basis of multiple victims and also convicted of first-degree murder for one or more of those multiple victims.

The *Scott* court based its holding on the lack of declared legislative intent to authorize cumulative punishment for multiple victim murders. *Scott*, 286 Kan. at 65-68. If the legislature does intend to authorize cumulative punishment in such a case, the Committee’s recommended language will make that clear. The language is found in Section 2, subsection (c) and reads as follows, “Notwithstanding subsections (2)(a) or (b) of K.S.A. 21-3107, and amendments thereto, when the same conduct of a defendant may establish the commission of aggravated murder and the commission of another crime under the laws of this state, the defendant may be prosecuted and sentenced for each of such crimes.”

This amendment makes clear that the legislature intends cumulative punishment under Section 2. For example, if a defendant commits an intentional and premeditated double homicide, the defendant may be charged with and sentenced for both aggravated murder under Section 2(a)(6) (intentional and premeditated killing of more than one person) and first degree murder. As another example, if a defendant commits an intentional and premeditated murder in the course of a kidnapping for ransom, the defendant may be charged with and sentenced for both aggravated murder under Section 2(a)(1) (intentional and premeditated killing in commission of kidnapping for ransom) and the underlying kidnapping.

On the other hand, if the legislature agrees with the outcome of the *Scott* decision and does not wish to authorize cumulative punishment as described above, subsection (c) of Section 2 should be deleted.

**Definition of Life Without Parole: New bill, New Section 3.**

As originally drafted, 2009 SB 208 would repeal the current definition of life without parole. The Committee believes that the definition of life without parole should be retained, and it appears in the redraft in Section 3. The language is based on current K.S.A. 21-4624(g) and 21-4638.

**Governor's Commutation Powers: New bill, Section 12 amending K.S.A. 22-3705.**

The Committee's redraft amends K.S.A. 22-3705 to clarify the governor's commutation powers where the original sentence is death, life without the possibility of parole, or some other term of imprisonment. The amendments do not significantly change current law, but assume that the governor's power to commute a sentence of life without the possibility of parole should be limited in the same way as the power to commute a sentence of death is limited.

Under the amendments, the governor has the power to commute a death sentence to life imprisonment without parole or any other term of imprisonment not less than 10 years. The governor may commute a

sentence of life imprisonment without parole to a sentence of life or any other term of imprisonment not less than 10 years.

The Committee noted that life imprisonment means something different now than it did when K.S.A. 22-3705 was enacted in 1970. Then, life imprisonment meant parole eligibility after 15 years. K.S.A. 22-3717(b)(3). Now, life imprisonment means parole eligibility after 25 years. K.S.A. 22-3717(b)(1). In addition there is now the possibility of a Hard 40 or Hard 50 sentence. K.S.A. 21-4635.

### **Conforming Amendments: New bill, Sections 4 through 11 and 13 through 23**

The majority of the amendments contained in the redraft are conforming amendments which strike references to capital murder or the death penalty, change some of those references to "capital murder before its repeal," and add new references to "aggravated murder." The effect of these changes is to ensure that the new crime of aggravated murder will be treated in the same manner as capital murder before its repeal. For example, under current law a defendant convicted of capital murder cannot have the conviction of capital murder expunged, is subject to Alexa's Law, and must register under the Offender Registration Act. Under the redraft, a defendant convicted of aggravated murder is subject to exactly the same requirements and limitations. These changes resolve issues 1 through 4 listed on pages 1-2 of Senator Schmidt's letter.

## **II. Constitutionality of Repeal**

As part of its review of 2009 SB 208, Senator Owens asked the Advisory Committee to review any constitutional questions relating to those currently awaiting execution versus those convicted of the same offense after abolition of the death penalty. The Committee concluded there are no constitutional obstacles to a prospective repeal of the death penalty.

The Committee concluded that prospective repeal of the death penalty does not constitute an arbitrary classification or deny a criminal

defendant equal protection of the law. The Committee also concluded that prospective repeal of the death penalty does not violate the prohibition against ex post facto laws, because the Ex Post Facto Clause is implicated only where a law alters the definition of criminal conduct or increases the penalty retroactively. A more detailed discussion of these issues is included in the memorandum attached as Appendix D.

### **III. Costs of the Death Penalty**

Senator Owens asked the Advisory Committee to review the cost of a death sentence compared to the cost of life in prison without parole. First, some background on why death penalty cases are so costly may be helpful.

#### **General Background on Death Penalty Costs**

Death penalty cases are more expensive than non-death prosecutions for many reasons, including higher trial costs, higher appeal costs, potential retrial costs, and lost opportunity costs. The capital case consumes more trial court time and attorney time than the non-capital case beginning with pre-trial preparation. A capital case often takes a full year to come to trial. Even before the prosecutor has given notice that he or she will seek the death penalty, experienced defense counsel have begun preparing the defense. Both prosecution and defense must prepare for two separate trials: a trial to determine guilt and a trial to determine the appropriate penalty.

At the earliest stages of the capital case, competent defense counsel must engage the costly services of investigators, psychological evaluators, and a mitigation specialist. The mitigation specialist is a forensic researcher who will develop an exhaustive "social history" of the defendant. This history will be useful to the defense in both the trial phase and the penalty phase. The United States Supreme Court has ruled that compiling a social history is a requirement of competent representation in death penalty mitigation proceedings, and that a capital defense lawyer who does not have such a report prepared must show that the report would not have

aided in the case or the case may be reversed and a new trial on penalty ordered. *Wiggins v. Smith*, 539 U.S. 510, 123 S. Ct. 2527 (2003). Furthermore, a defendant has an absolute right to present mitigation evidence relevant to leniency in sentencing during the penalty hearing. See *Lockett v. Ohio*, 438 U.S. 586, 98 S. Ct. 2954 (1978).

The capital case requires more lawyers on both the prosecution and defense teams, more experts on both sides, more pre-trial motions, longer jury selection time, and a longer trial. Researchers at Duke University found that a capital murder case takes more than three times longer to try than a non-capital murder case. See P. Cook, "The Costs of Prosecuting Murder Cases in North Carolina," Duke University, Terry Sanford Institute of Public Policy (May 1993). Some consider the capital trial the single most costly element of the capital punishment legal process that extends from arrest through trial to sentencing and possible execution.

The post-conviction process is a long process even with changes in federal law intended to streamline it. The process after trial includes direct appeal to the state supreme court and petition for review to the U.S. Supreme Court. Following denial of Supreme Court review, the inmate may seek state habeas corpus relief. The inmate can then appeal a denial of state habeas relief to the state Supreme Court and to the U.S. Supreme Court. After state proceedings are completed, the inmate may then seek federal habeas corpus relief, and appeal the federal trial court decision to the U.S. Circuit Court of Appeals and the U.S. Supreme Court. If evidentiary hearings are required to decide the issues in the case, the case can be litigated for years.

After an inmate is denied federal habeas corpus relief in the U.S. Supreme Court, and upon issuance of a state death warrant, the inmate may again initiate state or federal court proceedings to avoid execution. The courts may delay an execution to evaluate the new claims. The inmate may also seek clemency or commutation of the death sentence from the governor.

The post-conviction process involves difficult and time-consuming legal and factual issues. There is a nationwide reversal rate of more than

two out of three capital judgments due to serious error. See J. Leibman, *et al.*, "Capital Attrition: Error Rates in Capital Cases 1973-1995," 78 Texas Law Review 1839 (2000). The Leibman study also found that when the cases were retried, over 80% of the defendants received a sentence less than death.

Death penalty costs also impact the courts. State criminal justice systems are run economically. Salaries of those working in the criminal justice system are often modest. Jurors are paid a token sum for their service. Court facilities are usually not elaborate. The cost of the death penalty can weigh heavily on this system and weaken it. Courts at the trial and appellate level may become so busy with capital litigation matters that other court business suffers potential neglect due to lack of time and personnel.

The death penalty process combines high costs of trial, investigation, and appeals. Yet a death penalty proceeding may, and often does, result in a sentence of life in prison rather than the death sentence, either because the judge or jury imposes a sentence less than death or because the death sentence is not carried out. When this happens, taxpayers pay for not only a more costly criminal trial and appeals process, they also pay for years of incarceration in maximum security.

It may take ten to twelve years from conviction for an execution. Kansas has yet to execute a capital defendant since the death penalty was reinstated in 1994.

The more reliable the procedures are that are used by the state to seek and to impose the death penalty, the higher the costs incurred. Higher legal standards for death penalty defense at trial, on appeal, and in post-conviction proceedings, higher pay for lawyers, more time spent by prosecutors to respond to the defense case, and more thorough review by the appellate courts add to the cost. However, these higher legal standards are necessary to insure that an innocent person is not put to death. If they are ignored, the result is likely to be a reversal on appeal and a costly retrial.

The *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, revised edition (February 2003), are recommended national standards of practice developed to ensure high quality legal representation for all persons facing the possible imposition or execution of a death sentence in any jurisdiction. The United States Supreme Court reaffirmed in *Wiggins v. Smith*, 539 U.S. 510, 123 S. Ct. 2527 (2003), that its standard of effective assistance of counsel under the 6<sup>th</sup> Amendment in death penalty cases is influenced by local community standards and the ABA Guidelines. State lawmakers must be aware of Supreme Court case law and the ABA standards when they enact capital legislation.

The standards contained in the ABA Guidelines apply once a person is taken into custody and extend to all stages of every case in which the state or federal government may seek the death penalty, including initial and ongoing investigation, pretrial proceedings, trial, post-conviction review, clemency proceedings, and any connected litigation. In February 2003, these standards were revised upward. They now require membership on the defense team of "at least one mitigation specialist."

The Guidelines also require "high quality representation" in defense of death penalty cases. This is a more demanding standard than the former Guideline standard: "effective assistance." The same standards apply whether the capital defense counsel is appointed or retained. The Guidelines seek to apply at "the moment the client is taken in to custody" in a death eligible case, and funding should begin at this time. At the outset of representation a team of two attorneys, and an investigator, and a mitigation specialist should be assembled. One member of the team should be qualified to screen for mental retardation and mental illness. If counsel is retained and lacks funds to hire such assistants, funds should be supplied by the court. All members of the team, including the non-lawyers, must receive death penalty specific training at least every other year.

So that clients get the necessary quality of representation, the Guidelines recommend that attorneys and other team members should receive "full" funding. Public defenders must receive comparable salaries to the prosecutors' salaries. For private practitioners, the hourly rate

should be the market rate for retained lawyers doing similar work. The commentary to the Guidelines points out that in the criminal justice system, "you get what you pay for" and, therefore, discourages flat fees, caps, and other cost saving methods that could hinder quality representation. The commentary to the Guidelines encourages periodic payment to lawyers rather than requiring counsel to wait until the case is concluded.

## **Death Penalty Costs in Kansas**

In considering the question of death penalty costs, the Advisory Committee reviewed its own previous January 2004 report on costs as well as Post Audit's December 2003 Performance Audit Report, "Costs Incurred for Death Penalty Cases: A K-GOAL Audit of the Department of Corrections." In its 2004 report, the Advisory Committee concluded that the best information relating to what the death penalty costs in Kansas could be obtained from the Post Audit Report.

The Advisory Committee did not have the time or resources to conduct a complete update of either report; however, the Committee was able to obtain some figures that are more current. The 2003 Post Audit report projected costs in three kinds of cases: seven cases where the death penalty was sought and imposed; seven cases where the death penalty was sought but not imposed; and eight first degree murder cases where the death penalty was not sought. At the time of the Post Audit report, actual cost figures did not exist. However, there are now some estimated figures available as to defense costs that have been actually incurred so far.

Committee member Patricia Scalia, Executive Director of the Board of Indigents' Defense Services, provided information about estimated defense costs incurred in the seven cases where the death penalty was sought but not imposed and the eight cases where the death penalty was not sought. See the chart attached as Appendix E. (The cases listed on the chart are the same ones used in the 2003 Post Audit report.) The chart demonstrates that death penalty cases in Kansas have proven more expensive to defend at trial and on appeal than non-death cases.



The figures in the chart at Appendix E were based on the 2003 Post Audit estimates and then adjusted up or down to reflect defense costs incurred between 2003 and October 8, 2009. Defense costs include defense investigators' and attorney' hourly pay, based upon their estimates of the hours they worked on each death case. Defense costs do not include administrative costs. Two of the defendants in death cases, Marsh and Elms, have entered into plea agreements and received life sentences; thus, those cases are completed and no additional costs other than incarceration are likely to be incurred. The other five cases, however, are ongoing and costs will continue to accrue.

### **Incarceration Costs**

The Committee invited Secretary of Corrections Roger Werholtz to attend a meeting to discuss the difference in cost between incarcerating an inmate for life versus putting that inmate to death. A copy of Secretary Werholtz' memorandum regarding operating cost information is attached as Appendix F.

Secretary Werholtz explained that one can calculate the cost of incarcerating an inmate either by looking at the average annual cost per inmate (which includes DOC operating costs) or the marginal cost per inmate. The average annual per capita cost to house an inmate is approximately \$25,000. However, the marginal cost to house one additional inmate is \$2,400 per year. He suggested the latter cost figure is the most realistic one.

Inmates who are under a sentence of death are housed in administrative segregation; there is no separate "death row." Because it is more labor intensive, housing an inmate in administrative segregation costs approximately \$1,000 more per year than housing that inmate in the general population. If an inmate is sentenced to life without parole, even if that inmate was previously sentenced to death, the inmate would be housed in the general population unless the DOC determined that a security concern required the inmate to be housed in administrative segregation.

Post Audit's projected incarceration/execution costs were based in part on the DOC's average annual per capita cost to house an inmate. Secretary Werholtz stated that, while those numbers are not inaccurate, they do not represent the true difference between incarcerating an inmate for life versus putting that inmate to death.

Given the small number of Kansas inmates currently sentenced to death, housing those inmates makes little or no difference to the Department of Corrections' budget. Only if the inmate population increased by a significant amount would the DOC reach a "tipping point" where construction of new bed space would be required.

### **Conclusion re Costs**

If the death penalty were repealed in Kansas pursuant to the bill drafted by the Advisory Committee, it is expected that the state would realize cost savings. However, the Committee recognizes that cost savings alone are not the only consideration in determining whether to repeal the death penalty, and the Committee expresses no opinion regarding whether the death penalty should be repealed.

*As Amended by Senate Committee**Session of 2009***SENATE BILL No. 208**

By Committee on Ways and Means

2-4

10 AN ACT concerning abolition of the death penalty; amending K.S.A. 21-  
 11 3105, 21-4364, 21-4634, 21-4635, 21-4706, 22-3405, 22-3705, 22-3717,  
 12 22-4210, 22-4505 and 22-4506 and K.S.A. 2008 Supp. 21-4619, 22-  
 13 4902, 38-2255, 38-2271, 38-2312, 38-2365, 39-970, 65-5117 and 75-  
 14 52,148 and repealing the existing sections; also repealing K.S.A. 21-  
 15 3439, 21-4622, 21-4623, 21-4624, 21-4627, 21-4629, 21-4630 and  
 16 22-3704.

17  
 18 WHEREAS, Kansas reenacted the death penalty in 1994; and  
 19 WHEREAS, ~~Ten inmates~~ **Inmates** in Kansas are currently under sen-  
 20 tence of death; and

21 WHEREAS, Kansas has not carried out an execution since 1965; and

22 WHEREAS, The estimated median cost of a case in which the death  
 23 sentence was given was approximately 70% more than the median cost  
 24 of a non-death penalty murder case: Now, therefore,

25

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

27 New Section 1. (a) No person shall be sentenced to death after July  
 28 1, 2009.

29 (b) Any person who has been sentenced to death before July 1, 2009,  
 30 may be put to death pursuant to the provisions of article 40 of chapter  
 31 22 of the Kansas Statutes Annotated, and amendments thereto.

32 (c) The provisions of article 40 of chapter 22 of the Kansas Statutes  
 33 Annotated, and amendments thereto, shall apply only to persons who  
 34 have been sentenced to death before July 1, 2009.

35 Sec. 2. K.S.A. 21-3105 is hereby amended to read as follows: 21-  
 36 3105. (a) A crime is an act or omission defined by law and for which,  
 37 upon conviction, ~~a sentence of death~~, imprisonment or fine, or both im-  
 38 prisonment and fine, is authorized or, in the case of a traffic infraction or  
 39 a cigarette or tobacco infraction, a fine is authorized.

40 (b) Crimes are classified as felonies, misdemeanors, traffic infractions  
 41 and cigarette or tobacco infractions.

42 (1) A felony is a crime punishable ~~by death or~~ by imprisonment in  
 43 any state correctional institution or a crime which is defined as a felony

1 by law.

2 (2) A traffic infraction is a violation of any of the statutory provisions  
3 listed in subsection (c) of K.S.A. 8-2118 and amendments thereto.

4 (3) A cigarette or tobacco infraction is a violation of subsection (m)  
5 or (n) of K.S.A. 79-3321 and amendments thereto.

6 (4) All other crimes are misdemeanors.

7 Sec. 3. K.S.A. 2008 Supp. 21-4619 is hereby amended to read as  
8 follows: 21-4619. (a) (1) Except as provided in subsections (b) and (c),  
9 any person convicted in this state of a traffic infraction, cigarette or to-  
10 bacco infraction, misdemeanor or a class D or E felony, or for crimes  
11 committed on or after July 1, 1993, nondrug crimes ranked in severity  
12 levels 6 through 10 or any felony ranked in severity level 4 of the drug  
13 grid, may petition the convicting court for the expungement of such con-  
14 viction or related arrest records if three or more years have elapsed since  
15 the person: (A) Satisfied the sentence imposed; or (B) was discharged  
16 from probation, a community correctional services program, parole, post-  
17 release supervision, conditional release or a suspended sentence.

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

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

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

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

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

43 (4) violating the provisions of the fifth clause of K.S.A. 8-142, and

1 amendments thereto, relating to fraudulent applications or violating the  
2 provisions of a law of another state which is in substantial conformity with  
3 that statute;

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

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

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

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

13 (c) There shall be no expungement of convictions for the following  
14 offenses or of convictions for an attempt to commit any of the following  
15 offenses: (1) Rape as defined in K.S.A. 21-3502, and amendments thereto;  
16 (2) indecent liberties with a child as defined in K.S.A. 21-3503, and  
17 amendments thereto; (3) aggravated indecent liberties with a child as  
18 defined in K.S.A. 21-3504, and amendments thereto; (4) criminal sodomy  
19 as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, and amend-  
20 ments thereto; (5) aggravated criminal sodomy as defined in K.S.A. 21-  
21 3506, and amendments thereto; (6) indecent solicitation of a child as  
22 defined in K.S.A. 21-3510, and amendments thereto; (7) aggravated in-  
23 decent solicitation of a child as defined in K.S.A. 21-3511, and amend-  
24 ments thereto; (8) sexual exploitation of a child as defined in K.S.A. 21-  
25 3516, and amendments thereto; (9) aggravated incest as defined in K.S.A.  
26 21-3603, and amendments thereto; (10) endangering a child as defined  
27 in K.S.A. 21-3608, and amendments thereto; (11) abuse of a child as  
28 defined in K.S.A. 21-3609, and amendments thereto; (12) capital murder  
29 as defined in K.S.A. 21-3439, and amendments thereto prior to its repeal;  
30 (13) murder in the first degree as defined in K.S.A. 21-3401, and amend-  
31 ments thereto; (14) murder in the second degree as defined in K.S.A. 21-  
32 3402, and amendments thereto; (15) voluntary manslaughter as defined  
33 in K.S.A. 21-3403, and amendments thereto; (16) involuntary manslaugh-  
34 ter as defined in K.S.A. 21-3404, and amendments thereto; (17) invol-  
35 untary manslaughter while driving under the influence of alcohol or drugs  
36 as defined in K.S.A. 21-3442, and amendments thereto; (18) sexual bat-  
37 tery as defined in K.S.A. 21-3517, and amendments thereto, when the  
38 victim was less than 18 years of age at the time the crime was committed;  
39 (19) aggravated sexual battery as defined in K.S.A. 21-3518, and amend-  
40 ments thereto; (20) a violation of K.S.A. 8-1567, and amendments thereto,  
41 including any diversion for such violation; (21) a violation of K.S.A. 8-  
42 2,144, and amendments thereto, including any diversion for such viola-  
43 tion; or (22) any conviction for any offense in effect at any time prior to

1 the effective date of this act, that is comparable to any offense as provided  
2 in this subsection.

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

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

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

10 (4) the crime for which the defendant was arrested, convicted or  
11 diverted;

12 (5) the date of the defendant's arrest, conviction or diversion; and

13 (6) the identity of the convicting court, arresting law enforcement  
14 authority or diverting authority. There shall be no docket fee for filing a  
15 petition pursuant to this section. All petitions for expungement shall be  
16 docketed in the original criminal action. Any person who may have rel-  
17 evant information about the petitioner may testify at the hearing. The  
18 court may inquire into the background of the petitioner and shall have  
19 access to any reports or records relating to the petitioner that are on file  
20 with the secretary of corrections or the Kansas parole board.

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

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

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

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

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

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

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

- 1 (A) In any application for licensure as a private detective, private  
2 detective agency, certification as a firearms trainer pursuant to K.S.A.  
3 2008 Supp. 75-7b21, and amendments thereto, or employment as a de-  
4 tective with a private detective agency, as defined by K.S.A. 75-7b01, and  
5 amendments thereto; as security personnel with a private patrol operator,  
6 as defined by K.S.A. 75-7b01, and amendments thereto; or with an insti-  
7 tution, as defined in K.S.A. 76-12a01, and amendments thereto, of the  
8 department of social and rehabilitation services;
- 9 (B) in any application for admission, or for an order of reinstatement,  
10 to the practice of law in this state;
- 11 (C) to aid in determining the petitioner's qualifications for employ-  
12 ment with the Kansas lottery or for work in sensitive areas within the  
13 Kansas lottery as deemed appropriate by the executive director of the  
14 Kansas lottery;
- 15 (D) to aid in determining the petitioner's qualifications for executive  
16 director of the Kansas racing and gaming commission, for employment  
17 with the commission or for work in sensitive areas in parimutuel racing  
18 as deemed appropriate by the executive director of the commission, or  
19 to aid in determining qualifications for licensure or renewal of licensure  
20 by the commission;
- 21 (E) to aid in determining the petitioner's qualifications for the fol-  
22 lowing under the Kansas expanded lottery act: (i) Lottery gaming facility  
23 manager or prospective manager, racetrack gaming facility manager or  
24 prospective manager, licensee or certificate holder; or (ii) an officer, di-  
25 rector, employee, owner, agent or contractor thereof;
- 26 (F) upon application for a commercial driver's license under K.S.A.  
27 8-2,125 through 8-2,142, and amendments thereto;
- 28 (G) to aid in determining the petitioner's qualifications to be an em-  
29 ployee of the state gaming agency;
- 30 (H) to aid in determining the petitioner's qualifications to be an em-  
31 ployee of a tribal gaming commission or to hold a license issued pursuant  
32 to a tribal-state gaming compact;
- 33 (I) in any application for registration as a broker-dealer, agent, in-  
34 vestment adviser or investment adviser representative all as defined in  
35 K.S.A. 17-12a102, and amendments thereto;
- 36 (J) in any application for employment as a law enforcement officer as  
37 defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; or
- 38 (K) for applications received on and after July 1, 2006, to aid in de-  
39 termining the petitioner's qualifications for a license to carry a concealed  
40 weapon pursuant to the personal and family protection act, K.S.A. 2008  
41 Supp. 75-7c01 et seq., and amendments thereto;
- 42 (3) the court, in the order of expungement, may specify other cir-  
43 cumstances under which the conviction is to be disclosed;

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

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

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

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

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

29 (1) The person whose record was expunged;

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

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

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

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

43 (6) a prosecuting attorney, and such request is accompanied by a



1 statement that the request is being made in conjunction with a prosecu-  
2 tion of an offense that requires a prior conviction as one of the elements  
3 of such offense;

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

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

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

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

29 (11) the Kansas sentencing commission;

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

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

41 (14) the Kansas commission on peace officers' standards and training  
42 and the request is accompanied by a statement that the request is being  
43 made to aid in determining certification eligibility as a law enforcement

- 1 officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;
- 2 (15) a law enforcement agency and the request is accompanied by a  
3 statement that the request is being made to aid in determining eligibility  
4 for employment as a law enforcement officer as defined by K.S.A. 22-  
5 2202, and amendments thereto; or
- 6 (16) the attorney general and the request is accompanied by a state-  
7 ment that the request is being made to aid in determining qualifications  
8 for a license to carry a concealed weapon pursuant to the personal and  
9 family protection act.
- 10 Sec. 4. K.S.A. 21-4634 is hereby amended to read as follows: 21-  
11 4634. (a) If a defendant is convicted of the crime of ~~capital murder and~~  
12 ~~a sentence of death is not imposed, or if a defendant is convicted of the~~  
13 ~~crime of murder in the first degree based upon the finding of premedi-~~  
14 ~~tated murder or an offense for which the sentence is life in prison without~~  
15 ~~the possibility of parole pursuant to K.S.A. 21-4635, and amendments~~  
16 ~~thereto~~, the defendant's counsel or the director of the correctional insti-  
17 tution or sheriff having custody of the defendant may request a deter-  
18 mination by the court of whether the defendant is mentally retarded. If  
19 the court determines that there is not sufficient reason to believe that the  
20 defendant is mentally retarded, the court shall so find and the defendant  
21 shall be sentenced in accordance with K.S.A. 21-4635 through 21-4638,  
22 *and amendments thereto*. If the court determines that there is sufficient  
23 reason to believe that the defendant is mentally retarded, the court shall  
24 conduct a hearing to determine whether the defendant is mentally  
25 retarded.
- 26 (b) At the hearing, the court shall determine whether the defendant  
27 is mentally retarded. The court shall order a psychiatric or psychological  
28 examination of the defendant. For that purpose, the court shall appoint  
29 two licensed physicians or licensed psychologists, or one of each, qualified  
30 by training and practice to make such examination, to examine the de-  
31 fendant and report their findings in writing to the judge within 10 days  
32 after the order of examination is issued. The defendant shall have the  
33 right to present evidence and cross-examine any witnesses at the hearing.  
34 No statement made by the defendant in the course of any examination  
35 provided for by this section, whether or not the defendant consents to  
36 the examination, shall be admitted in evidence against the defendant in  
37 any criminal proceeding.
- 38 (c) If, at the conclusion of a hearing pursuant to this section, the court  
39 determines that the defendant is not mentally retarded, the defendant  
40 shall be sentenced in accordance with K.S.A. 21-4635 through 21-4638,  
41 *and amendments thereto*.
- 42 (d) If, at the conclusion of a hearing pursuant to this section, the court  
43 determines that the defendant is mentally retarded, the court shall sen-

1 tence the defendant as otherwise provided by law, and no mandatory term  
2 of imprisonment shall be imposed hereunder.

3 (e) ~~Unless otherwise ordered by the court for good cause shown, the~~  
4 ~~provisions of this section shall not apply if it has been determined, pur-~~  
5 ~~suant to K.S.A. 21-4622 and amendments thereto, that the defendant is~~  
6 ~~not mentally retarded.~~

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

12 Sec. 5. K.S.A. 21-4635 is hereby amended to read as follows: 21-  
13 4635(a) ~~Except as provided in K.S.A. 21-4622, 21-4623 and 21-4634 and~~  
14 ~~amendments thereto, if a defendant is convicted of the crime of capital~~  
15 ~~murder and a sentence of death is not imposed pursuant to subsection~~  
16 ~~(c) of K.S.A. 21-4624, and amendments thereto, or requested pursuant~~  
17 ~~to subsection (a) or (b) of K.S.A. 21-4624, and amendments thereto, the~~  
18 ~~defendant shall be sentenced to life without the possibility of parole.~~

19 —(b) *If a defendant is convicted of any of the following crimes, the*  
20 *defendant shall be sentenced to life in prison without the possibility of*  
21 *parole:*

22 (1) *The intentional and premeditated killing of any person in the com-*  
23 *mission of kidnapping, as defined in K.S.A. 21-3420, and amendments*  
24 *thereto, or aggravated kidnapping, as defined in K.S.A. 21-3421, and*  
25 *amendments thereto, when the kidnapping or aggravated kidnapping was*  
26 *committed with the intent to hold such person for ransom;*

27 (2) *the intentional and premeditated killing of any person pursuant*  
28 *to a contract or agreement to kill such person or being a party to the*  
29 *contract or agreement pursuant to which such person is killed;*

30 (3) *the intentional and premeditated killing of any person by an in-*  
31 *mate or prisoner confined in a state correctional institution, community*  
32 *correctional institution or jail or while in the custody of an officer or*  
33 *employee of a state correctional institution, community correctional in-*  
34 *stitution or jail;*

35 (4) *the intentional and premeditated killing of the victim of one of the*  
36 *following crimes in the commission of, or subsequent to, such crime: Rape,*  
37 *as defined in K.S.A. 21-3502, and amendments thereto, criminal sodomy,*  
38 *as defined in subsections (a)(2) or (a)(3) of K.S.A. 21-3505, and amend-*  
39 *ments thereto, aggravated criminal sodomy, as defined in K.S.A. 21-3506,*  
40 *and amendments thereto, or any attempt at rape, criminal sodomy or*  
41 *aggravated criminal sodomy, as defined in K.S.A. 21-3301, and amend-*  
42 *ments thereto;*

43 (5) *the intentional and premeditated killing of a law enforcement of-*

1 *ficer, as defined in K.S.A. 21-3110, and amendments thereto;*  
2 (6) *the intentional and premeditated killing of more than one person*  
3 *as a part of the same act or transaction or in two or more acts or trans-*  
4 *actions connected together or constituting parts of a common scheme or*  
5 *course of conduct; or*  
6 (7) *the intentional and premeditated killing of a child under the age*  
7 *of 14 in the commission of kidnapping, as defined in K.S.A. 21-3420, and*  
8 *amendments thereto, or aggravated kidnapping, as defined in K.S.A. 21-*  
9 *3421, and amendments thereto, when the kidnapping or aggravated kid-*  
10 *napping was committed with intent to commit a sex offense upon or with*  
11 *the child or with intent that the child commit or submit to a sex offense.*  
12 (b) *For purposes of subsection (a), "sex offense" means rape, as de-*  
13 *fined in K.S.A. 21-3502, and amendments thereto, aggravated indecent*  
14 *liberties with a child, as defined in K.S.A. 21-3504, and amendments*  
15 *thereto, aggravated criminal sodomy, as defined in K.S.A. 21-3506, and*  
16 *amendments thereto, prostitution, as defined in K.S.A. 21-3512, and*  
17 *amendments thereto, promoting prostitution, as defined in K.S.A. 21-*  
18 *3513, and amendments thereto, or sexual exploitation of a child, as defined*  
19 *in K.S.A. 21-3516, and amendments thereto.*  
20 (c) *If a defendant is convicted of murder in the first degree based*  
21 *upon the finding of premeditated murder, the court shall determine*  
22 *whether the defendant shall be required to serve a mandatory term of*  
23 *imprisonment of 40 years or for crimes committed on and after July 1,*  
24 *1999, a mandatory term of imprisonment of 50 years or sentenced as*  
25 *otherwise provided by law.*  
26 (e) (d) *In order to make such determination, the court may be pre-*  
27 *sented evidence concerning any matter that the court deems relevant to*  
28 *the question of sentence and shall include matters relating to any of the*  
29 *aggravating circumstances enumerated in K.S.A. 21-4636, and amend-*  
30 *ments thereto, and any mitigating circumstances. Any such evidence*  
31 *which the court deems to have probative value may be received regardless*  
32 *of its admissibility under the rules of evidence, provided that the defend-*  
33 *ant is accorded a fair opportunity to rebut any hearsay statements. Only*  
34 *such evidence of aggravating circumstances as the state has made known*  
35 *to the defendant prior to the sentencing shall be admissible and no evi-*  
36 *dence secured in violation of the constitution of the United States or of*  
37 *the state of Kansas shall be admissible. No testimony by the defendant*  
38 *at the time of sentencing shall be admissible against the defendant at any*  
39 *subsequent criminal proceeding. At the conclusion of the evidentiary*  
40 *presentation, the court shall allow the parties a reasonable period of time*  
41 *in which to present oral argument.*  
42 (d) (e) *If the court finds that one or more of the aggravating circum-*  
43 *stances enumerated in K.S.A. 21-4636, and amendments thereto, exist*

1 and, further, that the existence of such aggravating circumstances is not  
2 outweighed by any mitigating circumstances which are found to exist, the  
3 defendant shall be sentenced pursuant to K.S.A. 21-4638, and amend-  
4 ments thereto; otherwise, the defendant shall be sentenced as provided  
5 by law. The court shall designate, in writing, the statutory aggravating  
6 circumstances which it found. The court may make the findings required  
7 by this subsection for the purpose of determining whether to sentence a  
8 defendant pursuant to K.S.A. 21-4638, and amendments thereto, not-  
9 withstanding contrary findings made by the jury or court pursuant to  
10 subsection (e) of K.S.A. 21-4624, and amendments thereto for the pur-  
11 pose of determining whether to sentence such defendant to death.

12 Sec. 6. K.S.A. 21-4706 is hereby amended to read as follows: 21-  
13 4706. (a) For crimes committed on or after July 1, 1993, the sentences  
14 of imprisonment shall represent the time a person shall actually serve,  
15 subject to a reduction of up to 15% of the primary sentence for good  
16 time as authorized by law. For crimes committed on or after January 1,  
17 2008, the sentences of imprisonment shall represent the time a person  
18 shall actually serve, subject to a reduction of up to 20% of the primary  
19 sentence for good time for drug severity level 3 or 4 or nondrug severity  
20 level 7 through 10 crimes and a reduction for program credit as author-  
21 ized by K.S.A. 21-4722, and amendments thereto.

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

23 (c) Violations of K.S.A. 21-3401, ~~21-3439~~, 21-3449, 21-3450 and 21-  
24 3801, and amendments thereto, are off-grid crimes for the purpose of  
25 sentencing. ~~Except as otherwise provided by K.S.A. 21-4622 through 21-~~  
26 ~~4627, and 21-4629 through 21-4631, and amendments thereto,~~ The sen-  
27 tence shall be imprisonment for life and shall not be subject to statutory  
28 provisions for suspended sentence, community service or probation.

29 (d) As identified in K.S.A. 21-3447, 21-3502, 21-3504, 21-3506, 21-  
30 3513 and 21-3516, and amendments thereto, if the offender is 18 years  
31 of age or older and the victim is under 14 years of age, such violations  
32 are off-grid crimes for the purposes of sentencing. Except as provided in  
33 K.S.A. 21-4642, and amendments thereto, the sentence shall be impris-  
34 onment for life pursuant to K.S.A. 21-4643, and amendments thereto.

35 Sec. 7. K.S.A. 22-3405 is hereby amended to read as follows: 22-  
36 3405. ~~(1)~~ (a) The defendant in a felony case shall be present at the ar-  
37 raignment, at every stage of the trial including the impaneling of the jury  
38 and the return of the verdict, and at the imposition of sentence, except  
39 as otherwise provided by law. ~~In prosecutions for crimes not punishable~~  
40 ~~by death,~~ The defendant's voluntary absence after the trial has been com-  
41 menced in such person's presence shall not prevent continuing the trial  
42 to and including the return of the verdict. A corporation may appear by  
43 counsel for all purposes.

1     ~~(2)~~ (b) The defendant must be present, either personally or by coun-  
2     sel, at every stage of the trial of traffic infraction, cigarette or tobacco  
3     infraction and misdemeanor cases.

4     Sec. 8. K.S.A. 22-3705 is hereby amended to read as follows: 22-  
5     3705. The governor may, when ~~he~~ *the governor* deems it proper or ad-  
6     visable, commute a sentence in any criminal case by reducing the penalty  
7     as follows:

8     (a) If the sentence is death *and such person was sentenced prior to*  
9     *the repeal of the sentence of death on July 1, 2007 2009*, to imprisonment  
10    for life or for any term not less than ten years;

11    (b) If the sentence is to imprisonment, by reducing the duration of  
12    such imprisonment;

13    (c) If the sentence is a fine, by reducing the amount thereof;

14    (d) If the sentence is both imprisonment and fine, by reducing either  
15    or both.

16    Sec. 9. K.S.A. 22-3717 is hereby amended to read as follows: 22-  
17    3717. (a) Except as otherwise provided by this section; K.S.A. 1993 Supp.  
18    21-4628 prior to its repeal; K.S.A. 21-4635 through 21-4638, and amend-  
19    ments thereto; K.S.A. 8-1567, and amendments thereto; K.S.A. 21-4642,  
20    and amendments thereto; and K.S.A. 21-4624, ~~and amendments thereto~~  
21    *prior to its repeal*, an inmate, including an inmate sentenced pursuant to  
22    K.S.A. 21-4618, and amendments thereto, shall be eligible for parole after  
23    serving the entire minimum sentence imposed by the court, less good  
24    time credits.

25    (b) (1) Except as provided by K.S.A. 21-4635 through 21-4638, and  
26    amendments thereto, an inmate sentenced to imprisonment for the crime  
27    of capital murder *prior to its repeal*, or an inmate sentenced for the crime  
28    of murder in the first degree based upon a finding of premeditated mur-  
29    der, committed on or after July 1, 1994, shall be eligible for parole after  
30    serving 25 years of confinement, without deduction of any good time  
31    credits.

32    (2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993  
33    Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638,  
34    and amendments thereto, an inmate sentenced to imprisonment for an  
35    off-grid offense committed on or after July 1, 1993, but prior to July 1,  
36    1999, shall be eligible for parole after serving 15 years of confinement,  
37    without deduction of any good time credits and an inmate sentenced to  
38    imprisonment for an off-grid offense committed on or after July 1, 1999,  
39    shall be eligible for parole after serving 20 years of confinement without  
40    deduction of any good time credits.

41    (3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its  
42    repeal, an inmate sentenced for a class A felony committed before July  
43    1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, and

1 amendments thereto, shall be eligible for parole after serving 15 years of  
2 confinement, without deduction of any good time credits.

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

8 (5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-  
9 4643, and amendments thereto, committed on or after July 1, 2006, shall  
10 be eligible for parole after serving the mandatory term of imprisonment  
11 without deduction of any good time credits.

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

15 (A) The aggregate minimum sentences, as determined pursuant to  
16 K.S.A. 21-4608, and amendments thereto, less good time credits for those  
17 crimes which are not class A felonies; and

18 (B) an additional 15 years, without deduction of good time credits,  
19 for each crime which is a class A felony.

20 (2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-  
21 4643, and amendments thereto, for crimes committed on or after July 1,  
22 2006, the inmate shall be eligible for parole after serving the mandatory  
23 term of imprisonment.

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

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

34 (B) Except as provided in subparagraphs (D) and (E), persons sen-  
35 tenced for nondrug severity levels 5 and 6 crimes and drug severity level  
36 3 crimes must serve 24 months, plus the amount of good time and pro-  
37 gram credit earned and retained pursuant to K.S.A. 21-4722, and amend-  
38 ments thereto, on postrelease supervision.

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

- 1 (D) (i) The sentencing judge shall impose the postrelease supervi-  
2 sion period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C),  
3 unless the judge finds substantial and compelling reasons to impose a  
4 departure based upon a finding that the current crime of conviction was  
5 sexually motivated. In that event, departure may be imposed to extend  
6 the postrelease supervision to a period of up to 60 months.
- 7 (ii) If the sentencing judge departs from the presumptive postrelease  
8 supervision period, the judge shall state on the record at the time of  
9 sentencing the substantial and compelling reasons for the departure. De-  
10 partures in this section are subject to appeal pursuant to K.S.A. 21-4721,  
11 and amendments thereto.
- 12 (iii) In determining whether substantial and compelling reasons exist,  
13 the court shall consider:
- 14 (a) Written briefs or oral arguments submitted by either the defend-  
15 ant or the state;
- 16 (b) any evidence received during the proceeding;
- 17 (c) the presentence report, the victim's impact statement and any  
18 psychological evaluation as ordered by the court pursuant to subsection  
19 (e) of K.S.A. 21-4714, and amendments thereto; and
- 20 (d) any other evidence the court finds trustworthy and reliable.
- 21 (iv) The sentencing judge may order that a psychological evaluation  
22 be prepared and the recommended programming be completed by the  
23 offender. The department of corrections or the parole board shall ensure  
24 that court ordered sex offender treatment be carried out.
- 25 (v) In carrying out the provisions of subparagraph (d)(1)(D), the court  
26 shall refer to K.S.A. 21-4718, and amendments thereto.
- 27 (vi) Upon petition, the parole board may provide for early discharge  
28 from the postrelease supervision period upon completion of court or-  
29 dered programs and completion of the presumptive postrelease super-  
30 vision period, as determined by the crime of conviction, pursuant to sub-  
31 paragraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from  
32 postrelease supervision is at the discretion of the parole board.
- 33 (vii) Persons convicted of crimes deemed sexually violent or sexually  
34 motivated, shall be registered according to the offender registration act,  
35 K.S.A. 22-4901 through 22-4910, and amendments thereto.
- 36 (viii) Persons convicted of K.S.A. 21-3510 or 21-3511, and amend-  
37 ments thereto, shall be required to participate in a treatment program  
38 for sex offenders during the postrelease supervision period.
- 39 (E) The period of postrelease supervision provided in subparagraphs  
40 (A) and (B) may be reduced by up to 12 months and the period of post-  
41 release supervision provided in subparagraph (C) may be reduced by up  
42 to six months based on the offender's compliance with conditions of su-  
43 pervision and overall performance while on postrelease supervision. The



1 reduction in the supervision period shall be on an earned basis pursuant  
2 to rules and regulations adopted by the secretary of corrections.

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

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

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

13 (A) Rape, K.S.A. 21-3502, and amendments thereto;

14 (B) indecent liberties with a child, K.S.A. 21-3503, and amendments  
15 thereto;

16 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, and  
17 amendments thereto;

18 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505,  
19 and amendments thereto;

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

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

24 (G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and  
25 amendments thereto;\*

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

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

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

31 (K) 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.

34 "Sexually motivated" means that one of the purposes for which the  
35 defendant committed the crime was for the purpose of the defendant's  
36 sexual gratification.

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

1 (f) If a person is sentenced to prison for a crime committed on or  
2 after July 1, 1993, while on probation, parole, conditional release or in a  
3 community corrections program, for a crime committed prior to July 1,  
4 1993, and the person is not eligible for retroactive application of the  
5 sentencing guidelines and amendments thereto pursuant to K.S.A. 21-  
6 4724, and amendments thereto, the new sentence shall not be aggregated  
7 with the old sentence, but shall begin when the person is paroled or  
8 reaches the conditional release date on the old sentence. If the offender  
9 was past the offender's conditional release date at the time the new of-  
10 fense was committed, the new sentence shall not be aggregated with the  
11 old sentence but shall begin when the person is ordered released by the  
12 Kansas parole board or reaches the maximum sentence expiration date  
13 on the old sentence, whichever is earlier. The new sentence shall then  
14 be served as otherwise provided by law. The period of postrelease su-  
15 pervision shall be based on the new sentence, except that those offenders  
16 whose old sentence is a term of imprisonment for life, imposed pursuant  
17 to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate  
18 sentence with a maximum term of life imprisonment, for which there is  
19 no conditional release or maximum sentence expiration date, shall remain  
20 on postrelease supervision for life or until discharged from supervision  
21 by the Kansas parole board.

22 (g) Subject to the provisions of this section, the Kansas parole board  
23 may release on parole those persons confined in institutions who are el-  
24 igible for parole when: (1) The board believes that the inmate should be  
25 released for hospitalization, for deportation or to answer the warrant or  
26 other process of a court and is of the opinion that there is reasonable  
27 probability that the inmate can be released without detriment to the com-  
28 munity or to the inmate; or (2) the secretary of corrections has reported  
29 to the board in writing that the inmate has satisfactorily completed the  
30 programs required by any agreement entered under K.S.A. 75-5210a, and  
31 amendments thereto, or any revision of such agreement, and the board  
32 believes that the inmate is able and willing to fulfill the obligations of a  
33 law abiding citizen and is of the opinion that there is reasonable proba-  
34 bility that the inmate can be released without detriment to the community  
35 or to the inmate. Parole shall not be granted as an award of clemency and  
36 shall not be considered a reduction of sentence or a pardon.

37 (h) The Kansas parole board shall hold a parole hearing at least the  
38 month prior to the month an inmate will be eligible for parole under  
39 subsections (a), (b) and (c). At least the month preceding the parole hear-  
40 ing, the county or district attorney of the county where the inmate was  
41 convicted shall give written notice of the time and place of the public  
42 comment sessions for the inmate to any victim of the inmate's crime who  
43 is alive and whose address is known to the county or district attorney or,

1 if the victim is deceased, to the victim's family if the family's address is  
2 known to the county or district attorney. Except as otherwise provided,  
3 failure to notify pursuant to this section shall not be a reason to postpone  
4 a parole hearing. In the case of any inmate convicted of an off-grid felony  
5 or a class A felony the secretary of corrections shall give written notice  
6 of the time and place of the public comment session for such inmate at  
7 least one month preceding the public comment session to any victim of  
8 such inmate's crime or the victim's family pursuant to K.S.A. 74-7338,  
9 and amendments thereto. If notification is not given to such victim or  
10 such victim's family in the case of any inmate convicted of an off-grid  
11 felony or a class A felony, the board shall postpone a decision on parole  
12 of the inmate to a time at least 30 days after notification is given as  
13 provided in this section. Nothing in this section shall create a cause of  
14 action against the state or an employee of the state acting within the scope  
15 of the employee's employment as a result of the failure to notify pursuant  
16 to this section. If granted parole, the inmate may be released on parole  
17 on the date specified by the board, but not earlier than the date the  
18 inmate is eligible for parole under subsections (a), (b) and (c). At each  
19 parole hearing and, if parole is not granted, at such intervals thereafter  
20 as it determines appropriate, the Kansas parole board shall consider: (1)  
21 Whether the inmate has satisfactorily completed the programs required  
22 by any agreement entered under K.S.A. 75-5210a, and amendments  
23 thereto, or any revision of such agreement; and (2) all pertinent infor-  
24 mation regarding such inmate, including, but not limited to, the circum-  
25 stances of the offense of the inmate; the presentence report; the previous  
26 social history and criminal record of the inmate; the conduct, employ-  
27 ment, and attitude of the inmate in prison; the reports of such physical  
28 and mental examinations as have been made, including, but not limited  
29 to, risk factors revealed by any risk assessment of the inmate; comments  
30 of the victim and the victim's family including in person comments, con-  
31 temporaneous comments and prerecorded comments made by any tech-  
32 nological means; comments of the public; official comments; any rec-  
33 ommendation by the staff of the facility where the inmate is incarcerated;  
34 proportionality of the time the inmate has served to the sentence a person  
35 would receive under the Kansas sentencing guidelines for the conduct  
36 that resulted in the inmate's incarceration; and capacity of state correc-  
37 tional institutions.

38 (i) In those cases involving inmates sentenced for a crime committed  
39 after July 1, 1993, the parole board will review the inmates proposed  
40 release plan. The board may schedule a hearing if they desire. The board  
41 may impose any condition they deem necessary to insure public safety,  
42 aid in the reintegration of the inmate into the community, or items not  
43 completed under the agreement entered into under K.S.A. 75-5210a, and

1 amendments thereto. The board may not advance or delay an inmate's  
2 release date. Every inmate while on postrelease supervision shall remain  
3 in the legal custody of the secretary of corrections and is subject to the  
4 orders of the secretary.

5 (j) Before ordering the parole of any inmate, the Kansas parole board  
6 shall have the inmate appear before [\*] either in person or via a video  
7 conferencing format and shall interview the inmate unless impractical  
8 because of the inmate's physical or mental condition or absence from the  
9 institution. Every inmate while on parole shall remain in the legal custody  
10 of the secretary of corrections and is subject to the orders of the secretary.  
11 Whenever the Kansas parole board formally considers placing an inmate  
12 on parole and no agreement has been entered into with the inmate under  
13 K.S.A. 75-5210a, and amendments thereto, the board shall notify the  
14 inmate in writing of the reasons for not granting parole. If an agreement  
15 has been entered under K.S.A. 75-5210a, and amendments thereto, and  
16 the inmate has not satisfactorily completed the programs specified in the  
17 agreement, or any revision of such agreement, the board shall notify the  
18 inmate in writing of the specific programs the inmate must satisfactorily  
19 complete before parole will be granted. If parole is not granted only  
20 because of a failure to satisfactorily complete such programs, the board  
21 shall grant parole upon the secretary's certification that the inmate has  
22 successfully completed such programs. If an agreement has been entered  
23 under K.S.A. 75-5210a, and amendments thereto, and the secretary of  
24 corrections has reported to the board in writing that the inmate has sat-  
25 isfactorily completed the programs required by such agreement, or any  
26 revision thereof, the board shall not require further program participa-  
27 tion. However, if the board determines that other pertinent information  
28 regarding the inmate warrants the inmate's not being released on parole,  
29 the board shall state in writing the reasons for not granting the parole. If  
30 parole is denied for an inmate sentenced for a crime other than a class A  
31 or class B felony or an off-grid felony, the board shall hold another parole  
32 hearing for the inmate not later than one year after the denial unless the  
33 parole board finds that it is not reasonable to expect that parole would  
34 be granted at a hearing if held in the next three years or during the interim  
35 period of a deferral. In such case, the parole board may defer subsequent  
36 parole hearings for up to three years but any such deferral by the board  
37 shall require the board to state the basis for its findings. If parole is denied  
38 for an inmate sentenced for a class A or class B felony or an off-grid  
39 felony, the board shall hold another parole hearing for the inmate not  
40 later than three years after the denial unless the parole board finds that  
41 it is not reasonable to expect that parole would be granted at a hearing if  
42 held in the next 10 years or during the interim period of a deferral. In  
43 such case, the parole board may defer subsequent parole hearings for up

1 to 10 years but any such deferral shall require the board to state the basis  
2 for its findings.

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

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

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

17 (1) Unless it finds compelling circumstances which would render a  
18 plan of payment unworkable, shall order as a condition of parole or post-  
19 release supervision that the parolee or the person on postrelease super-  
20 vision pay any transportation expenses resulting from returning the pa-  
21 rolee or the person on postrelease supervision to this state to answer  
22 criminal charges or a warrant for a violation of a condition of probation,  
23 assignment to a community correctional services program, parole, con-  
24 ditional release or postrelease supervision;

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

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

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

38 (5) unless it finds compelling circumstances which would render a  
39 plan of payment unworkable, shall order that the parolee or person on  
40 postrelease supervision reimburse the state for all or part of the expend-  
41 itures by the state board of indigents' defense services to provide counsel  
42 and other defense services to the person. In determining the amount and  
43 method of payment of such sum, the parole board shall take account of

1 the financial resources of the person and the nature of the burden that  
2 the payment of such sum will impose. Such amount shall not exceed the  
3 amount claimed by appointed counsel on the payment voucher for indi-  
4 gents' defense services or the amount prescribed by the board of indi-  
5 gents' defense services reimbursement tables as provided in K.S.A. 22-  
6 4522, and amendments thereto, whichever is less, minus any previous  
7 payments for such services.

8 (n) If the court which sentenced an inmate specified at the time of  
9 sentencing the amount and the recipient of any restitution ordered as a  
10 condition of parole or postrelease supervision, the Kansas parole board  
11 shall order as a condition of parole or postrelease supervision that the  
12 inmate pay restitution in the amount and manner provided in the journal  
13 entry unless the board finds compelling circumstances which would ren-  
14 der a plan of restitution unworkable.

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

19 (p) When an inmate is to be released on postrelease supervision, the  
20 secretary, within 30 days prior to release, shall provide the county or  
21 district attorney of the county where the inmate was sentenced written  
22 notice of the release date.

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

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

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

36 (t) For offenders sentenced prior to the effective date of this act who  
37 are eligible for modification of their postrelease supervision obligation,  
38 the department of corrections shall modify the period of postrelease su-  
39 pervision as provided for by this section for offenders convicted of severity  
40 level 9 and 10 crimes on the sentencing guidelines grid for nondrug  
41 crimes and severity level 4 crimes on the sentencing guidelines grid for  
42 drug crimes on or before September 1, 2000; for offenders convicted of  
43 severity level 7 and 8 crimes on the sentencing guidelines grid for nondrug

1 crimes on or before November 1, 2000; and for offenders convicted of  
2 severity level 5 and 6 crimes on the sentencing guidelines grid for nondrug  
3 crimes and severity level 3 crimes on the sentencing guidelines grid for  
4 drug crimes on or before January 1, 2001.

5 (u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-  
6 4643, and amendments thereto, for crimes committed on or after July 1,  
7 2006, shall be placed on parole for life and shall not be discharged from  
8 supervision by the Kansas parole board. When the board orders the parole  
9 of an inmate pursuant to this subsection, the board shall order as a con-  
10 dition of parole that the inmate be electronically monitored for the du-  
11 ration of the inmate's natural life.

12 (v) Whenever the Kansas parole board or the court orders a person  
13 to be electronically monitored, the board or court shall order the person  
14 to reimburse the state for all or part of the cost of such monitoring. In  
15 determining the amount and method of payment of such sum, the board  
16 or court shall take account of the financial resources of the person and  
17 the nature of the burden that the payment of such sum will impose.

18 Sec. 10. K.S.A. 22-4210 is hereby amended to read as follows: 22-  
19 4210. (a) If a person confined in a penal institution in any other state may  
20 be a material witness in a criminal action pending in a court of record or  
21 in a grand jury investigation in this state, a judge of the court may certify  
22 (1) that there is a criminal proceeding or investigation by a grand jury or  
23 a criminal action pending in the court, (2) that a person who is confined  
24 in a penal institution in the other state may be a material witness in the  
25 proceeding, investigation, or action, and (3) that ~~his~~ *the person's* presence  
26 will be required during a specified time. The certificate shall be presented  
27 to a judge of a court of record in the other state having jurisdiction over  
28 the prisoner confined, and a notice shall be given to the attorney general  
29 of the state in which the prisoner is confined.

30 (b) This act does not apply to any person in this state confined as  
31 mentally ill; ~~or in need of mental treatment; or under sentence of death.~~

32 Sec. 11. K.S.A. 22-4505 is hereby amended to read as follows: 22-  
33 4505. (a) When a defendant has been convicted in the district court of  
34 any felony, the court shall inform the defendant of such defendant's right  
35 to appeal the conviction to the appellate court having jurisdiction and that  
36 if the defendant is financially unable to pay the costs of such appeal such  
37 defendant may request the court to appoint an attorney to represent the  
38 defendant on appeal and to direct that the defendant be supplied with a  
39 transcript of the trial record.

40 (b) If the defendant files an affidavit stating that the defendant in-  
41 tends to take an appeal in the case and if the court determines, as provided  
42 in K.S.A. 22-4504, and amendments thereto, that the defendant is not  
43 financially able to employ counsel, the court shall appoint counsel from

1 the panel for indigents' defense services or otherwise in accordance with  
2 the applicable system for providing legal defense services for indigent  
3 persons prescribed by the state board of indigents' defense services, to  
4 represent the defendant and to perfect and handle the appeal. If the  
5 defendant files a verified motion for transcript stating that a transcript of  
6 the trial record is necessary to enable the defendant to prosecute the  
7 appeal and that the defendant is not financially able to pay the cost of  
8 procuring such transcript, and if the court finds that the statements con-  
9 tained therein are true, the court shall order that such transcript be sup-  
10 plied to the defendant as provided in K.S.A. 22-4509, and amendments  
11 thereto, and paid for by the state board of indigents' defense services  
12 pursuant to claims submitted therefor.

13 (c) Upon an appeal or petition for certiorari addressed to the supreme  
14 court of the United States, if the defendant is without means to pay the  
15 cost of making and forwarding the necessary records, the supreme court  
16 of Kansas may by order provide for the furnishing of necessary records.

17 ~~(d) (1) The state board of indigents' defense services shall provide~~  
18 ~~by rule and regulation for: (A) The assignment of attorneys to the panel~~  
19 ~~for indigents' defense services to represent indigent persons who have~~  
20 ~~been convicted of capital murder and are under sentence of death, in the~~  
21 ~~direct review of the judgment;~~

22 ~~—(B) standards of competency and qualification for the appointment~~  
23 ~~of counsel in capital cases under this section; and~~

24 ~~—(C) the reasonable compensation of counsel appointed to represent~~  
25 ~~individuals convicted of capital murder and under a sentence of death in~~  
26 ~~the appeal of such cases and for reasonable and necessary litigation ex-~~  
27 ~~penditure associated with such appeals.~~

28 ~~—(2) If a defendant has been convicted of capital murder and is under~~  
29 ~~a sentence of death, the district court shall make a determination on the~~  
30 ~~record whether the defendant is indigent. Upon a finding that the de-~~  
31 ~~fendant is indigent and accepts the offer of representation or is unable~~  
32 ~~competently to decide whether to accept or reject the offer, the court~~  
33 ~~shall appoint one or more counsel, in accordance with subsection (d)(1),~~  
34 ~~to represent the defendant. If the defendant rejects the offer of repre-~~  
35 ~~sentation, the court shall find on the record, after a hearing if necessary,~~  
36 ~~whether the defendant rejected the offer of representation with the un-~~  
37 ~~derstanding of its legal consequences. The court shall deny the appoint-~~  
38 ~~ment of counsel upon a finding that the defendant is competent and not~~  
39 ~~indigent.~~

40 ~~—(3) Counsel appointed to represent the defendant, under this section,~~  
41 ~~shall not have represented the defendant at trial unless the defendant and~~  
42 ~~counsel expressly request continued representation.~~

43 Sec. 12. K.S.A. 22-4506 is hereby amended to read as follows: 22-



1 4506. (a) Whenever any person who is in custody under a sentence of  
2 imprisonment upon conviction of a felony files a petition for writ of ha-  
3 beas corpus or a motion attacking sentence under K.S.A. 60-1507 and  
4 files with such petition or motion such person's affidavit stating that the  
5 petition or motion is filed in good faith and that such person is financially  
6 unable to pay the costs of such action and to employ counsel therefor,  
7 the court shall make a preliminary examination of the petition or motion  
8 and the supporting papers.

9 (b) If the court finds that the petition or motion presents substantial  
10 questions of law or triable issues of fact and if the petitioner or movant  
11 has been or is thereafter determined to be an indigent person as provided  
12 in K.S.A. 22-4504, and amendments thereto, the court shall appoint coun-  
13 sel from the panel for indigents' defense services or otherwise in accord-  
14 ance with the applicable system for providing legal defense services for  
15 indigent persons prescribed by the state board of indigents' defense serv-  
16 ices, to assist such person and authorize the action to be filed without a  
17 deposit of security for costs. If the petition or motion in such case raises  
18 questions shown by the trial record, the court shall order that the peti-  
19 tioner or movant be supplied with a transcript of the trial proceedings,  
20 or so much thereof as may be necessary to present the issue, without cost  
21 to such person.

22 (c) If an appeal is taken in such action and if the trial court finds that  
23 the petitioner or movant is an indigent person, the trial court shall appoint  
24 counsel to conduct the appeal, order that the appellant be supplied with  
25 a record of the proceedings or so much thereof as such counsel deter-  
26 mines to be necessary and order that the deposit of security for costs be  
27 waived.

28 (d) ~~(1) The state board of indigents' defense services shall provide~~  
29 ~~by rule and regulation for: (A) The assignment of attorneys to the panel~~  
30 ~~for indigents' defense services to represent indigent persons, who have~~  
31 ~~been convicted of capital murder and are under sentence of death, upon~~  
32 ~~a filing of a petition for writ of habeas corpus or a motion attacking sen-~~  
33 ~~tence under K.S.A. 60-1507 and amendments thereto;~~

34 ~~—(B) standards of competency and qualification for the appointment~~  
35 ~~of counsel in capital cases under this section; and~~

36 ~~—(C) the reasonable compensation of counsel appointed to represent~~  
37 ~~individuals convicted of capital murder and under a sentence of death,~~  
38 ~~during proceedings conducted pursuant to subsection (a), (b) or (c) and~~  
39 ~~for reasonable and necessary litigation expense associated with such~~  
40 ~~proceedings.~~

41 ~~(2) If a petitioner or movant, who has been convicted of capital mur-~~  
42 ~~der and is under a sentence of death, files a petition for writ of habeas~~  
43 ~~corpus or a motion attacking sentence under K.S.A. 60-1507 and amend-~~

1 ments thereto, the district court shall make a determination on the record  
2 whether the petitioner or movant is indigent. Upon a finding that the  
3 petitioner or movant is indigent and accepts the offer of representation  
4 or is unable competently to decide whether to accept or reject the offer,  
5 the court shall appoint one or more counsel, in accordance with subsec-  
6 tion (d) (1), to represent the petitioner or movant. If the petitioner or  
7 movant rejects the offer of representation, the court shall find on the  
8 record, after a hearing if necessary, whether the petitioner or movant  
9 rejected the offer of representation with the understanding of its legal  
10 consequences. The court shall deny the appointment of counsel upon a  
11 finding that the petitioner or movant is competent and not indigent.

12 ~~—(3) Counsel appointed to represent the petitioner or movant shall not~~  
13 ~~have represented the petitioner or movant at trial or on direct appeal~~  
14 ~~therefrom unless the petitioner or movant and counsel expressly request~~  
15 ~~continued representation.~~

16 ~~—(e) Whenever it is determined that electronic access to court records~~  
17 ~~is necessary to present a petitioner's cause adequately and it is further~~  
18 ~~determined that the petitioner or movant is an indigent person, the court~~  
19 ~~having jurisdiction in the matter shall order that the records be supplied~~  
20 ~~to the defendant, at no charge, by the electronic access service. The state~~  
21 ~~board of indigents' defense services shall be exempt from paying user fees~~  
22 ~~to access electronic court records.~~

23 Sec. 13. K.S.A. 2008 Supp. 22-4902 is hereby amended to read as  
24 follows: 22-4902. As used in this act, unless the context otherwise  
25 requires:

26 (a) "Offender" means: (1) A sex offender as defined in subsection (b);  
27 (2) a violent offender as defined in subsection (d);  
28 (3) a sexually violent predator as defined in subsection (f);  
29 (4) any person who, on and after the effective date of this act, is  
30 convicted of any of the following crimes when the victim is less than 18  
31 years of age:

32 (A) Kidnapping as defined in K.S.A. 21-3420 and amendments  
33 thereto, except by a parent;

34 (B) aggravated kidnapping as defined in K.S.A. 21-3421 and amend-  
35 ments thereto; or

36 (C) criminal restraint as defined in K.S.A. 21-3424 and amendments  
37 thereto, except by a parent;

38 (5) any person convicted of any of the following criminal sexual con-  
39 duct if one of the parties involved is less than 18 years of age:

40 (A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;

41 (B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-  
42 3505, and amendments thereto;

43 (C) promoting prostitution as defined by K.S.A. 21-3513, and amend-

1 ments thereto;

2 (D) patronizing a prostitute as defined by K.S.A. 21-3515, and  
3 amendments thereto;

4 (E) lewd and lascivious behavior as defined by K.S.A. 21-3508, and  
5 amendments thereto; or

6 (F) unlawful sexual relations as defined by K.S.A. 21-3520, and  
7 amendments thereto;

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

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

13 (8) any person who has been convicted of an offense in effect at any  
14 time prior to the effective date of this act, that is comparable to any crime  
15 defined in subsection (4), (5), (7) or (11), or any federal, military or other  
16 state conviction for an offense that under the laws of this state would be  
17 an offense defined in subsection (4), (5), (7) or (11);

18 (9) any person who has been convicted of an attempt, conspiracy or  
19 criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303  
20 and amendments thereto, of an offense defined in subsection (4), (5), (7)  
21 or (10);

22 (10) any person who has been convicted of aggravated trafficking as  
23 defined in K.S.A. 21-3447, and amendments thereto; or

24 (11) any person who has been convicted of: (A) Unlawful manufac-  
25 ture or attempting such of any controlled substance as defined by K.S.A.  
26 65-4159, and amendments thereto, unless the court makes a finding on  
27 the record that the manufacturing or attempting to manufacture such  
28 controlled substance was for such person's personal use;

29 (B) possession of ephedrine, pseudoephedrine, red phosphorus, lith-  
30 ium metal, sodium metal, iodine, anhydrous ammonia, pressurized am-  
31 monia or phenylpropanolamine, or their salts, isomers or salts of isomers  
32 with intent to use the product to manufacture a controlled substance as  
33 defined by K.S.A. 65-7006, and amendments thereto, unless the court  
34 makes a finding on the record that the possession of such product was  
35 intended to be used to manufacture a controlled substance for such per-  
36 son's personal use; or

37 (C) K.S.A. 65-4161, and amendments thereto.

38 Convictions which result from or are connected with the same act, or  
39 result from crimes committed at the same time, shall be counted for the  
40 purpose of this section as one conviction. Any conviction set aside pur-  
41 suant to law is not a conviction for purposes of this section. A conviction  
42 from another state shall constitute a conviction for purposes of this  
43 section.

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

1 date of this act, is convicted of any of the following crimes:

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

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

6 (3) murder in the second degree as defined by K.S.A. 21-3402 and  
7 amendments thereto;

8 (4) voluntary manslaughter as defined by K.S.A. 21-3403 and amend-  
9 ments thereto;

10 (5) involuntary manslaughter as defined by K.S.A. 21-3404 and  
11 amendments thereto; or

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

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

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

23 (f) "Sexually violent predator" means any person who, on or after July  
24 1, 2001, is found to be a sexually violent predator pursuant to K.S.A. 59-  
25 29a01 et seq. and amendments thereto.

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

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

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

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

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

41 (i) "Institution of higher education" means any post-secondary school  
42 under the supervision of the Kansas board of regents.

43 Sec. 14. K.S.A. 2008 Supp. 38-2255 is hereby amended to read as

1 follows: 38-2255. (a) *Considerations*. Prior to entering an order of dis-  
2 position, the court shall give consideration to:

- 3 (1) The child's physical, mental and emotional condition;
- 4 (2) the child's need for assistance;
- 5 (3) the manner in which the parent participated in the abuse, neglect  
6 or abandonment of the child;
- 7 (4) any relevant information from the intake and assessment process;
- 8 and
- 9 (5) the evidence received at the dispositional hearing.

10 (b) *Placement with a parent*. The court may place the child in the  
11 custody of either of the child's parents subject to terms and conditions  
12 which the court prescribes to assure the proper care and protection of  
13 the child, including, but not limited to:

- 14 (1) Supervision of the child and the parent by a court services officer;
- 15 (2) participation by the child and the parent in available programs  
16 operated by an appropriate individual or agency; and
- 17 (3) any special treatment or care which the child needs for the child's  
18 physical, mental or emotional health and safety.

19 (c) *Removal of a child from custody of a parent*. The court shall not  
20 enter an order removing a child from the custody of a parent pursuant  
21 to this section unless the court first finds probable cause that: (1)(A) The  
22 child is likely to sustain harm if not immediately removed from the home;

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

25 (C) immediate placement of the child is in the best interest of the  
26 child; and

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

30 (d) *Custody of a child removed from the custody of a parent*. If the  
31 court has made the findings required by subsection (c), the court shall  
32 enter an order awarding custody to a relative of the child or to a person  
33 with whom the child has close emotional ties, to any other suitable person,  
34 to a shelter facility, to a youth residential facility or to the secretary. Cus-  
35 tody awarded under this subsection shall continue until further order of  
36 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. 2008 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. 2008 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: Murder in the  
5 first degree, K.S.A. 21-3401, and amendments thereto, murder in the  
6 second degree, K.S.A. 21-3402, and amendments thereto, capital murder,  
7 K.S.A. 21-3439, ~~and amendments thereto prior to its repeal~~, voluntary  
8 manslaughter, K.S.A. 21-3403, and amendments thereto, or a felony bat-  
9 tery that resulted in bodily injury;
- 10 (2) whether a parent has subjected the child or another child to ag-  
11 gravated circumstances;
- 12 (3) whether a parent has previously been found to be an unfit parent  
13 in proceedings under this code or in comparable proceedings under the  
14 laws of another state or the federal government;
- 15 (4) whether the child has been in extended out of home placement;
- 16 (5) whether the parents have failed to work diligently toward  
17 reintegration;
- 18 (6) whether the secretary has provided the family with services nec-  
19 essary for the safe return of the child to the home; and
- 20 (7) whether it is reasonable to expect reintegration to occur within a  
21 time frame consistent with the child's developmental needs.
- 22 (f) *Proceedings if reintegration is not a viable alternative.* If the court  
23 determines that reintegration is not a viable alternative, proceedings to  
24 terminate parental rights and permit placement of the child for adoption  
25 or appointment of a permanent custodian shall be initiated unless the  
26 court finds that compelling reasons have been documented in the case  
27 plan why adoption or appointment of a permanent custodian would not  
28 be in the best interests of the child. If compelling reasons have not been  
29 documented, the county or district attorney shall file a motion within 30  
30 days to terminate parental rights or a motion to appoint a permanent  
31 custodian within 30 days and the court shall hold a hearing on the motion  
32 within 90 days of its filing. No hearing is required when the parents  
33 voluntarily relinquish parental rights or consent to the appointment of a  
34 permanent custodian.
- 35 (g) *Additional Orders.* In addition to or in lieu of any other order  
36 authorized by this section:
- 37 (1) The court may order the child and the parents of any child who  
38 has been adjudicated a child in need of care to attend counseling sessions  
39 as the court directs. The expense of the counseling may be assessed as  
40 an expense in the case. No mental health provider shall charge a greater  
41 fee for court-ordered counseling than the provider would have charged  
42 to the person receiving counseling if the person had requested counseling  
43 on the person's own initiative.



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

15       (3) If child support has been requested and the parent or parents  
16 have a duty to support the child, the court may order one or both parents  
17 to pay child support and, when custody is awarded to the secretary, the  
18 court shall order one or both parents to pay child support. The court shall  
19 determine, for each parent separately, whether the parent is already sub-  
20 ject to an order to pay support for the child. If the parent is not presently  
21 ordered to pay support for any child who is subject to the jurisdiction of  
22 the court and the court has personal jurisdiction over the parent, the court  
23 shall order the parent to pay child support in an amount determined  
24 under K.S.A. 2008 Supp. 38-2277, and amendments thereto. Except for  
25 good cause shown, the court shall issue an immediate income withholding  
26 order pursuant to K.S.A. 23-4,105 et seq., and amendments thereto, for  
27 each parent ordered to pay support under this subsection, regardless of  
28 whether a payor has been identified for the parent. A parent ordered to  
29 pay child support under this subsection shall be notified, at the hearing  
30 or otherwise, that the child support order may be registered pursuant to  
31 K.S.A. 2008 Supp. 38-2279, and amendments thereto. The parent shall  
32 also be informed that, after registration, the income withholding order  
33 may be served on the parent's employer without further notice to the  
34 parent and the child support order may be enforced by any method al-  
35 lowed by law. Failure to provide this notice shall not affect the validity of  
36 the child support order.

37       Sec. 15. K.S.A. 2008 Supp. 38-2271 is hereby amended to read as  
38 follows: 38-2271. (a) It is presumed in the manner provided in K.S.A. 60-  
39 414, and amendments thereto, that a parent is unfit by reason of conduct  
40 or condition which renders the parent unable to fully care for a child, if  
41 the state establishes, by clear and convincing evidence, that:

42       (1) A parent has previously been found to be an unfit parent in pro-  
43 ceedings under K.S.A. 2008 Supp. 38-2266 et seq., and amendments

- 1 thereto, or comparable proceedings under the laws of another  
2 jurisdiction;
- 3 (2) a parent has twice before been convicted of a crime specified in  
4 article 34, 35, or 36 of chapter 21 of the Kansas Statutes Annotated, and  
5 amendments thereto, or comparable offenses under the laws of another  
6 jurisdiction, or an attempt or attempts to commit such crimes and the  
7 victim was under the age of 18 years;
- 8 (3) on two or more prior occasions a child in the physical custody of  
9 the parent has been adjudicated a child in need of care as defined by  
10 subsection (d)(1),(d)(3), (d)(5) or (d)(11) of K.S.A. 2008 Supp. 38-2202,  
11 and amendments thereto, or comparable proceedings under the laws of  
12 another jurisdiction.
- 13 (4) the parent has been convicted of causing the death of another  
14 child or stepchild of the parent;
- 15 (5) the child has been in an out-of-home placement, under court  
16 order for a cumulative total period of one year or longer and the parent  
17 has substantially neglected or willfully refused to carry out a reasonable  
18 plan, approved by the court, directed toward reintegration of the child  
19 into the parental home;
- 20 (6) (A) the child has been in an out-of-home placement, under court  
21 order for a cumulative total period of two years or longer; (B) the parent  
22 has failed to carry out a reasonable plan, approved by the court, directed  
23 toward reintegration of the child into the parental home; and (C) there  
24 is a substantial probability that the parent will not carry out such plan in  
25 the near future;
- 26 (7) a parent has been convicted of capital murder, K.S.A. 21-3439,  
27 ~~and amendments thereto~~ *prior to its repeal*, murder in the first degree,  
28 K.S.A. 21-3401, and amendments thereto, murder in the second degree,  
29 K.S.A. 21-3402, and amendments thereto, or voluntary manslaughter,  
30 K.S.A. 21-3403, and amendments thereto, or comparable proceedings  
31 under the laws of another jurisdiction or, has been adjudicated a juvenile  
32 offender because of an act which if committed by an adult would be an  
33 offense as provided in this subsection, and the victim of such murder was  
34 the other parent of the child;
- 35 (8) a parent abandoned or neglected the child after having knowledge  
36 of the child's birth or either parent has been granted immunity from  
37 prosecution for abandonment of the child under subsection (b) of K.S.A.  
38 21-3604, and amendments thereto; or
- 39 (9) a parent has made no reasonable efforts to support or commu-  
40 nicate with the child after having knowledge of the child's birth;
- 41 (10) a father, after having knowledge of the pregnancy, failed without  
42 reasonable cause to provide support for the mother during the six months  
43 prior to the child's birth;

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

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

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

10 (b) The burden of proof is on the parent to rebut the presumption  
11 of unfitness by a preponderance of the evidence. In the absence of proof  
12 that the parent is presently fit and able to care for the child or that the  
13 parent will be fit and able to care for the child in the foreseeable future,  
14 the court shall terminate parental rights in proceedings pursuant to K.S.A.  
15 2008 Supp. 38-2266 et seq., and amendments thereto.

16 Sec. 16. K.S.A. 2008 Supp. 38-2312 is hereby amended to read as  
17 follows: 38-2312. (a) Except as provided in subsection (b), any records or  
18 files specified in this code concerning a juvenile may be expunged upon  
19 application to a judge of the court of the county in which the records or  
20 files are maintained. The application for expungement may be made by  
21 the juvenile, if 18 years of age or older or, if the juvenile is less than 18  
22 years of age, by the juvenile's parent or next friend.

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

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

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

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

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

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

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

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

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

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

1 (h) Nothing in this section shall be construed to prohibit the main-  
2 tenance of information relating to an offense after records or files con-  
3 cerning the offense have been expunged if the information is kept in a  
4 manner that does not enable identification of the juvenile.

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

8 (j) Whenever the records or files of any adjudication have been ex-  
9 punged under the provisions of this section, the custodian of the records  
10 or files of adjudication relating to that offense shall not disclose the ex-  
11 istence of such records or files, except when requested by:

12 (1) The person whose record was expunged;

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

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

19 (4) the secretary of social and rehabilitation services, or a designee of  
20 the secretary, for the purpose of obtaining information relating to em-  
21 ployment in an institution, as defined in K.S.A. 76-12a01, and amend-  
22 ments thereto, of the department of social and rehabilitation services of  
23 any person whose record has been expunged;

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

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

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

38 (8) the Kansas sentencing commission.

39 Sec. 17. K.S.A. 2008 Supp. 38-2365 is hereby amended to read as  
40 follows: 38-2365. (a) When a juvenile offender has been placed in the  
41 custody of the commissioner, the commissioner shall have a reasonable  
42 time to make a placement. If the juvenile offender has not been placed,  
43 any party who believes that the amount of time elapsed without place-

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

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

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

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

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

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

40 (6) the juvenile has been in extended out-of-home placement as de-  
41 fined in K.S.A. 2008 Supp. 38-2202, and amendments thereto.

42 (c) If the juvenile is placed in the custody of the commissioner, the  
43 plan shall be prepared and submitted by the commissioner. If the juvenile

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

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

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

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

42 (g) If the court finds reintegration continues to be a viable alternative,  
43 the court shall determine whether and, if applicable, when the juvenile

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

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

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

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

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

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

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

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

38 Sec. 18. K.S.A. 2008 Supp. 39-970 is hereby amended to read as  
39 follows: 39-970. (a) (1) No person shall knowingly operate an adult care  
40 home if, in the adult care home, there works any person who has been  
41 convicted of or has been adjudicated a juvenile offender because of having  
42 committed an act which if done by an adult would constitute the com-  
43 mission of capital murder, pursuant to K.S.A. 21-3439 and amendments



1 ~~thereto, prior to its repeal~~, first degree murder, pursuant to K.S.A. 21-  
2 3401, and amendments thereto, second degree murder, pursuant to sub-  
3 section (a) of K.S.A. 21-3402, and amendments thereto, voluntary man-  
4 slaughter, pursuant to K.S.A. 21-3403, and amendments thereto, assisting  
5 suicide pursuant to K.S.A. 21-3406, and amendments thereto, mistreat-  
6 ment of a dependent adult, pursuant to K.S.A. 21-3437, and amendments  
7 thereto, rape, pursuant to K.S.A. 21-3502, and amendments thereto, in-  
8 decent liberties with a child, pursuant to K.S.A. 21-3503, and amend-  
9 ments thereto, aggravated indecent liberties with a child, pursuant to  
10 K.S.A. 21-3504, and amendments thereto, aggravated criminal sodomy,  
11 pursuant to K.S.A. 21-3506, and amendments thereto, indecent sollicita-  
12 tion of a child, pursuant to K.S.A. 21-3510, and amendments thereto,  
13 aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511,  
14 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A.  
15 21-3516, and amendments thereto, sexual battery, pursuant to K.S.A. 21-  
16 3517, and amendments thereto, or aggravated sexual battery, pursuant to  
17 K.S.A. 21-3518, and amendments thereto, an attempt to commit any of  
18 the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301,  
19 and amendments thereto, a conspiracy to commit any of the crimes listed  
20 in this subsection (a)(1), pursuant to K.S.A. 21-3302, and amendments  
21 thereto, or criminal solicitation of any of the crimes listed in this subsec-  
22 tion (a)(1), pursuant to K.S.A. 21-3303, and amendments thereto, or sim-  
23 ilar statutes of other states or the federal government.

24 (2) A person operating an adult care home may employ an applicant  
25 who has been convicted of any of the following if five or more years have  
26 elapsed since the applicant satisfied the sentence imposed or was dis-  
27 charged from probation, a community correctional services program, pa-  
28 role, postrelease supervision, conditional release or a suspended sentence;  
29 or if five or more years have elapsed since the applicant has been finally  
30 discharged from the custody of the commissioner of juvenile justice or  
31 from probation or has been adjudicated a juvenile offender, whichever  
32 time is longer: A felony conviction for a crime which is described in: (A)  
33 Article 34 of chapter 21 of the Kansas Statutes Annotated, and amend-  
34 ments thereto, except those crimes listed in subsection (a)(1); (B) articles  
35 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments  
36 thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-  
37 3605, and amendments thereto; (C) an attempt to commit any of the  
38 crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, and  
39 amendments thereto; (D) a conspiracy to commit any of the crimes listed  
40 in subsection (a)(2) pursuant to K.S.A. 21-3302, and amendments thereto;  
41 (E) criminal solicitation of any of the crimes listed in subsection (a)(2)  
42 pursuant to K.S.A. 21-3303, and amendments thereto; or (F) similar stat-  
43 utes of other states or the federal government.

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

6 (c) The secretary of health and environment shall have access to any  
7 criminal history record information in the possession of the Kansas bureau  
8 of investigation regarding felony convictions, convictions under K.S.A. 21-  
9 3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a  
10 juvenile offender which if committed by an adult would have been a  
11 felony conviction, and adjudications of a juvenile offender for an offense  
12 described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments  
13 thereto, concerning persons working in an adult care home. The secretary  
14 shall have access to these records for the purpose of determining whether  
15 or not the adult care home meets the requirements of this section. The  
16 Kansas bureau of investigation may charge to the department of health  
17 and environment a reasonable fee for providing criminal history record  
18 information under this subsection.

19 (d) For the purpose of complying with this section, the operator of  
20 an adult care home shall request from the department of health and  
21 environment information regarding only felony convictions, convictions  
22 under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto,  
23 adjudications of a juvenile offender which if committed by an adult would  
24 have been a felony conviction, and adjudications of a juvenile offender  
25 for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and  
26 amendments thereto, and which relates to a person who works in the  
27 adult care home, or is being considered for employment by the adult care  
28 home, for the purpose of determining whether such person is subject to  
29 the provision of this section. For the purpose of complying with this sec-  
30 tion, the operator of an adult care home shall receive from any employ-  
31 ment agency which provides employees to work in the adult care home  
32 written certification that such employees are not prohibited from working  
33 in the adult care home under this section. For the purpose of complying  
34 with this section, information relating to convictions and adjudications by  
35 the federal government or to convictions and adjudications in states other  
36 than Kansas shall not be required until such time as the secretary of health  
37 and environment determines the search for such information could rea-  
38 sonably be performed and the information obtained within a two-week  
39 period. For the purpose of complying with this section, a person who  
40 operates an adult care home may hire an applicant for employment on a  
41 conditional basis pending the results from the department of health and  
42 environment of a request for information under this subsection. No adult  
43 care home, the operator or employees of an adult care home or an em-

1 ployment agency, or the operator or employees of an employment agency,  
2 shall be liable for civil damages resulting from any decision to employ, to  
3 refuse to employ or to discharge from employment any person based on  
4 such adult care home's compliance with the provisions of this section if  
5 such adult care home or employment agency acts in good faith to comply  
6 with this section.

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

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

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

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

37 (4) The secretary of health and environment shall not provide each  
38 operator requesting information under this section with the juvenile crim-  
39 inal history record information which relates to a person subject to a  
40 background check as is provided by K.S.A. 2008 Supp. 38-2326, and  
41 amendments thereto, except for adjudications of a juvenile offender for  
42 an offense described in K.S.A. 21-3701, and amendments thereto. The  
43 secretary shall notify the operator that requested the information, in writ-

1 ing and within three working days of receipt of such information from  
2 the Kansas bureau of investigation, whether juvenile criminal history rec-  
3 ord information received pursuant to this section reveals that the operator  
4 would or would not be prohibited by this section from employing the  
5 subject of the request for information and whether such information con-  
6 tains adjudications of a juvenile offender for an offense described in  
7 K.S.A. 21-3701, and amendments thereto.

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

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

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

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

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

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

37 (l) For purposes of this section, the Kansas bureau of investigation  
38 shall only report felony convictions, convictions under K.S.A. 21-3437,  
39 21-3517 and 21-3701, and amendments thereto, adjudications of a juve-  
40 nile offender which if committed by an adult would have been a felony  
41 conviction, and adjudications of a juvenile offender for an offense de-  
42 scribed in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments  
43 thereto, to the secretary of health and environment when a background

1 check is requested.

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

4 Sec. 19. K.S.A. 2008 Supp. 65-5117 is hereby amended to read as  
5 follows: 65-5117. (a) (1) No person shall knowingly operate a home health  
6 agency if, for the home health agency, there works any person who has  
7 been convicted of or has been adjudicated a juvenile offender because of  
8 having committed an act which if done by an adult would constitute the  
9 commission of capital murder, pursuant to K.S.A. 21-3439 ~~and amend-~~  
10 ~~ments thereto, prior to its repeal,~~ first degree murder, pursuant to K.S.A.  
11 21-3401, and amendments thereto, second degree murder, pursuant to  
12 subsection (a) of K.S.A. 21-3402, and amendments thereto, voluntary  
13 manslaughter, pursuant to K.S.A. 21-3403, and amendments thereto, as-  
14 sisting suicide, pursuant to K.S.A. 21-3406, and amendments thereto,  
15 mistreatment of a dependent adult, pursuant to K.S.A. 21-3437, and  
16 amendments thereto, rape, pursuant to K.S.A. 21-3502, and amendments  
17 thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503, and  
18 amendments thereto, aggravated indecent liberties with a child, pursuant  
19 to K.S.A. 21-3504, and amendments thereto, aggravated criminal sodomy,  
20 pursuant to K.S.A. 21-3506, and amendments thereto, indecent sollicita-  
21 tion of a child, pursuant to K.S.A. 21-3510, and amendments thereto,  
22 aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511,  
23 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A.  
24 21-3516, and amendments thereto, sexual battery, pursuant to K.S.A. 21-  
25 3517, and amendments thereto, or aggravated sexual battery, pursuant to  
26 K.S.A. 21-3518, and amendments thereto, an attempt to commit any of  
27 the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301,  
28 and amendments thereto, a conspiracy to commit any of the crimes listed  
29 in this subsection (a)(1), pursuant to K.S.A. 21-3302, and amendments  
30 thereto, or criminal solicitation of any of the crimes listed in this subsec-  
31 tion (a)(1), pursuant to K.S.A. 21-3303, and amendments thereto, or sim-  
32 ilar statutes of other states or the federal government.

33 (2) A person operating a home health agency may employ an appli-  
34 cant who has been convicted of any of the following if five or more years  
35 have elapsed since the applicant satisfied the sentence imposed or was  
36 discharged from probation, a community correctional services program,  
37 parole, postrelease supervision, conditional release or a suspended sen-  
38 tence; or if five or more years have elapsed since the applicant has been  
39 finally discharged from the custody of the commissioner of juvenile justice  
40 or from probation or has been adjudicated a juvenile offender, whichever  
41 time is longer: A felony conviction for a crime which is described in: (A)  
42 Article 34 of chapter 21 of the Kansas Statutes Annotated, and amend-  
43 ments thereto, except those crimes listed in subsection (a)(1); (B) articles

1 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments  
2 thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-  
3 3605, and amendments thereto; (C) an attempt to commit any of the  
4 crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, and  
5 amendments thereto; (D) a conspiracy to commit any of the crimes listed  
6 in subsection (a)(2) pursuant to K.S.A. 21-3302, and amendments thereto;  
7 (E) criminal solicitation of any of the crimes listed in subsection (a)(2)  
8 pursuant to K.S.A. 21-3303, and amendments thereto; or (F) similar stat-  
9 utes of other states or the federal government.

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

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

28 (d) For the purpose of complying with this section, the operator of a  
29 home health agency shall request from the department of health and  
30 environment information regarding only felony convictions, convictions  
31 under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto,  
32 adjudications of a juvenile offender which if committed by an adult would  
33 have been a felony conviction, and adjudications of a juvenile offender  
34 for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and  
35 amendments thereto, and which relates to a person who works for the  
36 home health agency or is being considered for employment by the home  
37 health agency, for the purpose of determining whether such person is  
38 subject to the provisions of 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, the operator of a  
2 home health agency shall receive from any employment agency which  
3 provides employees to work for the home health agency written certifi-  
4 cation that such employees are not prohibited from working for the home  
5 health agency under this section. For the purpose of complying with this  
6 section, a person who operates a home health agency may hire an appli-  
7 cant for employment on a conditional basis pending the results from the  
8 department of health and environment of a request for information under  
9 this subsection. No home health agency, the operator or employees of a  
10 home health agency or an employment agency, or the operator or em-  
11 ployees of an employment agency, which provides employees to work for  
12 the home health agency shall be liable for civil damages resulting from  
13 any decision to employ, to refuse to employ or to discharge from em-  
14 ployment any person based on such home health agency's compliance  
15 with the provisions of this section if such home health agency or employ-  
16 ment agency acts in good faith to comply with this section.

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

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

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

42 (3) Whenever the criminal history record information reveals that the  
43 subject of the request has no criminal history on record, the secretary

1 shall provide notice to each operator requesting information under this  
2 section, in writing and within three working days after receipt of such  
3 information from the Kansas bureau of investigation.

4 (4) The secretary of health and environment shall not provide each  
5 operator requesting information under this section with the juvenile crim-  
6 inal history record information which relates to a person subject to a  
7 background check as is provided by K.S.A. 2008 Supp. 38-2326, and  
8 amendments thereto, except for adjudications of a juvenile offender for  
9 an offense described in K.S.A. 21-3701, and amendments thereto. The  
10 secretary shall notify the operator that requested the information, in writ-  
11 ing and within three working days of receipt of such information from  
12 the Kansas bureau of investigation, whether juvenile criminal history rec-  
13 ord information received pursuant to this section reveals that the operator  
14 would or would not be prohibited by this section from employing the  
15 subject of the request for information and whether such information con-  
16 tains adjudications of a juvenile offender for an offense described in  
17 K.S.A. 21-3701, and amendments thereto.

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

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

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

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

35 (j) The operator of a home health agency shall not be required under  
36 this section to conduct a background check on an applicant for employ-  
37 ment with the home health agency if the applicant has been the subject  
38 of a background check under this act within one year prior to the appli-  
39 cation for employment with the home health agency. The operator of a  
40 home health agency where the applicant was the subject of such back-  
41 ground check may release a copy of such background check to the op-  
42 erator of a home health agency where the applicant is currently applying.

43 (k) For purposes of this section, the Kansas bureau of investigation



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

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

11 Sec. 20. K.S.A. 2008 Supp. 75-52,148 is hereby amended to read as  
12 follows: 75-52,148. (a) The department of corrections shall be required  
13 to review and report on the following serious offenses committed by sex  
14 offenders, as defined by K.S.A. 22-4902, and amendments thereto, while  
15 such offenders are in the custody of the secretary of corrections:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 amendments thereto;  
2 (16) aggravated robbery, as provided in K.S.A. 21-3427, and amend-  
3 ments thereto;  
4 (17) burglary, as provided in K.S.A. 21-3715, and amendments  
5 thereto;  
6 (18) aggravated burglary, as provided in K.S.A. 21-3716, and amend-  
7 ments thereto;  
8 (19) theft, as provided in K.S.A. 21-3701, and amendments thereto;  
9 (20) vehicular homicide, as provided in K.S.A. 21-3405, and amend-  
10 ments thereto;  
11 (21) involuntary manslaughter while driving under the influence, as  
12 provided in K.S.A. 21-3442, and amendments thereto; or  
13 (22) stalking, as provided in K.S.A. 21-3438, and amendments  
14 thereto.  
15 (b) The secretary of corrections shall submit such report to the  
16 speaker of the house of representatives and the president of the senate  
17 annually, beginning January 1, 2007.  
18 Sec. 21. K.S.A. 21-3105, 21-3439, 21-4364, 21-4622, 21-4623, 21-  
19 4624, 21-4627, 21-4629, 21-4630, 21-4634, 21-4635, 21-4706, 22-3405,  
20 22-3704, 22-3705, 22-3717, 22-4210, 22-4505 and 22-4506 and K.S.A.  
21 2008 Supp. 21-4619, 22-4902, 38-2255, 38-2271, 38-2312, 38-2365, 39-  
22 970, 65-5117 and 75-52,148 are hereby repealed.  
23 Sec. 22. This act shall take effect and be in force from and after its  
24 publication in the statute book.

2010

9rs1234

SENATE BILL NO. \_\_\_\_

By

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

WHEREAS, Kansas reenacted the death penalty in 1994; and

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

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

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

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

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

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

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

(1) Intentional and premeditated killing of any person in the commission of kidnapping, as defined in K.S.A. 21-3420, and amendments thereto, or aggravated kidnapping, as defined in K.S.A. 21-3421, and amendments thereto, when the kidnapping or aggravated kidnapping was committed

with the intent to hold such person for ransom;

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

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

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

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

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

(7) intentional and premeditated killing of a child under the age of 14 in the commission of kidnapping, as defined in K.S.A. 21-3420, and amendments thereto, or aggravated kidnapping, as

defined in K.S.A. 21-3421, and amendments thereto, when the kidnapping or aggravated kidnapping was committed with intent to commit a sex offense upon or with the child or with intent that the child commit or submit to a sex offense.

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

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

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

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

New Sec. 3. (a) When it is provided by law that a person shall be sentenced pursuant to this section, such person shall be sentenced to imprisonment for life without the possibility of parole. A defendant who is sentenced to imprisonment for life without the possibility of parole shall spend the remainder of the defendant's natural life incarcerated and in the custody of the secretary of corrections. A defendant who is sentenced to imprisonment for life without the possibility of parole shall not be eligible for parole, probation, assignment to a community correctional services program, conditional release, postrelease supervision, or suspension, modification or reduction of sentence.

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

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

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

(b) As used in this section:

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

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

(c) This section shall not apply to:

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

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

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

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

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

Sec. 5. K.S.A. 2009 Supp. 21-4619 is hereby amended to read as follows: 21-4619. (a) (1)

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

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

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

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

(2) driving while the privilege to operate a motor vehicle on the public highways of this state

has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

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

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

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

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

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

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

(c) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses: (1) Rape as defined in K.S.A. 21-3502, and amendments thereto; (2) indecent liberties with a child as defined in K.S.A. 21-3503, and amendments thereto; (3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, and amendments thereto; (4) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, and amendments thereto; (5) aggravated criminal sodomy as defined in K.S.A. 21-3506, and amendments thereto; (6) indecent solicitation of a child as defined in K.S.A. 21-3510, and



amendments thereto; (7) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511, and amendments thereto; (8) sexual exploitation of a child as defined in K.S.A. 21-3516, and amendments thereto; (9) aggravated incest as defined in K.S.A. 21-3603, and amendments thereto; (10) endangering a child as defined in K.S.A. 21-3608, and amendments thereto; (11) aggravated endangering a child as defined in K.S.A. 21-3608a, and amendments thereto; (12) abuse of a child as defined in K.S.A. 21-3609, and amendments thereto; (13) capital murder as defined in K.S.A. 21-3439, ~~and amendments thereto prior to its repeal~~; (14) aggravated murder as defined in section 2, and amendments thereto, ~~(14)~~ (15) murder in the first degree as defined in K.S.A. 21-3401, and amendments thereto; ~~(15)~~ (16) murder in the second degree as defined in K.S.A. 21-3402, and amendments thereto; ~~(16)~~ (17) voluntary manslaughter as defined in K.S.A. 21-3403, and amendments thereto; ~~(17)~~ (18) involuntary manslaughter as defined in K.S.A. 21-3404, and amendments thereto; ~~(18)~~ (19) involuntary manslaughter while driving under the influence of alcohol or drugs as defined in K.S.A. 21-3442, and amendments thereto; ~~(19)~~ (20) sexual battery as defined in K.S.A. 21-3517, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed; ~~(20)~~ (21) aggravated sexual battery as defined in K.S.A. 21-3518, and amendments thereto; ~~(21)~~ (22) a violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation; ~~(22)~~ (23) a violation of K.S.A. 8-2,144, and amendments thereto, including any diversion for such violation; or ~~(23)~~ (24) any conviction for any offense in effect at any time prior to the effective date of this act, that is comparable to any offense as provided in this subsection.

(d) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the

arresting law enforcement agency. The petition shall state: (1) The defendant's full name;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

executive director of the Kansas lottery;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Kansas lottery;

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

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

(11) the Kansas sentencing commission;

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

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

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

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

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

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

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

Sec. 7. K.S.A. 21-4634 is hereby amended to read as follows: 21-4634. (a) If a defendant is convicted of the crime of ~~capital murder and a sentence of death is not imposed~~ aggravated murder, or if a defendant is convicted of the crime of murder in the first degree based upon the finding of premeditated murder, the defendant's counsel or the director of the correctional institution or sheriff having custody of the defendant may request a determination by the court of whether the defendant is mentally retarded. If the court determines that there is not sufficient reason to believe that the defendant is mentally retarded, the court shall so find and the defendant shall be sentenced



in accordance with K.S.A. 21-4635 through 21-4638, and amendments thereto. If the court determines that there is sufficient reason to believe that the defendant is mentally retarded, the court shall conduct a hearing to determine whether the defendant is mentally retarded.

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

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

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

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

~~\_\_\_\_\_~~ (f) As used in this section, "mentally retarded" means having significantly subaverage

general intellectual functioning, as defined by K.S.A. 76-12b01 and amendments thereto, to an extent which substantially impairs one's capacity to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law.

Sec. 8. K.S.A. 21-4635 is hereby amended to read as follows: 21-4635. (a) Except as provided in K.S.A. 21-4622,~~21-4623~~ and 21-4634, and amendments thereto, if a defendant is convicted of the crime of ~~capital murder and a sentence of death is not imposed pursuant to subsection (e) of K.S.A. 21-4624, and amendments thereto, or requested pursuant to subsection (a) or (b) of K.S.A. 21-4624, and amendments thereto~~ aggravated murder, the defendant shall be sentenced to life without the possibility of parole pursuant to section 3, and amendments thereto.

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

(c) In order to make such determination, the court may be presented evidence concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in K.S.A. 21-4636, and amendments thereto, and any mitigating circumstances. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating circumstances as the state has made known to the defendant prior to the sentencing shall be admissible and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the time of sentencing shall

be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(d) If the court finds that one or more of the aggravating circumstances enumerated in K.S.A. 21-4636, and amendments thereto exist and, further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist, the defendant shall be sentenced pursuant to K.S.A. 21-4638, and amendments thereto; otherwise, the defendant shall be sentenced as provided by law. The court shall designate, in writing, the statutory aggravating circumstances which it found. ~~The court may make the findings required by this subsection for the purpose of determining whether to sentence a defendant pursuant to K.S.A. 21-4638 and amendments thereto notwithstanding contrary findings made by the jury or court pursuant to subsection (c) of K.S.A. 21-4624 and amendments thereto for the purpose of determining whether to sentence such defendant to death.~~

Sec. 9. K.S.A. 21-4641 is hereby amended to read as follows: 21-4641. ~~(†)~~ (a) K.S.A. 21-4633 through 21-4640, and amendments thereto, shall be supplemental to and a part of the Kansas criminal code.

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

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

Sec. 10. K.S.A. 21-4706 is hereby amended to read as follows: 21-4706. (a) For crimes

committed on or after July 1, 1993, the sentences of imprisonment shall represent the time a person shall actually serve, subject to a reduction of up to 15% of the primary sentence for good time as authorized by law. For crimes committed on or after January 1, 2008, the sentences of imprisonment shall represent the time a person shall actually serve, subject to a reduction of up to 20% of the primary sentence for good time for drug severity level 3 or 4 or nondrug severity level 7 through 10 crimes and a reduction for program credit as authorized by K.S.A. 21-4722, and amendments thereto.

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

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

(d) As identified in K.S.A. 21-3447, 21-3502, 21-3504, 21-3506, 21-3513 and 21-3516, and amendments thereto, if the offender is 18 years of age or older and the victim is under 14 years of age, such violations are off-grid crimes for the purposes of sentencing. Except as provided in K.S.A. 21-4642, and amendments thereto, the sentence shall be imprisonment for life pursuant to K.S.A. 21-4643, and amendments thereto.

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

Sec. 11. K.S.A. 22-3405 is hereby amended to read as follows: 22-3405. (1) The defendant

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

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

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

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

~~(b)~~ (b) if the sentence is life without the possibility of parole, to imprisonment for life or any term not less than ten years;

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

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

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

Sec. 13. K.S.A. 2009 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A. 1993 Supp. 21-4628 prior to its repeal; K.S.A. 21-4635 through 21-4638, and amendments thereto; section 3, and amendments thereto; K.S.A.

8-1567, and amendments thereto; K.S.A. 21-4642, and amendments thereto; and K.S.A. 21-4624, and amendments thereto, an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618, and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

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

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

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

(4) An inmate sentenced to imprisonment for a violation of subsection (a) of K.S.A.

21-3402, and amendments thereto, committed on or after July 1, 1996, but prior to July 1, 1999, shall be eligible for parole after serving 10 years of confinement without deduction of any good time credits.

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

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

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

(A) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608 and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(B) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

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

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

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

(B) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity levels 5 and 6 crimes and drug severity level 3 crimes must serve 24 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, and amendments thereto, on postrelease supervision.

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

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

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

(iii) In determining whether substantial and compelling reasons exist, the court shall



consider:

- (a) Written briefs or oral arguments submitted by either the defendant or the state;
  - (b) any evidence received during the proceeding;
  - (c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant to subsection (e) of K.S.A. 21-4714, and amendments thereto; and
  - (d) any other evidence the court finds trustworthy and reliable.
- (iv) The sentencing judge may order that a psychological evaluation be prepared and the recommended programming be completed by the offender. The department of corrections or the parole board shall ensure that court ordered sex offender treatment be carried out.
- (v) In carrying out the provisions of subparagraph (d)(1)(D), the court shall refer to K.S.A. 21-4718, and amendments thereto.
- (vi) Upon petition, the parole board may provide for early discharge from the postrelease supervision period upon completion of court ordered programs and completion of the presumptive postrelease supervision period, as determined by the crime of conviction, pursuant to subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from postrelease supervision is at the discretion of the parole board.
- (vii) Persons convicted of crimes deemed sexually violent or sexually motivated, shall be registered according to the offender registration act, K.S.A. 22-4901 through 22-4910, and amendments thereto.
- (viii) Persons convicted of K.S.A. 21-3510 or 21-3511, and amendments thereto, shall be required to participate in a treatment program for sex offenders during the postrelease supervision period.

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

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

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

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

- (A) Rape, K.S.A. 21-3502, and amendments thereto;
- (B) indecent liberties with a child, K.S.A. 21-3503, and amendments thereto;
- (C) aggravated indecent liberties with a child, K.S.A. 21-3504, and amendments thereto;
- (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505, and amendments thereto;
- (E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments thereto;
- (F) indecent solicitation of a child, K.S.A. 21-3510, and amendments thereto;
- (G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and amendments thereto;

- (H) sexual exploitation of a child, K.S.A. 21-3516, and amendments thereto;
- (I) aggravated sexual battery, K.S.A. 21-3518, and amendments thereto;
- (J) aggravated incest, K.S.A. 21-3603, and amendments thereto; or
- (K) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of a sexually violent crime as defined in this section.

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

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

(f) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while on probation, parole, conditional release or in a community corrections program, for a crime committed prior to July 1, 1993, and the person is not eligible for retroactive application of the sentencing guidelines and amendments thereto pursuant to K.S.A. 21-4724, and amendments thereto, the new sentence shall not be aggregated with the old sentence, but shall begin when the person is paroled or reaches the conditional release date on the old sentence. If the offender was past the offender's conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the Kansas parole board or reaches the maximum sentence expiration date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period

of postrelease supervision shall be based on the new sentence, except that those offenders whose old sentence is a term of imprisonment for life, imposed pursuant to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate sentence with a maximum term of life imprisonment, for which there is no conditional release or maximum sentence expiration date, shall remain on postrelease supervision for life or until discharged from supervision by the Kansas parole board.

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

(h) The Kansas parole board shall hold a parole hearing at least the month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (c). At least the month preceding the parole hearing, the county or district attorney of the county where the inmate was convicted shall give written notice of the time and place of the public comment sessions for the inmate to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's family if the family's address is known to the county or

district attorney. Except as otherwise provided, failure to notify pursuant to this section shall not be a reason to postpone a parole hearing. In the case of any inmate convicted of an off-grid felony or a class A felony the secretary of corrections shall give written notice of the time and place of the public comment session for such inmate at least one month preceding the public comment session to any victim of such inmate's crime or the victim's family pursuant to K.S.A. 74-7338, and amendments thereto. If notification is not given to such victim or such victim's family in the case of any inmate convicted of an off-grid felony or a class A felony, the board shall postpone a decision on parole of the inmate to a time at least 30 days after notification is given as provided in this section. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section. If granted parole, the inmate may be released on parole on the date specified by the board, but not earlier than the date the inmate is eligible for parole under subsections (a), (b) and (c). At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the Kansas parole board shall consider: (1) Whether the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a, and amendments thereto, or any revision of such agreement; and (2) all pertinent information regarding such inmate, including, but not limited to, the circumstances of the offense of the inmate; the presentence report; the previous social history and criminal record of the inmate; the conduct, employment, and attitude of the inmate in prison; the reports of such physical and mental examinations as have been made, including, but not limited to, risk factors revealed by any risk assessment of the inmate; comments of the victim and the victim's family including in person comments, contemporaneous comments and prerecorded comments made by any technological

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

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

(j) Before ordering the parole of any inmate, the Kansas parole board shall have the inmate appear before either in person or via a video conferencing format and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the Kansas parole board formally considers placing an inmate on parole and no agreement has been entered into with the inmate under K.S.A. 75-5210a, and amendments thereto, the board shall notify the inmate in writing of the reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If parole is not granted only

because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in writing the reasons for not granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than one year after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next three years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to three years but any such deferral by the board shall require the board to state the basis for its findings. If parole is denied for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three years after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to 10 years but any such deferral shall require the board to state the basis for its findings.

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

(l) The Kansas parole board shall adopt rules and regulations in accordance with K.S.A.

77-415 et seq., and amendments thereto, not inconsistent with the law and as it may deem proper or necessary, with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution, reimbursement of expenditures by the state board of indigents' defense services and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.

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

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision;

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

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

(4) may order the parolee or person on postrelease supervision to pay the administrative fee imposed pursuant to K.S.A. 22-4529, and amendments thereto, unless the board finds compelling



circumstances which would render payment unworkable; and

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

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

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

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

(q) Inmates shall be released on postrelease supervision upon the termination of the prison

portion of their sentence. Time served while on postrelease supervision will vest.

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

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

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

(u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, and amendments thereto, for crimes committed on or after July 1, 2006, shall be placed on parole for life and shall not be discharged from supervision by the Kansas parole board. When the board orders the parole of an inmate pursuant to this subsection, the board shall order as a condition of parole that the inmate be

electronically monitored for the duration of the inmate's natural life.

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

Sec. 14. K.S.A. 22-4210 is hereby amended to read as follows: 22-4210. If a person confined in a penal institution in any other state may be a material witness in a criminal action pending in a court of record or in a grand jury investigation in this state, a judge of the court may certify (1) that there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court, (2) that a person who is confined in a penal institution in the other state may be a material witness in the proceeding, investigation, or action, and (3) that his presence will be required during a specified time. The certificate shall be presented to a judge of a court of record in the other state having jurisdiction over the prisoner confined, and a notice shall be given to the attorney general of the state in which the prisoner is confined.

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

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

- (a) "Offender" means: (1) A sex offender as defined in subsection (b);
- (2) a violent offender as defined in subsection (d);
- (3) a sexually violent predator as defined in subsection (f);

(4) any person who, on and after ~~the effective date of this act~~ May 29, 1997, is convicted of any of the following crimes when the victim is less than 18 years of age:

- (A) Kidnapping as defined in K.S.A. 21-3420, and amendments thereto, except by a parent;
- (B) aggravated kidnapping as defined in K.S.A. 21-3421, and amendments thereto; or
- (C) criminal restraint as defined in K.S.A. 21-3424, and amendments thereto, except by a parent;

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

- (A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;
- (B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-3505, and amendments thereto;
- (C) promoting prostitution as defined by K.S.A. 21-3513, and amendments thereto;
- (D) patronizing a prostitute as defined by K.S.A. 21-3515, and amendments thereto;
- (E) lewd and lascivious behavior as defined by K.S.A. 21-3508, and amendments thereto;

or

- (F) unlawful sexual relations as defined by K.S.A. 21-3520, and amendments thereto;
- (6) any person who has been required to register under any federal, military or other state's law or is otherwise required to be registered;

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

- (8) any person who has been convicted of an offense in effect at any time prior to the

~~effective date of this act~~ May 29, 1997, that is comparable to any crime defined in subsection (4), (5), (7) or (11), or any federal, military or other state conviction for an offense that under the laws of this state would be an offense defined in subsection (4), (5), (7) or (11);

(9) any person who has been convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of an offense defined in subsection (4), (5), (7) or (10);

(10) any person who has been convicted of aggravated trafficking as defined in K.S.A. 21-3447, and amendments thereto; or

(11) any person who has been convicted of: (A) Unlawful manufacture or attempting such of any controlled substance or controlled substance analog as defined by K.S.A. 65-4159, prior to its repeal, or K.S.A. 2009 Supp. 21-36a03, and amendments thereto, unless the court makes a finding on the record that the manufacturing or attempting to manufacture such controlled substance was for such person's personal use;

(B) possession of ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product to manufacture a controlled substance as defined by K.S.A. 65-7006, prior to its repeal, or K.S.A. 2009 Supp. 21-36a09 or 21-36a10, and amendments thereto, unless the court makes a finding on the record that the possession of such product was intended to be used to manufacture a controlled substance for such person's personal use; or

(C) K.S.A. 65-4161, prior to its repeal, or K.S.A. 2009 Supp. 21-36a05, and amendments thereto.

Convictions which result from or are connected with the same act, or result from crimes

committed at the same time, shall be counted for the purpose of this section as one conviction. Any conviction set aside pursuant to law is not a conviction for purposes of this section. A conviction from another state shall constitute a conviction for purposes of this section.

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

(c) "Sexually violent crime" means:

- (1) Rape as defined in K.S.A. 21-3502<sub>2</sub> and amendments thereto;
- (2) indecent liberties with a child as defined in K.S.A. 21-3503<sub>2</sub> and amendments thereto;
- (3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504<sub>2</sub> and amendments thereto;
- (4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of K.S.A. 21-3505<sub>2</sub> and amendments thereto;
- (5) aggravated criminal sodomy as defined in K.S.A. 21-3506<sub>2</sub> and amendments thereto;
- (6) indecent solicitation of a child as defined by K.S.A. 21-3510<sub>2</sub> and amendments thereto;
- (7) aggravated indecent solicitation of a child as defined by K.S.A. 21-3511<sub>2</sub> and amendments thereto;
- (8) sexual exploitation of a child as defined by K.S.A. 21-3516<sub>2</sub> and amendments thereto;
- (9) sexual battery as defined by K.S.A. 21-3517<sub>2</sub> and amendments thereto;
- (10) aggravated sexual battery as defined by K.S.A. 21-3518<sub>2</sub> and amendments thereto;
- (11) aggravated incest as defined by K.S.A. 21-3603<sub>2</sub> and amendments thereto; or

(12) electronic solicitation as defined by K.S.A. 21-3523, and amendments thereto, committed on and after ~~the effective date of this act~~ April 17, 2008;

(13) any conviction for an offense in effect at any time prior to ~~the effective date of this act~~ April 29, 1993, that is comparable to a sexually violent crime as defined in subparagraphs (1) through (11), or any federal, military or other state conviction for an offense that under the laws of this state would be a sexually violent crime as defined in this section;

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

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

(d) "Violent offender" includes any person who, after ~~the effective date of this act~~ May 29, 1997, is convicted of any of the following crimes:

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

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

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

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

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

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

or

~~(6)~~ (7) any conviction for an offense in effect at any time prior to ~~the effective date of this~~

act May 29, 1997, that is comparable to any crime defined in this subsection, or any federal, military or other state conviction for an offense that under the laws of this state would be an offense defined in this subsection; or

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

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

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

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

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

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

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

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

(i) "Institution of higher education" means any post-secondary school under the supervision



of the Kansas board of regents.

Sec. 16. K.S.A. 2009 Supp. 38-2255 is hereby amended to read as follows: 38-2255. (a)

*Considerations.* Prior to entering an order of disposition, the court shall give consideration to:

- (1) The child's physical, mental and emotional condition;
- (2) the child's need for assistance;
- (3) the manner in which the parent participated in the abuse, neglect or abandonment of the child;
- (4) any relevant information from the intake and assessment process; and
- (5) the evidence received at the dispositional hearing.

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

- (1) Supervision of the child and the parent by a court services officer;
- (2) participation by the child and the parent in available programs operated by an appropriate individual or agency; and
- (3) any special treatment or care which the child needs for the child's physical, mental or emotional health and safety.

(c) *Removal of a child from custody of a parent.* The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1)(A) The child is likely to sustain harm if not immediately removed from the home;

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

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

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

(d) *Custody of a child removed from the custody of a parent.* If the court has made the findings required by subsection (c), the court shall enter an order awarding custody to a relative of the child or to a person with whom the child has close emotional ties, to any other suitable person, to a shelter facility, to a youth residential facility or, if the child is 15 years of age or younger, or 16 or 17 years of age if the child has no identifiable parental or family resources or shows signs of physical, mental, emotional or sexual abuse, to the secretary. Custody awarded under this subsection shall continue until further order of the court.

(1) When custody is awarded to the secretary, the secretary shall consider any placement recommendation by the court and notify the court of the placement or proposed placement of the child within 10 days of the order awarding custody.

(A) After providing the parties or interested parties notice and opportunity to be heard, the court may determine whether the secretary's placement or proposed placement is contrary to the welfare or in the best interests of the child. In making that determination the court shall consider the health and safety needs of the child and the resources available to meet the needs of children in the custody of the secretary. If the court determines that the placement or proposed placement is contrary to the welfare or not in the best interests of the child, the court shall notify the secretary, who shall then make an alternative placement.

(B) The secretary may propose and the court may order the child to be placed in the custody of a parent or parents if the secretary has provided and the court has approved an appropriate safety

action plan which includes services to be provided. The court may order the parent or parents and the child to perform tasks as set out in the safety action plan.

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

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

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

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

(e) *Further determinations regarding a child removed from the home.* If custody has been awarded under subsection (d) to a person other than a parent, a permanency plan shall be provided or prepared pursuant to K.S.A. 2009 Supp. 38-2264, and amendments thereto. If a permanency plan

is provided at the dispositional hearing, the court may determine whether reintegration is a viable alternative or, if reintegration is not a viable alternative, whether the child should be placed for adoption or a permanent custodian appointed. In determining whether reintegration is a viable alternative, the court shall consider:

(1) Whether a parent has been found by a court to have committed one of the following crimes or to have violated the law of another state prohibiting such crimes or to have aided and abetted, attempted, conspired or solicited the commission of one of these crimes: Capital murder, K.S.A. 21-3439, prior to its repeal, aggravated murder, section 2, and amendments thereto, murder in the first degree, K.S.A. 21-3401, and amendments thereto, murder in the second degree, K.S.A. 21-3402, and amendments thereto, capital murder, K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, or a felony battery that resulted in bodily injury;

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

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

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

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

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

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

(f) *Proceedings if reintegration is not a viable alternative.* If the court determines that

reintegration is not a viable alternative, proceedings to terminate parental rights and permit placement of the child for adoption or appointment of a permanent custodian shall be initiated unless the court finds that compelling reasons have been documented in the case plan why adoption or appointment of a permanent custodian would not be in the best interests of the child. If compelling reasons have not been documented, the county or district attorney shall file a motion within 30 days to terminate parental rights or a motion to appoint a permanent custodian within 30 days and the court shall hold a hearing on the motion within 90 days of its filing. No hearing is required when the parents voluntarily relinquish parental rights or consent to the appointment of a permanent custodian.

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

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

(2) If the court has reason to believe that a child is before the court due, in whole or in part, to the use or misuse of alcohol or a violation of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, by the child, a parent of the child, or another person responsible for the care of the child, the court may order the child, parent of the child or other person responsible for the care of the child to submit to and complete an alcohol and drug evaluation by a qualified person or agency and comply with any recommendations. If the evaluation is performed by a community-based alcohol and drug safety program certified pursuant to K.S.A. 8-1008, and amendments thereto, the child, parent of the child or other person responsible for the care of the child shall pay a fee not to exceed

the fee established by that statute. If the court finds that the child and those legally liable for the child's support are indigent, the fee may be waived. In no event shall the fee be assessed against the secretary.

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

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

establishes, by clear and convincing evidence, that:

(1) A parent has previously been found to be an unfit parent in proceedings under K.S.A. 2009 Supp. 38-2266 et seq., and amendments thereto, or comparable proceedings under the laws of another jurisdiction;

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

(3) on two or more prior occasions a child in the physical custody of the parent has been adjudicated a child in need of care as defined by subsection (d)(1),(d)(3), (d)(5) or (d)(11) of K.S.A. 2009 Supp. 38-2202, and amendments thereto, or comparable proceedings under the laws of another jurisdiction.

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

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

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

(7) a parent has been convicted of capital murder, K.S.A. 21-3439, prior to its repeal, aggravated murder, section 2, and amendments thereto, murder in the first degree, K.S.A. 21-3401, and amendments thereto, murder in the second degree, K.S.A. 21-3402, and amendments thereto, or voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, or comparable proceedings under the laws of another jurisdiction or, has been adjudicated a juvenile offender because of an act which if committed by an adult would be an offense as provided in this subsection, and the victim of such murder was the other parent of the child;

(8) a parent abandoned or neglected the child after having knowledge of the child's birth or either parent has been granted immunity from prosecution for abandonment of the child under subsection (b) of K.S.A. 21-3604, and amendments thereto; or

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

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

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

(12) a parent has been convicted of rape, K.S.A. 21-3502, and amendments thereto, or comparable proceedings under the laws of another jurisdiction resulting in the conception of the child; or

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

(b) The burden of proof is on the parent to rebut the presumption of unfitness by a



preponderance of the evidence. In the absence of proof that the parent is presently fit and able to care for the child or that the parent will be fit and able to care for the child in the foreseeable future, the court shall terminate parental rights in proceedings pursuant to K.S.A. 2009 Supp. 38-2266 et seq., and amendments thereto.

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

(b) There shall be no expungement of records or files concerning acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-3439, prior to its repeal, capital murder, section 2, and amendments thereto, aggravated murder, K.S.A. 21-3401, and amendments thereto, murder in the first degree, K.S.A. 21-3402, and amendments thereto, murder in the second degree, K.S.A. 21-3403, and amendments thereto, voluntary manslaughter, K.S.A. 21-3404, and amendments thereto, involuntary manslaughter, ~~K.S.A. 21-3439, and amendments thereto, capital murder, K.S.A. 21-3442, and amendments thereto, involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3502, and amendments thereto, rape, K.S.A. 21-3503, and amendments thereto, indecent liberties with a child, K.S.A. 21-3504, and amendments thereto, aggravated indecent liberties with a child, K.S.A. 21-3506, and amendments thereto, aggravated criminal sodomy, K.S.A. 21-3510, and amendments thereto, indecent solicitation of a child, K.S.A. 21-3511, and amendments thereto, aggravated indecent solicitation of a child, K.S.A. 21-3516, and amendments thereto, sexual exploitation,~~

K.S.A. 21-3603, and amendments thereto, aggravated incest, K.S.A. 21-3608, and amendments thereto, endangering a child, K.S.A. 21-3609, and amendments thereto, abuse of a child, or which would constitute an attempt to commit a violation of any of the offenses specified in this subsection.

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

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

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

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

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

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

(e) Upon entry of an order expunging records or files, the offense which the records or files

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

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

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

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

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

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

- (1) The person whose record was expunged;
- (2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;
- (3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;
- (4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;
- (5) a person entitled to such information pursuant to the terms of the expungement order;
- (6) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;
- (7) the governor or the Kansas racing commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission; or
- (8) the Kansas sentencing commission.

Sec. 19. K.S.A. 2009 Supp. 38-2365 is hereby amended to read as follows: 38-2365. (a)

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

(b) If a juvenile is in the custody of the commissioner, the commissioner shall prepare and present a permanency plan at sentencing or within 30 days thereafter. If a permanency plan is already in place under a child in need of care proceeding, the court may adopt the plan under the present proceeding. The written permanency plan shall provide for reintegration of the juvenile into such juvenile's family or, if reintegration is not a viable alternative, for other permanent placement of the juvenile. Reintegration may not be a viable alternative when: (1) The parent has been found by a court to have committed capital murder, K.S.A. 21-3439, prior to its repeal, aggravated murder,

section 2, and amendments thereto, murder in the first degree, K.S.A. 21-3401, and amendments thereto, murder in the second degree, K.S.A. 21-3402, and amendments thereto, ~~capital murder, K.S.A. 21-3439, and amendments thereto~~; voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, of a child or violated a law of another state which prohibits such murder or manslaughter of a child;

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

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

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

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

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

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

(d) During the time a juvenile remains in the custody of the commissioner, the commissioner shall submit to the court, at least every six months, a written report of the progress being made toward the goals of the permanency plan submitted pursuant to subsections (b) and (c) and the

specific actions taken to achieve the goals of the permanency plan. If the juvenile is placed in foster care, the court may request the foster parent to submit to the court, at least every six months, a report in regard to the juvenile's adjustment, progress and condition. Such report shall be made a part of the juvenile's court social file. The court shall review the plan submitted by the commissioner and the report, if any, submitted by the foster parent and determine whether reasonable efforts and progress have been made to achieve the goals of the permanency plan. If the court determines that progress is inadequate or that the permanency plan is no longer viable, the court shall hold a hearing pursuant to subsection (e).

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

(f) Whenever a hearing is required under subsection (e), the court shall notify all interested parties of the hearing date, the commissioner, foster parent and preadoptive parent or relatives providing care for the juvenile and hold a hearing. Individuals receiving notice pursuant to this subsection shall not be made a party to the action solely on the basis of this notice and opportunity to be heard. After providing the persons receiving notice an opportunity to be heard, the court shall determine whether the juvenile's needs are being adequately met; whether services set out in the

permanency plan necessary for the safe return of the juvenile have been made available to the parent with whom reintegration is planned; and whether reasonable efforts and progress have been made to achieve the goals of the permanency plan.

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

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

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

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

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

(i) A petition to terminate parental rights is not required to be filed if one of the following



exceptions is documented to exist: (1) The juvenile is in a stable placement with relatives;

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

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

Sec. 20. K.S.A. 2009 Supp. 39-970 is hereby amended to read as follows: 39-970. (a) (1) No person shall knowingly operate an adult care home if, in the adult care home, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439, prior to its repeal, aggravated murder, pursuant to section 2, and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401 and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402 and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403 and amendments thereto, assisting suicide pursuant to K.S.A. 21-3406 and amendments thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503 and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506 and amendments thereto, indecent solicitation of a

child, pursuant to K.S.A. 21-3510 and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518 and amendments thereto, an attempt to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, and amendments thereto, a conspiracy to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, and amendments thereto, or criminal solicitation of any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, and amendments thereto, or similar statutes of other states or the federal government.

(2) A person operating an adult care home may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: A felony conviction for a crime which is described in: (A) Article 34 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605 and amendments thereto; (C) an attempt to commit any of the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, and amendments thereto; (D) a conspiracy to commit any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302, and amendments thereto; (E) criminal solicitation of any of the crimes

listed in subsection (a)(2) pursuant to K.S.A. 21-3303, and amendments thereto; or (F) similar statutes of other states or the federal government.

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

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

(d) For the purpose of complying with this section, the operator of an adult care home shall request from the department of health and environment information regarding only felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, and which relates to a person who works in the adult

care home, or is being considered for employment by the adult care home, for the purpose of determining whether such person is subject to the provision of this section. For the purpose of complying with this section, the operator of an adult care home shall receive from any employment agency which provides employees to work in the adult care home written certification that such employees are not prohibited from working in the adult care home under this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, a person who operates an adult care home may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No adult care home, the operator or employees of an adult care home or an employment agency, or the operator or employees of an employment agency, shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such adult care home's compliance with the provisions of this section if such adult care home or employment agency acts in good faith to comply with this section.

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

(f) (1) The secretary of health and environment shall provide each operator requesting information under this section with the criminal history record information concerning felony

convictions and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, in writing and within three working days of receipt of such information from the Kansas bureau of investigation. The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).

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

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

(4) The secretary of health and environment shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 2009 Supp. 38-2326, and amendments thereto, except for adjudications of a juvenile offender for an offense described in

K.S.A. 21-3701, and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator would or would not be prohibited by this section from employing the subject of the request for information and whether such information contains adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, and amendments thereto.

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

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

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

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

(j) The operator of an adult care home shall not be required under this section to conduct a background check on an applicant for employment with the adult care home if the applicant has been

the subject of a background check under this act within one year prior to the application for employment with the adult care home. The operator of an adult care home where the applicant was the subject of such background check may release a copy of such background check to the operator of an adult care home where the applicant is currently applying.

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

(l) For purposes of this section, the Kansas bureau of investigation shall only report felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, to the secretary of health and environment when a background check is requested.

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

Sec. 21. K.S.A. 2009 Supp. 65-5117 is hereby amended to read as follows: 65-5117. (a) (1) No person shall knowingly operate a home health agency if, for the home health agency, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439 prior to its repeal, aggravated murder, pursuant to section 2, and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401 and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402 and amendments thereto,

voluntary manslaughter, pursuant to K.S.A. 21-3403 and amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406 and amendments thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503 and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506 and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510 and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518 and amendments thereto, an attempt to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, and amendments thereto, a conspiracy to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, and amendments thereto, or criminal solicitation of any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, and amendments thereto, or similar statutes of other states or the federal government.

(2) A person operating a home health agency may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: A felony conviction for a crime which is described in: (A) Article 34 of chapter 21 of the



Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605 and amendments thereto; (C) an attempt to commit any of the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, and amendments thereto; (D) a conspiracy to commit any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302, and amendments thereto; (E) criminal solicitation of any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3303, and amendments thereto; or (F) similar statutes of other states or the federal government.

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

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

(d) For the purpose of complying with this section, the operator of a home health agency shall request from the department of health and environment information regarding only felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, and which relates to a person who works for the home health agency or is being considered for employment by the home health agency, for the purpose of determining whether such person is subject to the provisions of this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, the operator of a home health agency shall receive from any employment agency which provides employees to work for the home health agency written certification that such employees are not prohibited from working for the home health agency under this section. For the purpose of complying with this section, a person who operates a home health agency may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No home health agency, the operator or employees of a home health agency or an employment agency, or the operator or employees of an employment agency, which provides employees to work for the home health agency shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such home health agency's

compliance with the provisions of this section if such home health agency or employment agency acts in good faith to comply with this section.

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

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

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

(3) Whenever the criminal history record information reveals that the subject of the request

has no criminal history on record, the secretary shall provide notice to each operator requesting information under this section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.

(4) The secretary of health and environment shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 2009 Supp. 38-2326, and amendments thereto, except for adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator would or would not be prohibited by this section from employing the subject of the request for information and whether such information contains adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, and amendments thereto.

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

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

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

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

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

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

(l) This section shall be part of and supplemental to the provisions of article 51 of chapter 65 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto.

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

- (1) Rape, as defined in K.S.A. 21-3502, and amendments thereto;
- (2) indecent liberties with a child, as defined in K.S.A. 21-3503, and amendments thereto;
- (3) aggravated indecent liberties with a child, as defined in K.S.A. 21-3504, and amendments thereto;
- (4) criminal sodomy, as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, and amendments thereto;
- (5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, and amendments thereto;
- (6) indecent solicitation of a child, as defined in K.S.A. 21-3510, and amendments thereto;
- (7) aggravated indecent solicitation of a child, as defined in K.S.A. 21-3511, and amendments thereto;
- (8) sexual exploitation of a child, as defined in K.S.A. 21-3516, and amendments thereto;
- (9) aggravated incest, as defined in K.S.A. 21-3603, and amendments thereto;
- (10) aggravated endangering a child, as defined in K.S.A. 21-3608a, and amendments thereto;
- (11) abuse of a child, as defined in K.S.A. 21-3609, and amendments thereto;
- (12) capital murder, as defined in K.S.A. 21-3439, and ~~amendments thereto~~ prior to its repeal;
- (13) aggravated murder, as defined in section 2, and amendments thereto;
- ~~(13)~~ (14) murder in the first degree, as defined in K.S.A. 21-3401, and amendments thereto;
- ~~(14)~~ (15) murder in the second degree, as defined in K.S.A. 21-3402, and amendments thereto;
- ~~(15)~~ (16) voluntary manslaughter, as defined in K.S.A. 21-3403, and amendments thereto;

~~(16)~~ (17) involuntary manslaughter, as defined in K.S.A. 21-3404, and amendments thereto;

~~(17)~~ (18) involuntary manslaughter while driving under the influence of alcohol or drugs, as defined in K.S.A. 21-3442, and amendments thereto;

~~(18)~~ (19) sexual battery, as defined in K.S.A. 21-3517, and amendments thereto, when, at the time the crime was committed, the victim was less than 18 years of age or a student of the person committing such crime;

~~(19)~~ (20) aggravated sexual battery, as defined in K.S.A. 21-3518, and amendments thereto;

~~(20)~~ (21) attempt under K.S.A. 21-3301, and amendments thereto, to commit any act specified in this subsection;

~~(21)~~ (22) conspiracy under K.S.A. 21-3302, and amendments thereto, to commit any act specified in this subsection;

~~(22)~~ (23) an act in another state or by the federal government that is comparable to any act described in this subsection; or

~~(23)~~ (24) an offense in effect at any time prior to the effective date of this act that is comparable to an offense as provided in this subsection.

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

(1) A felony under K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto;

(2) a felony described in any section of article 34 of chapter 21 of the Kansas Statutes Annotated, other than an act specified in subsection (a), or a battery, as described in K.S.A. 21-3412, and amendments thereto, or domestic battery, as described in K.S.A. 21-3412a, and amendments

thereto, if the victim is a minor or student;

(3) a felony described in any section of article 35 of chapter 21 of the Kansas Statutes Annotated, other than an act specified in subsection (a);

(4) any act described in any section of article 36 of chapter 21 of the Kansas Statutes Annotated, other than an act specified in subsection (a);

(5) a felony described in article 37 of chapter 21 of the Kansas Statutes Annotated;

(6) promoting obscenity, as described in K.S.A. 21-4301, and amendments thereto, promoting obscenity to minors, as described in K.S.A. 21-4301a, and amendments thereto, or promoting to minors obscenity harmful to minors, as described in K.S.A. 21-4301c, and amendments thereto;

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

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

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

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

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

(c) The state board of education may issue a license to or renew the license of a person who has been convicted of committing an offense or act described in subsection (b) or who has entered into a criminal diversion agreement after having been charged with an offense or act described in



subsection (b) if the state board determines, following a hearing, that the person has been rehabilitated for a period of at least five years from the date of conviction of the offense or commission of the act or, in the case of a person who has entered into a criminal diversion agreement, that the person has satisfied the terms and conditions of the agreement. The state board of education may consider factors including, but not limited to, the following in determining whether to grant a license:

- (1) The nature and seriousness of the offense or act;
- (2) the conduct of the person subsequent to commission of the offense or act;
- (3) the time elapsed since the commission of the offense or act;
- (4) the age of the person at the time of the offense or act;
- (5) whether the offense or act was an isolated or recurring incident; and
- (6) discharge from probation, pardon or expungement.

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

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

(f) The state board of education shall not be liable for civil damages to any person refused

issuance or renewal of a license by reason of the state board's compliance, in good faith, with the provisions of this section.

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

- (1) Murder in the first degree, as provided in K.S.A. 21-3401, and amendments thereto;
- (2) murder in the second degree, as provided in K.S.A. 21-3402, and amendments thereto;
- (3) capital murder, as provided in K.S.A. 21-3439, ~~and amendments thereto~~ prior to its repeal;
- (4) aggravated murder, as provided in section 2, and amendments thereto;
- ~~(4)~~ (5) rape, as provided in K.S.A. 21-3502, and amendments thereto;
- ~~(5)~~ (6) aggravated criminal sodomy, as provided in K.S.A. 21-3506, and amendments thereto;
- ~~(6)~~ (7) sexual exploitation of a child, as provided in K.S.A. 21-3516, and amendments thereto;
- ~~(7)~~ (8) kidnapping as provided in K.S.A. 21-3420, and amendments thereto;
- (8) (9) aggravated kidnapping, as provided in K.S.A. 21-3421, and amendments thereto;
- ~~(9)~~ (10) criminal restraint, as provided in K.S.A. 21-3424, and amendments thereto;
- ~~(10)~~ (11) indecent solicitation of a child, as provided in K.S.A. 21-3510, and amendments thereto;
- ~~(11)~~ (12) aggravated indecent solicitation of a child, as provided in K.S.A. 21-3511, and

amendments thereto;

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

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

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

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

~~(16)~~ (17) aggravated robbery, as provided in K.S.A. 21-3427, and amendments thereto;

~~(17)~~ (18) burglary, as provided in K.S.A. 21-3715, and amendments thereto;

~~(18)~~ (19) aggravated burglary, as provided in K.S.A. 21-3716, and amendments thereto;

~~(19)~~ (20) theft, as provided in K.S.A. 21-3701, and amendments thereto;

~~(20)~~ (21) vehicular homicide, as provided in K.S.A. 21-3405, and amendments thereto;

~~(21)~~ (22) involuntary manslaughter while driving under the influence, as provided in K.S.A. 21-3442, and amendments thereto; or

~~(22)~~ (23) stalking, as provided in K.S.A. 21-3438, and amendments thereto.

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

Sec. 24. K.S.A. 21-3439, 21-3452, 21-4622, 21-4623, 21-4624, 21-4625, 21-4626, 21-4627, 21-4629, 21-4630, 21-4631, 21-4634, 21-4635, 21-4641, 21-4706, 22-3405, 22-3705 and 22-4210 and K.S.A. 2009 Supp. 21-4619, 22-3717, 22-4902, 38-2255, 38-2271, 38-2312, 38-2365, 39-970, 65-5117, 72-1397 and 75-52,148 are hereby repealed.

Sec. 25. This act shall take effect and be in force from and after its publication in the statute

book.

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**Senator Derek Schmidt**  
**Majority Leader**

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July 6, 2009

Honorable Tim Owens  
Chairman, Senate Judiciary Committee  
7804 W 100<sup>th</sup> Street  
Overland Park, KS 66212

**Re: Concerns with Senate Bill 208- repeal of the death penalty**

Dear Mr. Chairman:

During the 2009 legislative session, you requested that I commit to paper concerns I expressed during floor debate regarding the drafting and content of Senate Bill 208. I regret this delay in completing that task and admit that a few detailed concerns then fresh may now be more difficult to recreate. I have, however, reviewed my notes from that debate and hope these thoughts are helpful to you and the Judicial Council in evaluating the language of the bill during this interim period.

As a general statement, I am concerned that the overall framework the bill employs in its attempt to implement a policy of repealing the death penalty in Kansas is flawed. Frankly, it appears to me that this particular bill draft may have been assembled by borrowing parts of various other bills drafted over the years to implement the policy of repealing the death penalty without properly integrating the diverse language from those bills. Senate Bill 208 repeals the capital murder statute, which encompasses both the death penalty and the life without parole law, but it is unclear to me what the bill is attempting to do in terms of re-implementing a possible penalty of life without parole for certain crimes. Whatever the intent of how to preserve a life without parole option, I do not believe it is accomplished by the bill as drafted.

This basic drafting point is important to resolving other concerns with the bill. If the intent of the bill is to rewrite the first degree murder statute to incorporate the possibility of a sentence of life without the possibility of parole, then doing that more coherently would resolve the following concerns. However, if the intent is to create some new homicide crime for which the penalty is life without the possibility of parole, then at numerous points in the bill the deletion of references to the capital murder statute and the failure to substitute a new reference to a new crime for which the penalty is life without the possibility of parole would lead to peculiar outcomes. For example:

1. Murderers in this new category of crime would be able to work at an adult care home (Section 18) or a home health agency (Section 19).
2. Murderers in this new category of crime would no longer have their murder conviction considered in custody decisions (page 30), to be declared an unfit parent (page 32), or in a CINC proceeding (page 36).

3. Murderers in this new category of crime would no longer have to register under the Offender Registration Act (Section 13).
4. Murderers in this new category of crime who kill a pregnant woman and her fetus would no longer be subject to Alexa's Law.

In addition, in no particular order, I share the following concerns and questions about the bill:

- 1 • New Section 1 is the heart of the bill insofar as it contains the language purported to stop the death penalty in Kansas after a date certain while grandfathering in those already under sentence of death. Among concerns about this section:
  1. If a person who is under sentence of death prior to the deadline is subsequently resentenced after the deadline, does this section eliminate the possibility of that person being sentenced to death? Is that the intended policy?
  2. What equal protections concerns are implicated as a result of grandfathering those already under sentence of death?
  3. If this bill is enacted, does the governor retain the authority to commute the sentences of persons already under sentence of death?
- 2 • Insofar as the bill repeals K.S.A. 21-4627, which sets forth the process for death penalty appeals, are persons currently under sentence of death and grandfathered by the bill still entitled to an automatic appeal and the same appeals process?
- 3 • Insofar as Section 11 of the bill repeals authority to pay BIDS attorneys for death penalty work, what is the process by which the persons currently under sentence of death and grandfathered by the bill obtain representation for a direct appeal? Or for a habeas corpus or K.S.A. 60-1507 motion?
- 4 • What is the rationale for repealing the severability clause that is part of the capital murder statute in current law (K.S.A. 21-4630)? Does this mean that, to the extent the capital murder statute applies to the persons currently under sentence of death and grandfathered by the bill, the capital murder statute is now to be considered by courts as non-severable?
- 5 • If this bill is enacted, how will the concept of life without the possibility of parole interact with the language of Section 8 (K.S.A. 22-3705)? This problem may be remedied by tightening the definition of life without the possibility of parole.
- 6 • If this bill is enacted, what aggravating circumstances can result in a sentence of life without the possibility of parole? Are they the Hard 40/50 aggravators? Or the capital murder aggravators?
- 7 • If this bill is enacted, can a sentence of life without parole be given to a juvenile? Current law precludes that possibility in K.S.A. 21-4622, but that section of law is repealed by the bill.
- 8 • If this bill is enacted, what will be the definition of a sentence of life without the possibility of parole (LWOP)? Current law defines LWOP in K.S.A. 21-4624(g), but that provision of law is repealed by the bill.
- 9 • If this bill is enacted, is the governor granted authority to commute a sentence of life without the possibility of parole? The express prohibition against that in current law is repealed by the bill.

- 10 • If this bill is enacted, would it then become possible to expunge a LWOP conviction of an adult (Section 3) or a juvenile (Section 16)?
- 11 • If this bill is enacted, the amendments to current law included in Section 11 of the bill appear to allow persons under sentence of death but grandfathered by the bill to be sent out of state as witnesses in out-of-state trials under the Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act. Is this policy change intended?
- 12 • What is the reason for striking lines 10 and 11 on page 11 of the bill but retaining lines 6 to 10 on that same page? It is not clear to me whether these retained words have meaning absent a connection to a death sentence.

Mr. Chairman, these are the concerns I have gleaned from the notes I assembled for Senate floor debate on this bill earlier this year. I hope reducing them to paper in this manner is helpful to you and to the Judicial Council in working through the drafting choices made in this legislation.

If I may be of further assistance, please let me know.

Sincerely,



Derek Schmidt  
Kansas State Senator

cc: Randy Hearrell, Kansas Judicial Council

The Committee reviewed and responded to each of the bullet points listed in Senator Schmidt's letter as follows (bullets are numbered for ease of reference and paraphrased):

**Bullet 1 – Listing several concerns about 2009 SB 208, Section 1, relating to retroactivity, equal protection, and governor's commutation powers.**

**Bullet 1, question 1 - If a person under sentence of death is resentenced after the effective date of 2009 SB 208, can that person be resentenced to death?**

Under 2009 SB 208 as originally drafted, it appears that a defendant could not be resentenced to death after the repeal of the death penalty, even if that defendant had originally been sentenced to death while the death penalty was still in effect. As discussed in Section I of the report, the Committee recommends making the repeal of the death penalty dependent on the date of the offense rather than the date of sentencing. Under the redraft, a defendant who had been sentenced to death before the repeal could be resentenced to death after the repeal, so long as the offense was committed while the death penalty was in effect.

**Bullet 1, question 2 - What equal protection concerns are implicated as a result of grandfathering in defendants already sentenced to death?**

The prospective repeal of the death penalty does not constitute an arbitrary classification or deny equal protection of the law to a prisoner who has already been sentenced to death. This issue is addressed in more detail in Section II of this report.



**Bullet 1, question 3 - Under 2009 SB 208, does the governor retain the authority to commute existing death sentences?**

Under both 2009 SB 208 as originally drafted and the Committee's redraft, the governor retains the power to commute existing death sentences. See SB 208, Sec. 8; New bill, Section 12. Under current law, the governor may commute a death sentence to "imprisonment for life or for any term not less than ten years." K.S.A. 22-3705(a). The redraft does not significantly change current law but clarifies that the governor may commute a death sentence to "imprisonment for life without the possibility of parole or any lesser sentence, but not to any term less than ten years."

**Bullet 2 – Under 2009 SB 208, are persons currently sentenced to death still entitled to an automatic appeal and the same appeals process?**

Yes. In both 2009 SB 208 and the Committee's redraft, K.S.A. 21-4627 is repealed prospectively only; therefore, the statute would still apply to defendants who committed capital crimes when the statute was in effect.

**Bullet 3 – Under the bill, how will persons currently sentenced to death obtain representation for a direct appeal or habeas motion?**

The Committee determined that stricken language in 2009 SB 208, Sections 11 and 12, relating to BIDS representation of capital defendants needed to be replaced, as persons already sentenced to death will continue to need those services. The Committee recommends no changes to the BIDS statutes (K.S.A. 22-4505 and 22-4506) in the redraft.

**Bullet 4 – What is the effect of repealing the severability clause which is part of the capital murder statutes?**

No effect. If an offense was committed while the death penalty was still in effect, one would look to the version of the statutes in effect at the time of the capital crime, including the severability clause.

**Bullet 5 - How does the section on the governor's commutation powers relate to a sentence of life without parole?**

The redraft contains amendments that specifically address the governor's power to commute a sentence of life without parole. See New bill; Section 12. Under the redraft, the governor would have the same power to commute a sentence of life without parole as he currently has to commute a death sentence.

**Bullet 6 - What aggravating factors must be found to impose a sentence of life without parole?**

The redraft defines a new crime of "aggravated murder" for which the penalty is life without parole. New bill, New Section 2. There are no hard 40/50 aggravating or mitigating factors to be considered.

**Bullet 7 - Under the bill, can a sentence of life without parole be imposed upon a juvenile?**

While 2009 SB 208 as originally drafted would repeal K.S.A. 21-4622, the Committee agreed that statute should be amended rather than repealed. Under the redraft, a

juvenile cannot be sentenced to life imprisonment without parole.

**Bullet 8 – How will life without parole be defined?**

2009 SB 208 as originally drafted would repeal the current definition of life without parole as contained in K.S.A. 21-4624(g). The Committee agreed that the definition of life without parole should be retained and it appears in the redraft in Section 3. The language is based on current K.S.A. 21-4624(g) and 21-4638.

**Bullet 9 - Does the governor have the authority to commute a sentence of life without parole? The express prohibition against that is repealed by 2009 SB 208.**

Yes, the governor does have such authority. Section 12 of the redraft addresses the governor's commutation powers.

The Committee was not aware of any express prohibition against the governor commuting a sentence of life without parole. The Committee reviewed K.S.A. 21-4624(g), which may have been the basis of Senator Schmidt's concern. That statute provides a defendant who is sentenced to imprisonment for life without the possibility of parole is not eligible for "suspension, modification or reduction of sentence." However, the Committee believes this language refers to suspension, modification or reduction of sentence by the court, not by the governor. K.S.A. 21-4624(g) does not reference the governor's commutation power.

**Bullet 10 - Can a conviction for a crime carrying a sentence of life without parole be expunged?**

No. The redraft addresses this issue by inserting a reference to aggravated murder in the expungement statute, and in any other statute which currently refers to capital murder. See New bill, Section 5 amending K.S.A. 2009 Supp. 21-4619.

**Bullet 11 - Under 2009 SB 208, persons under a sentence of death will be allowed to be sent out of state as witnesses in out-of-state trials. Is this change intended?**

The Committee believes this change was not intended. Under the redraft, persons under a sentence of death or a sentence of life without parole will not be allowed to be sent out of state as witnesses in out-of-state trials. See New bill, Section 14 amending K.S.A. 22-4210.

**Bullet 12 - On page 11 of 2009 SB 208, why are lines 10-11 stricken but not the preceding lines that are part of the same sentence?**

The Committee believes this was an oversight. In the redraft, the entire sentence from line 6 to line 11 is stricken. See New bill, Section 8 amending K.S.A. 21-4635.

MEMORANDUM

TO: Kansas Judicial Council Death Penalty Advisory Committee  
FROM: Michael Kaye, Jeffrey Jackson, Ronald Evans, and Jeffrey Dazey  
DATE: November 18, 2009  
RE: Constitutional Questions Raised by Senate Bill 208

ISSUES PRESENTED

1. Whether passage of Senate Bill 208, prospectively repealing capital punishment, violates the Equal Protection Clause of the Fourteenth Amendment and § 1 of the Kansas Constitution Bill of Rights.
2. Whether passage of Senate Bill 208, prospectively repealing capital punishment, violates the Ex Post Facto Clause of Article 1 of the United States Constitution and the Kansas Constitution.

BRIEF ANSWERS

1. *Equal Protection Challenge* - A Kansas prisoner currently under sentence of death will probably not raise a successful equal protection challenge following passage of Senate Bill 208. Although the Equal Protection Clause does protect arguably indistinguishable persons from unequal treatment by a local, state or federal governments, the courts and legal scholars who have addressed this issue agree that legislatures may chose an effective date for a statute reducing the penalty for a crime and not run afoul of the Equal Protection Clause. Courts will always begin their analysis by presuming that a statute is constitutional. Moreover, even if a court were to address the issue it is unlikely that a Kansas prisoner currently under sentence of death would prevail on a claim of unequal treatment. A court addressing the issue would be likely to apply the most deferential standard of review, because a prisoner forfeits a fundamental right to liberty following a

lawful conviction. Finally, even if a court chose to apply a less deferential standard of review, it is unlikely that any prisoner would successfully overcome the legislature's articulated interests in repealing capital punishment because these interests are legitimate.

2. *Ex Post Facto Challenge* – The Ex Post Facto Clause prohibits a legislature from passing laws that punish a person for then legal conduct committed before passage of the law, or from increasing the punishment for a crime committed before passage of the increased punishment. Senate Bill 208 proposes to eliminate the death penalty for all capital murders committed on or after the bill's July 1, 2010, effective date. Because Senate Bill 208 both reduces a criminal sanction and operates only against future crimes, the Ex Post Facto Clause would not be offended by passage of Senate Bill 208.

#### BACKGROUND

The Kansas Judicial Council has been convened to review and make recommendations on Senate Bill 208 (SB 208), an act concerning abolition of the death penalty. As drafted, with September 11, 2009, revisions in italics, SB 208 § 1(a) provides that “[n]o person shall be sentenced to death *for any crime committed* on or after July 1, 2010.” § 1(b) addresses the issue of retroactivity: “[a]ny person who has been sentenced to death before July 1, 2009, may be put to death pursuant to the provisions of article 4 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto.” Together, these initial provisions express a clear legislative intention that SB 208 abolishes the death penalty prospectively and that SB 208 should not be given retroactive effect for the inmates presently on Kansas' death row.

Kansas is not alone in considering bills to prospectively abolish the death penalty. As recently as March 18, 2009, Gov. Bill Richardson of New Mexico signed legislation prospectively repealing New Mexico's death penalty. See Shari Allison, Cathy Ansheles, and

Angelyn Frazer, *Taking Death of the Table in the Land of Enchantment*, 33 Jun Champ. 42 (2009). Two men, Robert Fry and Timothy Allen, remain on New Mexico's death row. *Id.* Victoria Wilson, the New Mexico Assistant Attorney General tasked with defending Fry and Allen's convictions and sentences, confirmed that neither defendant has raised a constitutional challenge to the prospective repeal of Capital Punishment by the New Mexico legislature. Both defendants are procedurally at the State post-conviction review stage of their appellate proceedings.

Constitutional concerns over a prospective repeal of capital punishment have been brought to the attention of the Senate Judiciary Committee. In a letter dated July 6, 2009, from Senator Derek Schmidt to Senator Tim Owens, Senator Schmidt shared several concerns with SB208. Ltr. from Sen. Derek Schmidt, Majority Leader of the Kansas Senate, to Sen. Tim Owens, Chairman, Senate Judiciary Committee, *Re: Concerns with Senate Bill 208 – repeal of the death penalty 2* (July 6, 2009) (copy provided to Kansas Judicial Council Death Penalty Advisory Committee). Among Senator Schmidt's written concerns, was the issue of "[w]hat equal protections (sic) concerns are implicated as a result of grandfathering those already under sentence of death?" *Id.* These concerns, in part, prompted the Kansas Judicial Council Death Penalty Advisory Committee to request a review of SB 208 focusing on three issues:

- (1) The cost of a death sentence versus the cost of life in prison without parole;
- (2) The sentencing aspect for a person convicted of a crime when the offense occurred while the death penalty was still in effect; and
- (3) Any constitutional questions relating to those currently awaiting execution versus those convicted of the same offense after abolition of the death penalty.

Ltr. from Christy R. Molzen, Staff Attorney, Kansas Judicial Council, to the Members of the Kansas Judicial Council Death Penalty Advisory Committee, 2 (Aug. 7, 2009) (copy provided to Kansas Judicial Council Death Penalty Advisory Committee). The following memorandum has

been drafted to address Senator Schmidt's Equal Protection concern and issue number (3) set forth above.

During the initial meeting of the Kansas Judicial Council Death Penalty Advisory Committee, held on Wednesday, August 19, 2009, the Committee established a subcommittee consisting of Profs. Michael Kaye and Jeffrey Jackson, both of Washburn University School of Law, and Ronald Evans, of the Kansas Death Penalty Defender's Unit. From these conversations, the Committee agreed that the "Constitutional Issues" subcommittee would review two particular constitutional concerns:

- (1) Whether passage of Senate Bill 208, prospectively repealing capital punishment, violates the Equal Protection Clause of the Fourteenth Amendment.
- (2) Whether passage of Senate Bill 208, prospectively repealing capital punishment, violates the Ex Post Facto Clause of Article 1.

The legal memorandum below represents the Advisory Committee's legal conclusions following a review by the "Constitutional Issues" subcommittee.

#### DISCUSSION

- (I) EQUAL PROTECTION CHALLENGE: The prospective repeal of capital punishment by passage of SB 208 does not constitute an arbitrary classification or deny those currently under sentence of death equal protection of the law

This section will address whether prospective repeal of capital punishment raises equal protection concerns by distinguishing between persons sentenced to death for murders committed before July 1, 2010, and those sentenced to life without parole for murders committed on or after July 1, 2010. First, this portion of the memo will discuss Kansas equal protection jurisprudence, focusing on the analysis used by Kansas courts, the presumption that legislation is constitutionally valid and the situations implicating equal protection concerns. Next, this memo will discuss the prevailing view among courts and legal commentators that prospectively



reducing a criminal punishment by legislative action does not constitute an arbitrary classification or deny the prisoner equal protection of the law. Last, this portion of the memo will discuss why a prospective repeal of capital punishment would survive an equal protection analysis, if the Kansas court rejected the prevailing viewpoint set forth above.

a. KANSAS EQUAL PROTECTION JURISPRUDENCE: Analysis, Presumption of Validity and Circumstances Implicating Equal Protection Challenges

In Kansas, Equal Protection challenges derive from the Fourteenth Amendment to the United States Constitution and § 1 of the Kansas Constitution's Bill of Rights. An Equal Protection challenge "emphasizes disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable." *Chiles v. State*, 254 Kan. 888, 891, 869 P.2d 707, 711 (1994) (citing *Ross v. Moffitt*, 417 U.S. 600, 609 (1974)). Resolving the constitutionality of a particular statutory classification depends on the relationship between the challenged classification and the "objective sought by its creation." *Id.*

Recently, the Kansas Supreme Court described the steps of analysis used to assess the constitutionality of a statute challenged on the basis of the equal protection clause. *See State v. Salas*, 289 Kan. 245, 210 P.3d 635, 638-39 (2009). The first step is to determine the nature of the legislative classification, and whether it results in arguably indistinguishable classes of individuals being treated differently. *Id.* at 638. "*Only if there is differing treatment of similarly situated individuals is the Equal Protection Clause implicated.*" *Id.* (emphasis added.)

If the Equal Protection Clause is implicated, the Kansas Supreme Court will examine which rights are affected by the classification, and using this examination as a guide, select the level of scrutiny applied to the legislative classification. *See id.* The final step of this

constitutional analysis requires the court to determine whether the relationship between the classifications and the legislative goal withstands the applicable level of scrutiny. *See id.* These steps will be addressed below using the order supplied by the Kansas Supreme Court.

i. Presumption of Validity

Before conducting an Equal Protection analysis, Kansas courts emphasize the presumption of constitutionality favoring the legislature's enactments. *See State v. Denney*, 278 Kan. 643, 651-52, 101 P.3d 1257, 1264 (2004). The Kansas Supreme Court has "often" held that "[a] statute is presumed constitutional, and all doubts must be resolved in favor of validity." *See id.* 278 Kan. at 651, 101 P.3d at 1263 (citing *Mudd v. Neosho Memorial Regional Med. Center*, 275 Kan. 187, 197, 62 P.3d 236, 244 (2003)). Moreover, the Kansas Supreme Court has observed that, under an equal protection analysis, the courts have a "duty" to "construe a statute in such a manner that it is constitutional if this can be done within the apparent intent of the legislature in passing the statute." *Salas*, 210 P.3d at 638.

Where the intent of the legislature can be ascertained, and the statute is plain and unambiguous, Kansas courts apply the "fundamental rule," and hold all other rules subordinate, that the legislature's intent governs. *See Denney*, 278 Kan. at 650, 101 P.3d at 1263. Here, the legislature's intent to prospectively repeal capital punishment is clearly expressed by the language of SB 208 §1(b), reading, "[a]ny person who has been sentenced to death before July 1, 2010, may be put to death."

ii. Circumstances Implicating Equal Protection Challenges

After setting forth the "fundamental rule," and presumption of constitutionality, a Kansas court will determine whether the legislative enactment implicates the equal protection clause by creating two arguably indistinguishable classes. *See Denney*, 278 Kan. 651-52, 101 P.3d at

1263-64. During this step of an equal protection analysis, a Kansas court will examine “the nature of the legislative classification and whether the classifications result in arguably indistinguishable classes of individuals being treated differently.” *Salas*, 210 P.3d at 638. Here, the Equal Protection Clause is only invoked if there is differing treatment of similarly situated individuals. *See id.* (citing *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985)). The question is whether the distinction between the penalty for the same crime based on the date of offense implicates the Equal Protection Clause. Every jurisdiction to examine this question has held that it does not.

b. Prospectively Reducing a Criminal Punishment by Legislative Action does not Constitute an Arbitrary Classification or Deny the Prisoner Equal Protection of the Law

Courts and commentators reaching this issue unanimously conclude that there is no merit to a claim that the denial of a retroactive application to a newly created statutory right is a denial of equal protection of the laws. *See e.g. Bowen v. Recorder’s Court Judge*, 179 N.W.2d 377, 378 (Mich. 1970), *Carter v. State*, 512 N.E.2d 158, 170 (Ind. 1987), Arthur W. Campbell, *Law of Sentencing* § 8:6 (3d ed., West 2004). In a recent, representative example, the Alabama Court of Criminal Appeals affirmed the sentence of defendant Zimmerman against an equal protection challenge. *Zimmerman v. State*, 838 So.2d 404 (Ala. Crim. App. 2001), *aff’d*, *Zimmerman v. State*, 838 So.2d 408 (Ala. 2002). Zimmerman argued that his 1991 sentence, as a habitual felony offender, of life without parole, violated his right to equal protection because the Alabama legislature amended the statute under which he was sentenced to give trial courts discretion to chose between imprisonment for life or imprisonment for life without parole. 838 So.2d at 805. Under the equal protection clause, Zimmerman asserted that:

the amendatory act results in a date-based classification, conferring the possibility of a more lenient sentencing on the class of persons whose sentences were not final . . . as of the effective date of the Act, while excluding from that leniency those whose sentences, although imposed on convictions for offenses of the same nature or seriousness, were final before the effective date of the act.

*Id.* at 806. The Alabama Court of Criminal Appeals rejected Zimmerman’s constitutional claim under the “well recognized rule” that “[a] reduction of sentences only prospectively from the date of a new sentencing statute takes effect is not a denial of equal protection.” *Id.* (citing 16B C.J.S. *Constitutional Law* § 777 (1985)).

The *Zimmerman* court also cited to the “general law,” found in 24 C.J.S. *Criminal Law* § 1462 (1989), that

a criminal offender must be sentenced pursuant to the statute in effect at the time of the commission of the offense, at least in the absence of an expression of intent by the legislature to make the new statute applicable to previously committed crimes. An increase in the penalty for previously committed crimes violates the prohibition against ex post facto legislation.

*A legislature may, however, prospectively reduce the maximum penalty for a crime even though those sentenced to the maximum penalty before the effective date of the act would serve a longer term of imprisonment than one sentenced to the maximum term thereunder.*

838 So.2d at 406 n. 1 (emphasis added). The California Supreme Court also addressed this issue recently, noting that the “[d]efendant has not cited a single case, in this state or any other, that recognizes an equal protection violation arising from the timing of the effective date of a statute lessening the punishment for a particular offense.” *People v. Floyd*, 72 P.3d 820, 825 (Cal. 2003). The California Supreme Court also observed that “[n]umerous courts, however, have rejected such a claim.” *Id.* (citing *Baker v. Superior Court*, 677 P.2d 219 (Cal. 1984) (holding that refusal to apply a statute retroactively does not violate the Fourteenth Amendment)).

Moreover, the courts reviewing similar equal protection challenges agree that the selection of an effective date is not an arbitrary action taken by a state legislature. *See Fleming*

v. *Zant*, 386 S.E.2d 339, 341 (Ga. 1989) (holding that a legislative distinction between cases that have been tried and those that have not is neither arbitrary nor discriminatory because the legislature had to choose some effective date). Further, the United States Supreme Court has held that “the Fourteenth Amendment does not forbid statutes and statutory changes to have a beginning, and thus to discriminate between the rights of an earlier and later time.” *Sperry & Hutchinson Co. v. Rhodes*, 220 U.S. 502, 505 (1911).

Thus, although the Kansas Supreme Court has not addressed this exact equal protection issue, if the Kansas Supreme Court follows the precedents set above, the court will conclude that the legislature can prospectively reduce a criminal penalty without creating an arbitrary classification or denying the prisoners presently under sentence of death equal protection under the law. See *Jackson v. Alabama*, 530 F.2d 1231, 1237-38 (5<sup>th</sup> Cir. 1976).

c. PROSPECTIVE REPEAL WOULD SURVIVE EQUAL PROTECTION SCRUTINY: Even if a Kansas Court were to Scrutinize a Prospective Repeal of Capital Punishment, SB 208 would Survive Equal Protection Scrutiny because the State’s Legitimate Interests Justify the Repeal

Further, even if a Kansas court were to agree that prospectively repealing capital punishment creates two arguably indistinct classes of offenders (those sentenced to death for capital murder before repeal and those sentenced to life without parole for aggravated murder after repeal) and treats these classes differently, it is unlikely that such a classification would be rejected as unconstitutional under the equal protection clause. The Kansas Supreme Court has repeatedly acknowledged that such a distinction need not be perfect. See *Chiles*, 254 Kan. at 900, 869 P.2d at 716 (citing *Marshall v. United States*, 414 U.S. 417, 428-30 (1974)); see also e.g., *Aves v. Shah*, 258 Kan. 506, 525, 906 P.2d 642, 655 (1995) (holding state legislature presumed

to act within constitutional power, even if statute results in some inequality). Thus, even if a statute implicates equal protection by distinguishing between arguably indistinguishable classes of individuals and treats them differently, this statutory distinction by itself will not render the statute unconstitutional. *See Aves*, 258 Kan. at 525, 906 P.2d at 655. Instead, at this point in a Kansas court's analysis, the court would decide which level of scrutiny to apply to the statutory distinction. *See Salas*, 210 P.3d at 638.

ii. RATIONAL BASIS: Kansas Court Would Probably Use a “Rational Basis” Test to Resolve an Equal Protection Challenge Brought by a Kansas Prisoner Under Sentence of Death Following Prospective Repeal of Capital Punishment

To resolve what level of scrutiny to apply to an equal protection challenge, the Kansas Supreme Court examines the rights which are affected by the classifications, because the “nature of the rights dictates the level of scrutiny.” *See id.* The Kansas Supreme Court has articulated at least three different standards which may be used in determining if a statute violates the equal protection clause of the Kansas and federal constitution: rational basis scrutiny, heightened (intermediate) scrutiny, and strict scrutiny. *See Farley v. Engelken*, 241 Kan. 663, 669, 740 P.2d 1058, 1062-63 (1987). Where a suspect classification such as race or gender, or a fundamental right is involved, the courts would apply a stricter form of scrutiny. *See Thompson v. KFB Ins. Co.*, 252 Kan. 1010, 1016-17, 850 P.2d 773, 778-79 (1993). But, where the right involves a sentencing question or aspect of criminal process, the Kansas courts generally apply a more deferential, “rational basis” test. *See Chiles*, 254 Kan. at 899-900, 869 P.2d at 716 (citing *Marshall v. United States*, 414 U.S. 417 (1974) (concluding no suspect classification and no

fundamental right to rehabilitation from narcotic addiction)), *see also Denney*, 278 Kan. at 654, 101 P.3d at 1265 (applying rational basis scrutiny to right to postconviction DNA testing).

The Kansas Supreme Court's decision to apply rational basis scrutiny to questions of sentencing or criminal rights is also in accord with courts that have rejected equal protection challenges based upon the prospective repeal or reduction of criminal sentences. *See State ex rel. Stewart v. McWherter*, 857 S.W.2d 875, 876 (Tenn. Crim. App. 1993). A prisoner challenging their sentence on equal protection grounds has lost the "relevant portion of his fundamental right to personal liberty by virtue of his lawful conviction." *Burch v. Tennessee Dept. of Correction*, 994 S.W.2d 137, 139 (Tenn. App. 1999).

The United States Supreme Court follows this tradition, holding that it has "never" subjected the criminal process to a truncated and stricter form of scrutiny because "a person who has been so convicted is eligible for, and the court may impose, whatever punishment is authorized by statute for his offense, so long as that penalty is not cruel and unusual." *See Chapman v. U.S.*, 500 U.S. 453, 465 (1991) (emphasis in original) (applied in due process context but noting that an argument based on equal protection essentially duplicates an argument based on due process); *see also e.g. Dist. Attorney's Office for Third Judicial Dist. v. Osborne*, \_\_\_ U.S. \_\_\_, 129 S. Ct. 2308, 2320 (2009) (rejecting a due process right to DNA testing by noting that a criminal defendant proved guilty after a fair trial does not have the same liberty interests as a free man). Further, the United States District Court for the District of Kansas has recently refused to apply a form of strict scrutiny to a substantive due process challenge to a sentence of death. *See U.S. v. Tisdale*, 2008 WL 5156426 (D. Kan. Dec. 8, 2008).

Here, the State of Kansas is likely to prevail, arguing that a form of scrutiny stricter than rational basis would not be appropriate because the Kansas inmates currently under sentence of

death forfeited their fundamental right to personal liberty by virtue of their lawful convictions. *See Kansas v. Marsh*, 548 U.S. 163 (2006) (upholding Kansas death penalty scheme as constitutional under the Eighth Amendment to the United States Constitution), *see also Stewart*, 857 S.W.2d at 876 (applying rational basis to equal protection challenge brought by prisoner citing forfeiture of fundamental right to personal liberty by lawful conviction). These arguments were persuasive to the Kansas Supreme Court in *Chiles*, 254 Kan. at 899-900, 869 P.2d at 715, and the United States Supreme Court in *Chapman*, 500 U.S. at 465, and *Osborne*, 129 S. Ct. at 2320. Accordingly, because the classification of inmates currently under sentence of death in Kansas does not involve a suspect category, such as race or gender, and because their fundamental right to personal liberty was forfeited by lawful convictions, it is likely that a reviewing court would apply a rational basis test to an equal protection challenge brought by a Kansas prisoner under sentence of death. *See Stewart*, 857 S.W.2d at 876.

Even if the inmate under sentence of death for whom the equal protection challenge is brought belongs to a suspect classification, according to the United States Supreme Court, such an inmate must prove that the “Legislature enacted or maintained the death penalty statute because of an anticipated racially discriminatory effect.” *See McCleskey v. Kemp*, 481 U.S. 279, 298 (1987).

- ii. LEGITIMATE STATE INTERESTS: Kansas Courts will Likely Conclude that a Prospective Repeal of Capital Punishment Passes Constitutional Muster Because the Means Chosen by the Legislature bear a Rational Relationship to the State’s Legitimate Goals.

For a Kansas Court conducting a rational basis review, relevance is the only relationship required between the classification and the objective. *See Chiles*, 254 Kan. at 895, 869 P.2d at



712-13. The constitutional safeguard of equal protection is offended “only if the classification rests on grounds wholly irrelevant to the achievement of the State’s objective.” *Id.* Under rational basis scrutiny, the legislature’s purpose in creating the classification need not actually be established, rather, “a statutory discrimination will not be set aside if any set of facts reasonably may be conceived to justify it.” *Id.* 254 Kan. at 895, 869 P.2d at 714. However, while the rational basis test is highly deferential, this test does contain two substantive limitations on legislative choices:

- (1) legislative enactments must implicate legitimate goals, and
- (2) the means chosen by the legislature must bear a rational relationship to those goals.

*Id.* Thus, the party asserting a statute’s unconstitutionality bears a “weighty” burden, and, according to the Kansas Supreme Court, “[t]his is just as it should be, for the enacted statute is adopted through the legislative process ultimately expressing the will of the electorate in a democratic society.” *See Mudd v. Neosho Memorial Regional Med. Center*, 275 Kan. 187, 198, 62 P.3d 236, 244 (2003).

The courts cited above denying equal protection challenges to prospective repeals or reductions of criminal sentences, rejected these challenges, in part, because the states articulated legitimate goals for the prospective repeal or reduction. *See e.g. Zimmerman*, 838 So.2d at 407. In *Jackson*, the Fifth Circuit rejected the “seeming inequity in fixing a cut-off date,” by asserting that the “factors of reliance and burden on the administration of justice” outweigh these inequities. 530 F.2d at 1238 (citing *Stovall v. Denno*, 388 U.S. 293 (1967)). In addition, other courts examining this issue have recognized that a legislature may give prospective operation to statutes reducing or repealing a punishment for a particular offense to assure that penal laws will maintain their desired deterrent effect by carrying on the original punishment. *See In re Moreno*,

58 Cal.App.3d 740, 743 (1976); *Burch*, 994 S.W.2d at 139. Moreover, the United States Supreme Court has recognized deterrence as serving an especially important purpose within the context of capital punishment. *See Gregg v. Georgia*, 428 U.S. 153, 185-87 (1976).

Additionally, courts have recognized that a compelling state interest exists in preserving the finality of criminal litigation within an equal protection challenge to prospective reduction in punishment. *See Stewart*, 857 S.W.2d at 877. Still other courts have recognized the legitimate state interest of avoiding remands for additional sentencing hearings as supplying a reasonable basis for a prospective only repeal, *see People v. Grant*, 377 N.E.2d 4, 9 (Ill. 1978), as well as a legitimate state interest in not “reopening” a “virtual Pandora’s box” of resentencing. *See Burch*, 994 S.W.2d at 139. The *Stewart* court even held that the interests of finality and avoiding resentencing were enough to allow the prospective repeal or reduction of a punishment to pass the “strict scrutiny test.” 857 S.W.2d at 876-77.

Here, the preamble to Senate Bill 208 lists the following motivations behind its proposal to abolish the death penalty: “[i]nmates in Kansas are currently under sentence of death; and . . . Kansas has not carried out an execution since 1965; and . . . The estimated median cost of a case in which the death sentence was given was approximately 70% more than the median cost of a non-death penalty murder case.” While “cutting costs” alone is not a legitimate State interest sufficient to survive rational basis scrutiny, *see Aves*, 258 Kan. at 526-27, 906 P.2d at 656, *citing Stephenson v. Sugar Creek Packing*, 250 Kan. 768, 780-81, 830 P.2d 41, 49-50 (1992), the Kansas Supreme Court has also clearly held that “a statutory discrimination will not be set aside *if any state of facts reasonably may be conceived to justify it.*” *Denney*, 278 Kan. at 651-52, 101 P.3d at 1265 (emphasis added).

Other legitimate goals for prospective repeal may be found in the testimony of SB 208 proponents, including the issue of innocence, *see Testimony Before the Senate Judiciary Committee Regarding SB 208* by Richard Dieter on Feb. 16, 2009, the ambiguous data concerning the deterrent effect of capital punishment, and the psychological toll on murder victims families, *see Sue Norton's letter dated February 26, 2009, to the Senate Judiciary Committee, dated February 26, 2009.*

Given the deferential nature of a rational basis review, and the legislature's power to enact any statute and apply it prospectively, a court is likely to conclude that the rationales elicited during testimony in support of SB 208, in addition to cost, finality, preservation of the deterrent effect of penal laws, and avoiding burdening the administration of justice with remands and resentencing, together serve as legitimate goals for the Kansas legislature to pursue by prospectively repealing capital punishment. Accordingly, it is likely that the prospective repeal of capital punishment by passage of SB 208 would survive an equal protection challenge brought by inmates currently under sentence of death in Kansas.

(II) *EX POST FACTO / RETROACTIVITY ISSUES: Kansas Courts Will Probably Conclude that the Prospective Repeal of Capital Punishment does not Raise any Constitutional Ex Post Facto Concerns Because Changing a Sentencing Statute is a Substantive Change that Kansas Courts would only Apply Prospectively*

The *Chiles* court also analyzed the Kansas Sentencing Guidelines Act for retroactivity concerns. 254 Kan. at 895-97, 869 P.2d at 714-15. When conducting a retroactivity analysis, to determine whether a statute violates the constitutional prohibition against *ex post facto* laws, the court must first determine the legislature's intent. *See State v. Sutherland*, 248 Kan. 96, 106, 804 P.2d 970, 977 (1991) (citing *State v. Dubish*, 236 Kan. 848, 853, 696 P.2d 969, 974-75 (1985)).

To determine whether the legislature intended a statute to act prospectively or retrospectively, the Kansas Supreme Court's "general rule of statutory construction is that a statute will operate prospectively unless its language clearly indicates the legislature intended that it operate retrospectively." *Chiles*, 254 Kan. at 897, 869 P.2d at 714, also *State v. Hutchinson*, 228 Kan. 279, 287-88, 615 P.2d 138, 145-46 (1980). Here, SB 208 exhibits clear language that its operation should be prospective only. See SB 208 § 1(b) ("Any person who has been sentenced to death before July 1, 2010, may be put to death"). The Kansas Supreme Court will only conduct a retroactivity analysis if the court determines that the legislature intended the statute to apply retroactively. See *Sutherland*, 248 Kan. at 106, 805 P.2d at 977. Thus, SB 208 would not violate the constitution's *ex post facto* prohibition because the bill clearly expresses an intent to act prospectively.

### Death Penalty Costs Estimate of 2003 Plus Defense Cost to October 8, 2009

Defendant's Name	Investigation and Trial Costs	Direct Appeal	Re-Trials	Additional Appeals	State Habeas	Federal Habeas
Robinson, John	\$1,331,617	\$313,220				
Kleypas, Gary	\$836,001	\$787,786	\$413,492			\$5,196
Carr, Reginald	\$469,520	\$143,848				
Carr, Jonathan	\$324,625	\$350,270				
*Marsh, Michael	\$312,537	\$435,016	\$0	\$90,726	\$0	\$0
*Elms, Stanely	\$195,102	\$356,459	\$0	\$0	\$0	\$0
Scott, Gavin	\$356,682	\$317,635	\$35,446	\$34,640	\$40,311	

\*These cases are completed based upon agreements for a life sentence.

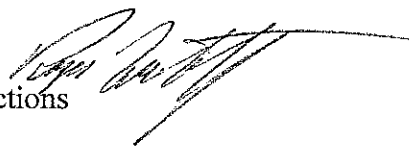
### Death Penalty-Not sought-Costs Estimate of 2003 Plus Defense Cost to October 8, 2009

Defendant's Name	Investigation and Trial Costs	Direct Appeal	Re-Trials	Additional Appeals	State Habeas	Federal Habeas
Donesay, Sakone	\$189,000	\$111,562	\$0	\$0	\$0	\$0
Barnes, Gordon	\$138,932	\$17,759	\$0	\$0	\$0	\$0
Wakelfield, Jason	\$87,801	\$9,829	\$0	\$0	\$0	\$0
Jamison, Chester	\$75,239	\$22,541	\$0	\$0	\$1,050	\$0
Douglas, Romaine	\$83,925	\$24,487	\$0	\$0	\$1,072	\$0
Juliano, Ramon	\$43,118	\$8,263	\$0	\$0	\$0	\$0
Henry, Rodney	\$207,633	\$18,363	\$0	\$0	\$0	\$0
James, Tyron	\$52,540	\$16,335	\$0	\$0	\$4,679	\$0

**MEMORANDUM**

**TO:** Christy R. Molzen  
Staff Attorney, Kansas Judicial Council

**FROM:** Roger Werholtz  
Secretary of Corrections



**DATE:** November 10, 2009

**SUBJECT:** Operating Cost Information

Attached are two tables summarizing operating cost information for the Kansas Department of Corrections. This information will be discussed during my appearance before the Death Penalty Advisory Committee on November 18th.

In determining the difference in cost between incarcerating an inmate for life versus putting that inmate to death, it is our recommendation that the marginal cost figure of \$2,400 or no cost figure be used.

If you have any questions, please contact me at 296-3310 or e-mail me at [RogerW@doc.ks.us](mailto:RogerW@doc.ks.us)

**KDOC PER CAPITA OPERATING COSTS  
FISCAL YEAR 2009**

KDOC  
11/10/09

<u>Facility</u>	<u>ADP</u>	<u>Actual Expenditures FY 2009</u>	<u>Annual Per Capita</u>	<u>Daily Per Capita</u>
Lansing Correctional Facility	2,351	\$35,866,683	\$15,256	\$41.80
Hutchinson Correctional Facility	1,711	27,440,776	16,038	43.94
El Dorado Correctional Facility	1,318	23,376,677	17,736	48.59
Topeka Correctional Facility	567	12,462,743	21,980	60.22
Norton Correctional Facility	734	13,298,625	18,118	49.64
Ellsworth Correctional Facility	814	11,833,359	14,537	39.83
Winfield Correctional Facility	652	11,565,930	17,739	48.60
Larned Correctional Mental Health Facility	326	9,013,716	27,649	75.75
<b>Subtotal</b>	<b>8,473</b>	<b>\$144,858,509</b>	<b>\$17,096</b>	<b>\$46.84</b>
Inmate Medical and Mental Health Care	8,473	45,560,805	5,377	14.73
Inmate Programs	8,473	6,423,006	758	2.08
Food Service	8,473	13,329,056	1,573	4.31
<b>Total Expenditures</b>	<b>8,473</b>	<b>\$210,171,376</b>	<b>\$24,804</b>	<b>\$67.96</b>

Note: The systemwide annual per capita operating cost was computed by dividing the authorized expenditures for facilities operations, health care, inmate programs, and food service by the systemwide average daily population (ADP) housed in KDOC facilities. The daily per capita operating cost was computed by dividing the annual cost by 365 days. The per capita costs do not include costs associated with central office administration, correctional industries, debt service, and capital improvements.

**OPERATING COST INFORMATION – KANSAS DEPARTMENT OF CORRECTIONS**

Systemwide Per Capita Operating Cost - FY 2009	\$24,804
Systemwide Per Capita Operating Cost - FY 2009 (Excluding Programs)	\$24,046
El Dorado Correctional Facility (EDCF) Per Capita Operating Cost - FY 2009	\$25,444
EDCF Per Capita Operating Cost - FY 2009 (Excluding Programs)	\$24,686
Per Capita Operating Cost for Administrative Segregation Cellhouse at EDCF (Excluding Programs) - FY 2010	\$25,710
Per Bed Cost for Construction of a Cellhouse at EDCF	\$75,000
Marginal Cost	\$2,400

**AVERAGE ANNUAL COST/MARGINAL COST PER INMATE**

The average annual cost per inmate, which for the FY 2009 was approximately \$25,000, is one indicator of correctional system costs, but caution should be exercised in how this indicator is used. The average annual cost per ADP is a derivative number (operating costs divided by ADP); it is not used as the basis for determining budgetary requirement or adjustments. The budget for the Kansas Department of Corrections (KDOC) is built through a detailed process of estimating expenditure requirements, by object code, for each budgetary program. The projected inmate population level is certainly an important factor in the budget development and approval process, but it is by no means the only one.

The \$25,000 figure is the result of a calculation that divides system wide expenditures for facility operations, health care, food service, and inmate programs by the system wide average daily population housed in KDOC facilities. The average cost cannot be used for budgetary adjustments, because it includes expenditure categories, such as salaries and wages, that are not adjusted in response to incremental changes in population that are accommodated within existing capacity and staffing levels. If adjustments are made, they are made to specific object codes, not on the basis of the average cost per inmate, but on the basis of the marginal cost per inmate. Our current estimate of marginal costs – i.e. those expenditure levels directly affected by the addition (or reduction) of a single inmate – is approximately \$2,400 per inmate for facility operations and food service. In addition, changes in medical contract costs may result, depending on the



magnitude of increase or decrease. Medical contract payments are affected when a facility's population varies from the contract capacity by increments of 10%. The amount of the adjustment varies by facility.

If the inmate population increases by 200, the department does not receive an additional \$5 million in its operating budget (the amount of funding increase that would occur if the population increase were multiplied by the average cost). If the increased population is accommodated within existing capacity and staffing resources, and if the budget is adjusted (it isn't always), we would most likely receive an additional \$480,000, which is based on the marginal cost amount of \$2,400 per inmate. If additional capacity and staffing were required to accommodate an increase in the population, the amount of the operating budget increase would depend on the specifics of the capacity project, such as custody and physical configuration. Similar considerations would be taken into account in calculating savings that would result from a decrease in the inmate population.