

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, ~~Fer 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 premeditated
14 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. 21-4623 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 *defined 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 ~~(c)~~ *(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 sollicitation 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 sollicitation 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) 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 sollicitation 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 sollicitation 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 sollicitation 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.