

## SENATE BILL No. 473

By Committee on Judiciary

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9 AN ACT concerning crimes and punishment; relating to rape; sentenc-  
10 ing; amending K.S.A. 2005 Supp. 21-3502, 21-4706 and 22-3717 and  
11 repealing the existing sections.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) If a defendant is charged with rape as defined in  
15 subsection (a)(1) of K.S.A. 21-3502, and amendments thereto, and the  
16 victim is less than 18 years of age, or subsection (a)(2) of K.S.A. 21-3502,  
17 and amendments thereto, the county or district attorney shall file written  
18 notice if such attorney intends, upon conviction of the defendant, to re-  
19 quest a separate sentencing proceeding to determine whether the de-  
20 fendant should be sentenced for an off-grid person felony with impris-  
21 onment for life and who shall not be eligible for probation or suspension,  
22 modification or reduction of sentence. Except as otherwise provided, in  
23 addition, a defendant sentenced pursuant to this section shall not be el-  
24 igible for parole prior to serving 25 years' imprisonment, and such 25  
25 years' imprisonment shall not be reduced by the application of good time  
26 credits. Such notice shall be filed with the court and served on the de-  
27 fendant or the defendant's attorney not later than five days after the time  
28 of arraignment. If such notice is not filed and served as required by this  
29 subsection, the county or district attorney may not request such a sen-  
30 tencing proceeding and the defendant, if convicted of rape as defined in  
31 subsection (a)(1) of K.S.A. 21-3502, and amendments thereto, and the  
32 victim is less than 18 years of age, or subsection (a)(2) of K.S.A. 21-3502,  
33 and amendments thereto, shall be sentenced to a severity level 1, person  
34 felony.

35 (b) Upon conviction of a defendant of rape as defined in subsection  
36 (a)(1) of K.S.A. 21-3502, and amendments thereto, and the victim is less  
37 than 18 years of age, or subsection (a)(2) of K.S.A. 21-3502, and amend-  
38 ments thereto, the court, upon motion of the county or district attorney,  
39 shall conduct a separate sentencing proceeding to determine whether the  
40 defendant shall be sentenced to imprisonment for life. The proceeding  
41 shall be conducted by the trial judge before the trial jury as soon as  
42 practicable. If any person who served on the trial jury is unable to serve  
43 on the jury for the sentencing proceeding, the court shall substitute an

1 alternate juror who has been impaneled for the trial jury. If there are  
2 insufficient alternate jurors to replace trial jurors who are unable to serve  
3 at the sentencing proceeding, the trial judge may summon a special jury  
4 of 12 persons which shall determine the question of whether a sentence  
5 of imprisonment for life shall be imposed. Jury selection procedures,  
6 qualifications of jurors and grounds for exemption or challenge of pro-  
7 spective jurors in criminal trials shall be applicable to the selection of  
8 such special jury. The jury at the sentencing proceeding may be waived  
9 in the manner provided by K.S.A. 22-3403, and amendments thereto, for  
10 waiver of a trial jury. If the jury at the sentencing proceeding has been  
11 waived or the trial jury has been waived, the sentencing proceeding shall  
12 be conducted by the court.

13 (c) In the sentencing proceeding, evidence may be presented con-  
14 cerning any matter that the court deems relevant to the question of sen-  
15 tence and shall include matters relating to any of the aggravating circum-  
16 stances enumerated in section 2, and amendments thereto, and any  
17 mitigating circumstances pursuant to section 3, and amendments thereto.  
18 Any such evidence which the court deems to have probative value may  
19 be received regardless of its admissibility under the rules of evidence,  
20 provided that the defendant is accorded a fair opportunity to rebut any  
21 hearsay statements. Only such evidence of aggravating circumstances as  
22 the state has made known to the defendant prior to the sentencing pro-  
23 ceeding shall be admissible, and no evidence secured in violation of the  
24 constitution of the United States or of the state of Kansas shall be ad-  
25 missible. No testimony by the defendant at the sentencing proceeding  
26 shall be admissible against the defendant at any subsequent criminal pro-  
27 ceeding. At the conclusion of the evidentiary presentation, the court shall  
28 allow the parties a reasonable period of time in which to present oral  
29 argument.

30 (d) At the conclusion of the evidentiary portion of the sentencing  
31 proceeding, the court shall provide oral and written instructions to the  
32 jury to guide its deliberations.

33 (e) If, by unanimous vote, the jury finds beyond a reasonable doubt  
34 that one or more of the aggravating circumstances enumerated in section  
35 2, and amendments thereto, exist and, further, that the existence of such  
36 aggravating circumstances outweighs any mitigating circumstances which  
37 are found to exist, the defendant shall be sentenced to imprisonment for  
38 life; otherwise, the defendant shall be sentenced for a severity level 1,  
39 person felony. The jury, if its verdict is a unanimous recommendation of  
40 a sentence of imprisonment for life, shall designate in writing, signed by  
41 the foreman of the jury, the statutory aggravating circumstances which it  
42 found beyond a reasonable doubt. If, after a reasonable time for delib-  
43 eration, the jury is unable to reach a verdict, the judge shall dismiss the

1 jury and impose a sentence for a severity level 1, person felony and shall  
2 commit the defendant to the custody of the secretary of corrections. In  
3 nonjury cases, the court shall follow the requirements of this subsection  
4 in determining the sentence to be imposed.

5 (f) Upon sentencing a defendant pursuant to this section, the court  
6 shall commit the defendant to the custody of the secretary of corrections  
7 and the court shall state in the sentencing order of the judgment form or  
8 journal entry, whichever is delivered with the defendant to the correc-  
9 tional institution, that the defendant has been sentenced pursuant to this  
10 section.

11 New Sec. 2. Aggravating circumstances shall be limited to the  
12 following:

13 (a) The victim suffered substantial bodily injury.

14 (b) The defendant has an extensive prior history of such offenses.  
15 Extensive prior history may be dependent on the number of victims,  
16 length of involvement, number of incidents, or continued involvement  
17 subsequent to arrest.

18 (c) The offense was characterized by extreme cruelty or depravity.

19 (d) The victim was unusually vulnerable.

20 (e) There existed a relationship of special trust between the defend-  
21 ant and the victim or the defendant was in a position of authority over  
22 the victim.

23 (f) The sex crime was committed upon one victim by two or more  
24 persons, acting in concert with the defendant.

25 (g) The sex crime was committed by a person while serving a sentence  
26 for a conviction of a sex crime, or while subject to any provision of a  
27 diversion, suspended sentence, postrelease supervision or parole for a  
28 conviction of a sex crime.

29 (h) The defendant has previously failed to complete treatment or has  
30 completed treatment and reoffended.

31 New Sec. 3. Mitigating circumstances shall include, but are not lim-  
32 ited to, the following:

33 (a) The defendant has no significant history of prior criminal activity.

34 (b) The crime was committed while the defendant was under the  
35 influence of extreme mental or emotional disturbances.

36 (c) The victim was a participant in or consented to the defendant's  
37 conduct.

38 (d) The victim was an accomplice in the crime committed by another  
39 person, and the defendant's participation was relatively minor.

40 (e) The defendant acted under extreme distress or under the sub-  
41 stantial domination of another person.

42 (f) The capacity of the defendant to appreciate the criminality of the  
43 defendant's conduct or to conform the defendant's conduct to the

1 requirements of law was substantially impaired.  
2 (g) The age of the defendant at the time of the crime.  
3 Sec. 4. K.S.A. 2005 Supp. 21-3502 is hereby amended to read as  
4 follows: 21-3502. (a) Rape is: (1) Sexual intercourse with a person who  
5 does not consent to the sexual intercourse, under any of the following  
6 circumstances:  
7 (A) When the victim is overcome by force or fear;  
8 (B) when the victim is unconscious or physically powerless; or  
9 (C) when the victim is incapable of giving consent because of mental  
10 deficiency or disease, or when the victim is incapable of giving consent  
11 because of the effect of any alcoholic liquor, narcotic, drug or other sub-  
12 stance, which condition was known by the offender or was reasonably  
13 apparent to the offender;  
14 (2) sexual intercourse with a child who is under 14 years of age;  
15 (3) sexual intercourse with a victim when the victim's consent was  
16 obtained through a knowing misrepresentation made by the offender that  
17 the sexual intercourse was a medically or therapeutically necessary pro-  
18 cedure; or  
19 (4) sexual intercourse with a victim when the victim's consent was  
20 obtained through a knowing misrepresentation made by the offender that  
21 the sexual intercourse was a legally required procedure within the scope  
22 of the offender's authority.  
23 (b) It shall be a defense to a prosecution of rape under subsection  
24 (a)(2) that the child was married to the accused at the time of the offense.  
25 (c) *Except as provided further*, rape as described in subsection (a)(1)  
26 ~~or (2)~~ is a severity level 1, person felony. Rape as described in subsection  
27 (a)(3) or (4) is a severity level 2, person felony. *Rape as described in*  
28 *subsection (a)(1), when the victim is less than 18 years of age or subsection*  
29 *(a)(2) is an off-grid person felony.*  
30 Sec. 5. K.S.A. 2005 Supp. 21-4706 is hereby amended to read as  
31 follows: 21-4706. (a) For crimes committed on or after July 1, 1993, the  
32 sentences of imprisonment shall represent the time a person shall actually  
33 serve, subject to a reduction of up to 15% of the primary sentence for  
34 good time as authorized by law.  
35 (b) The sentencing court shall pronounce sentence in all felony cases.  
36 (c) Violations of K.S.A. 21-3401, 21-3439 and 21-3801 and amend-  
37 ments thereto are off-grid crimes for the purpose of sentencing. Except  
38 as otherwise provided by K.S.A. 21-4622 through 21-4627, and 21-4629  
39 through 21-4631, and amendments thereto, the sentence shall be im-  
40 prisonment for life.  
41 (d) *Rape as defined in subsection (a)(1) of K.S.A. 21-3502, and*  
42 *amendments thereto, and the victim is less than 18 years of age, or sub-*  
43 *section (a)(2) of K.S.A. 21-3502, and amendments thereto, is an off-grid*

1 *crime for the purpose of sentencing and offenders shall be sentenced pur-*  
2 *suant to section 1, and amendments thereto.*

3 Sec. 6. K.S.A. 2005 Supp. 22-3717 is hereby amended to read as  
4 follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A.  
5 1993 Supp. 21-4628 prior to its repeal; K.S.A. 21-4635 through 21-4638  
6 and amendments thereto; K.S.A. 8-1567, and amendments thereto; and  
7 K.S.A. 21-4624, and amendments thereto, an inmate, including an inmate  
8 sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be  
9 eligible for parole after serving the entire minimum sentence imposed by  
10 the court, less good time credits.

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

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

26 (3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its  
27 repeal, an inmate sentenced for a class A felony committed before July  
28 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618 and  
29 amendments thereto, shall be eligible for parole after serving 15 years of  
30 confinement, without deduction of any good time credits.

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

36 (5) *An inmate sentenced to imprisonment pursuant to section 1, and*  
37 *amendments thereto, committed on or after July 1, 2006, shall be eligible*  
38 *for parole after serving the mandatory term of imprisonment without*  
39 *deduction of any good time credits.*

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

43 ~~(A)~~ (A) The aggregate minimum sentences, as determined pursuant

1 to K.S.A. 21-4608 and amendments thereto, less good time credits for  
2 those crimes which are not class A felonies; and  
3 ~~(2)~~ (B) an additional 15 years, without deduction of good time credits,  
4 for each crime which is a class A felony.  
5 (2) *If an inmate is sentenced to imprisonment pursuant to section 1,*  
6 *and amendments thereto, for crimes committed on or after July 1, 2006,*  
7 *the inmate shall be eligible for parole after serving the mandatory term*  
8 *of imprisonment.*  
9 (d) (1) Persons sentenced for crimes, other than off-grid crimes,  
10 committed on or after July 1, 1993, will not be eligible for parole, but will  
11 be released to a mandatory period of postrelease supervision upon com-  
12 pletion of the prison portion of their sentence as follows:  
13 (A) Except as provided in subparagraphs (D) and (E), persons sen-  
14 tenced for nondrug severity level 1 through 4 crimes and drug severity  
15 levels 1 and 2 crimes must serve 36 months, plus the amount of good  
16 time earned and retained pursuant to K.S.A. 21-4722 and amendments  
17 thereto, on postrelease supervision.  
18 (B) Except as provided in subparagraphs (D) and (E), persons sen-  
19 tenced for nondrug severity levels 5 and 6 crimes and drug severity level  
20 3 crimes must serve 24 months, plus the amount of good time earned  
21 and retained pursuant to K.S.A. 21-4722, and amendments thereto, on  
22 postrelease supervision.  
23 (C) Except as provided in subparagraphs (D) and (E), persons sen-  
24 tenced for nondrug severity level 7 through 10 crimes and drug severity  
25 level 4 crimes must serve 12 months, plus the amount of good time earned  
26 and retained pursuant to K.S.A. 21-4722 and amendments thereto, on  
27 postrelease supervision.  
28 (D) (i) The sentencing judge shall impose the postrelease supervi-  
29 sion period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C),  
30 unless the judge finds substantial and compelling reasons to impose a  
31 departure based upon a finding that the current crime of conviction was  
32 sexually violent or sexually motivated. In that event, departure may be  
33 imposed to extend the postrelease supervision to a period of up to 60  
34 months.  
35 (ii) If the sentencing judge departs from the presumptive postrelease  
36 supervision period, the judge shall state on the record at the time of  
37 sentencing the substantial and compelling reasons for the departure. De-  
38 partures in this section are subject to appeal pursuant to K.S.A. 21-4721  
39 and amendments thereto.  
40 (iii) In determining whether substantial and compelling reasons exist,  
41 the court shall consider:  
42 (a) Written briefs or oral arguments submitted by either the defend-  
43 ant or the state;

- 1 (b) any evidence received during the proceeding;
- 2 (c) the presentence report, the victim's impact statement and any  
3 psychological evaluation as ordered by the court pursuant to subsection  
4 (e) of K.S.A. 21-4714 and amendments thereto; and
- 5 (d) any other evidence the court finds trustworthy and reliable.
- 6 (iv) The sentencing judge may order that a psychological evaluation  
7 be prepared and the recommended programming be completed by the  
8 offender. The department of corrections or the parole board shall ensure  
9 that court ordered sex offender treatment be carried out.
- 10 (v) In carrying out the provisions of subparagraph (d)(1)(D), the court  
11 shall refer to K.S.A. 21-4718 and amendments thereto.
- 12 (vi) Upon petition, the parole board may provide for early discharge  
13 from the postrelease supervision period upon completion of court or-  
14 dered programs and completion of the presumptive postrelease super-  
15 vision period, as determined by the crime of conviction, pursuant to sub-  
16 paragraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from  
17 postrelease supervision is at the discretion of the parole board.
- 18 (vii) Persons convicted of crimes deemed sexually violent or sexually  
19 motivated, shall be registered according to the habitual sex offender reg-  
20 istration act, K.S.A. 22-4901 through 22-4910 and amendments thereto.
- 21 (E) The period of postrelease supervision provided in subparagraphs  
22 (A) and (B) may be reduced by up to 12 months and the period of post-  
23 release supervision provided in subparagraph (C) may be reduced by up  
24 to six months based on the offender's compliance with conditions of su-  
25 pervision and overall performance while on postrelease supervision. The  
26 reduction in the supervision period shall be on an earned basis pursuant  
27 to rules and regulations adopted by the secretary of corrections.
- 28 (F) In cases where sentences for crimes from more than one severity  
29 level have been imposed, the offender shall serve the longest period of  
30 postrelease supervision as provided by this section available for any crime  
31 upon which sentence was imposed irrespective of the severity level of the  
32 crime. Supervision periods will not aggregate.
- 33 (2) As used in this section, "sexually violent crime" means:
- 34 (A) Rape, K.S.A. 21-3502, and amendments thereto;
- 35 (B) indecent liberties with a child, K.S.A. 21-3503, and amendments  
36 thereto;
- 37 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, and  
38 amendments thereto;
- 39 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505  
40 and amendments thereto;
- 41 (E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments  
42 thereto;
- 43 (F) indecent solicitation of a child, K.S.A. 21-3510, and amendments

1 thereto;

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

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

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

8 (J) any conviction for a felony offense in effect at any time prior to  
9 the effective date of this act, that is comparable to a sexually violent crime  
10 as defined in subparagraphs (A) through (I), or any federal or other state  
11 conviction for a felony offense that under the laws of this state would be  
12 a sexually violent crime as defined in this section;

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

16 (L) any act which at the time of sentencing for the offense has been  
17 determined beyond a reasonable doubt to have been sexually motivated.  
18 As used in this subparagraph, "sexually motivated" means that one of the  
19 purposes for which the defendant committed the crime was for the pur-  
20 pose of the defendant's sexual gratification.

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

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

1 to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate  
2 sentence with a maximum term of life imprisonment, for which there is  
3 no conditional release or maximum sentence expiration date, shall remain  
4 on postrelease supervision for life or until discharged from supervision  
5 by the Kansas parole board.

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

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

1 date specified by the board, but not earlier than the date the inmate is  
2 eligible for parole under subsections (a), (b) and (c). At each parole hear-  
3 ing and, if parole is not granted, at such intervals thereafter as it deter-  
4 mines appropriate, the Kansas parole board shall consider: (1) Whether  
5 the inmate has satisfactorily completed the programs required by any  
6 agreement entered under K.S.A. 75-5210a and amendments thereto, or  
7 any revision of such agreement; and (2) all pertinent information regard-  
8 ing such inmate, including, but not limited to, the circumstances of the  
9 offense of the inmate; the presentence report; the previous social history  
10 and criminal record of the inmate; the conduct, employment, and attitude  
11 of the inmate in prison; the reports of such physical and mental exami-  
12 nations as have been made; comments of the victim and the victim's  
13 family including in person comments, contemporaneous comments and  
14 prerecorded comments made by any technological means; comments of  
15 the public; official comments; and capacity of state correctional  
16 institutions.

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

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

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

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

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

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

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

- 1 criminal charges or a warrant for a violation of a condition of probation,  
2 assignment to a community correctional services program, parole, con-  
3 ditional release or postrelease supervision;
- 4 (2) to the extent practicable, shall order as a condition of parole or  
5 postrelease supervision that the parolee or the person on postrelease su-  
6 pervision make progress towards or successfully complete the equivalent  
7 of a secondary education if the inmate has not previously completed such  
8 educational equivalent and is capable of doing so;
- 9 (3) may order that the parolee or person on postrelease supervision  
10 perform community or public service work for local governmental agen-  
11 cies, private corporations organized not-for-profit or charitable or social  
12 service organizations performing services for the community;
- 13 (4) may order the parolee or person on postrelease supervision to pay  
14 the administrative fee imposed pursuant to K.S.A. 2005 Supp. 22-4529,  
15 and amendments thereto, unless the board finds compelling circum-  
16 stances which would render payment unworkable; and
- 17 (5) unless it finds compelling circumstances which would render a  
18 plan of payment unworkable, shall order that the parolee or person on  
19 postrelease supervision reimburse the state for all or part of the expend-  
20 itures by the state board of indigents' defense services to provide counsel  
21 and other defense services to the person. In determining the amount and  
22 method of payment of such sum, the parole board shall take account of  
23 the financial resources of the person and the nature of the burden that  
24 the payment of such sum will impose. Such amount shall not exceed the  
25 amount claimed by appointed counsel on the payment voucher for indi-  
26 gents' defense services or the amount prescribed by the board of indi-  
27 gents' defense services reimbursement tables as provided in K.S.A. 22-  
28 4522 and amendments thereto, whichever is less, minus any previous  
29 payments for such services.
- 30 (n) If the court which sentenced an inmate specified at the time of  
31 sentencing the amount and the recipient of any restitution ordered as a  
32 condition of parole or postrelease supervision, the Kansas parole board  
33 shall order as a condition of parole or postrelease supervision that the  
34 inmate pay restitution in the amount and manner provided in the journal  
35 entry unless the board finds compelling circumstances which would ren-  
36 der a plan of restitution unworkable.
- 37 (o) Whenever the Kansas parole board grants the parole of an inmate,  
38 the board, within 10 days of the date of the decision to grant parole, shall  
39 give written notice of the decision to the county or district attorney of the  
40 county where the inmate was sentenced.
- 41 (p) When an inmate is to be released on postrelease supervision, the  
42 secretary, within 30 days prior to release, shall provide the county or  
43 district attorney of the county where the inmate was sentenced written

1 notice of the release date.

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

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

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

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

27 Sec. 7. K.S.A. 2005 Supp. 21-3502, 21-4706 and 22-3717 are hereby  
28 repealed.

29 Sec. 8. This act shall take effect and be in force from and after its  
30 publication in the statute book.