

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2010

HOUSE BILL No. 2518

By Joint Committee on Corrections and Juvenile Justice Oversight

1-22

13 AN ACT concerning crimes, punishment and criminal procedure;
14 amending K.S.A. 9-2012, 16-305, 17-12a508, 17-1311a, 19-3519, 21-
15 2511, 21-3301, 21-3302, 21-3303, 21-3437, 21-3701, 21-3704, 21-3707,
16 21-3720, 21-3729, 21-3734, 21-3761, 21-3763, 21-3846, 21-3902, 21-
17 3904, 21-3905, 21-3910, 21-4018, 21-4111, 21-4503a, 21-4638, 21-
18 4643, 21-4703, 21-4706, 21-4707, 21-4709, 21-4710, 21-4711, 21-4720,
19 21-4722, 22-2908, 22-3303, 22-4906, 39-720 and 65-2859 and K.S.A.
20 2009 Supp. 21-36a01, 21-36a03, 21-36a05, 21-36a06, 21-36a07, 21-
21 36a08, 21-36a09, 21-36a10, 21-36a13, 21-36a14, 21-36a16, 21-4603d,
22 21-4611, 21-4619, 21-4704, 21,4717, 21-4729, 22-2802, 22-3412, 22-
23 3604, 22-3716, 22-3717, 38-2346, 38-2347, 38-2369, 38-2374, 38-2376,
24 38-2377, 39-717, 40-247, 40-2,118, 40-5013, 44-5,125, 44-719, 47-
25 1827, 65-4167, 74-9101 and 75-5291 and repealing the existing sec-
26 tions; also repealing K.S.A. 21-4724 and K.S.A. 2009 Supp. 21-4705
27 and 21-4708.

28

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

30 Section 1. K.S.A. 9-2012 is hereby amended to read as follows: 9-
31 2012. ~~Every~~ (a) *It shall be unlawful for a president, director, cashier,*
32 *assistant cashier, teller, clerk, officer or agent of any bank or trust com-*
33 *pany who embezzles, abstracts with the intent to injure, defraud or de-*
34 *ceive any individual, bank, trust company, business entity or agent ap-*
35 *pointed to examine the affairs of the bank or trust company to:*

36 (1) *Embezzle, abstract or willfully misapplies misapply any of the*
37 *moneys, funds, securities or credits of the bank or trust company; or who*
38 *issues or puts;*

39 (2) *issue or put forth any certificate of deposit, draws draw any draft*
40 *or bill of exchange, makes make any acceptance, assigns assign any note,*
41 *bond, draft, bill of exchange; or who makes; or*

42 (3) *make use of the name of the bank or trust company in any manner;*
43 *with intent in either case to injure or defraud the bank or trust company*

1 ~~or any individual, person, partnership, company or corporation, or to de-~~
2 ~~ceive any officer of the bank or trust company or any agent appointed to~~
3 ~~examine the affairs of the bank or trust company, and any person who~~
4 ~~with like intent aids or abets.~~

5 (b) *It shall be unlawful for a person to aid or abet any officer, clerk*
6 *or agent in violation of this act, ~~upon conviction shall be guilty of a severity~~*
7 *level 7, nonperson felony.*

8 (c) *Violation of this section in an amount of:*

9 (1) *\$100,000 or more is a severity level 5, nonperson felony;*

10 (2) *at least \$75,000 but less than \$100,000 is a severity level 6, non-*
11 *person felony;*

12 (3) *at least \$50,000 but less than \$75,000 is a severity level 7, non-*
13 *person felony;*

14 (4) *at least \$25,000 but less than \$50,000 is a severity level 8, non-*
15 *person felony;*

16 (5) *at least \$2,000 but less than \$25,000 is a severity level 9, nonper-*
17 *son felony;*

18 (6) *at least \$1,000 but less than \$2,000 is a severity level 10, nonper-*
19 *son felony;*

20 (7) *at least \$500 but less than \$1,000 is a class A nonperson misde-*
21 *meanor; and*

22 (8) *less than \$500 is a class B nonperson misdemeanor.*

23 Sec. 2. K.S.A. 16-305 is hereby amended to read as follows: 16-305.

24 Every person who violates any provision of this act: (a) Other than by
25 misappropriating funds in violation of an agreement ~~shall be~~ *is* guilty of
26 a *class C nonperson* misdemeanor, ~~and, upon conviction shall be fined~~
27 ~~not less than \$100 nor more than \$500, or shall be imprisoned for not~~
28 ~~less than 10 days nor more than 90 days, or both;~~ and (b) by misapprop-
29 riating funds in violation of an agreement in an amount of:

30 (1) ~~Of \$25,000 or more shall be guilty of a severity level 7, nonperson~~
31 ~~felony;~~

32 ~~—(2)—of at least \$1,000 but less than \$25,000 shall be guilty of a severity~~
33 ~~level 9, nonperson felony; or~~

34 ~~—(3)—of less than \$1,000 shall be guilty of a class A nonperson misde-~~
35 ~~meanor.~~

36 (1) *\$100,000 or more is guilty of a severity level 5, nonperson felony;*

37 (2) *at least \$75,000 but less than \$100,000 is a severity level 6, non-*
38 *person felony;*

39 (3) *at least \$50,000 but less than \$75,000 is a severity level 7, non-*
40 *person felony;*

41 (4) *at least \$25,000 but less than \$50,000 is a severity level 8, non-*
42 *person felony;*

43 (5) *at least \$2,000 but less than \$25,000 is a severity level 9, nonper-*

1 son felony;

2 (6) at least \$1,000 but less than \$2,000 is a severity level 10, nonper-
3 son felony;

4 (7) at least \$500 but less than \$1,000 is a class A nonperson misde-
5 meanor; and

6 (8) less than \$500 is a class B nonperson misdemeanor.

7 Sec. 3. K.S.A. 17-12a508 is hereby amended to read as follows: 17-
8 12a508. (a) *Criminal penalties.* (1) Except as provided in subsections
9 (a)(2) through (a)(4), a conviction for an intentional violation of ~~this the~~
10 *Kansas uniform securities act*, or a rule adopted or order issued under
11 this act, except K.S.A. 17-12a504, and amendments thereto, or the notice
12 filing requirements of K.S.A. 17-12a302 or 17-12a405, and amendments
13 thereto, is a severity level ~~7~~ 8, nonperson felony. An individual convicted
14 of violating a rule or order under this act may be fined, but may not be
15 imprisoned, if the individual did not have knowledge of the rule or order.

16 (2) A conviction for an intentional violation of K.S.A. 17-12a501 or
17 17-12a502, and amendments thereto, is:

18 ~~—(A) A severity level 4, nonperson felony if the violation resulted in a~~
19 ~~loss of \$100,000 or more;~~

20 ~~—(B) a severity level 5, nonperson felony if the violation resulted in a~~
21 ~~loss of at least \$25,000 but less than \$100,000; or~~

22 ~~—(C) a severity level 7, nonperson felony if the violation resulted in a~~
23 ~~loss of less than \$25,000; if the violation resulted in a loss of an amount~~
24 ~~of:~~

25 (A) \$1,000,000 or more is a severity level 2, nonperson felony;

26 (B) at least \$250,000 but less than \$1,000,000 is a severity level 3,
27 nonperson felony;

28 (C) at least \$100,000 but less than \$250,000 is a severity level 4,
29 nonperson felony;

30 (D) at least \$75,000 but less than \$100,000 is a severity level 5, non-
31 person felony;

32 (E) at least \$50,000 but less than \$75,000 is a severity level 6, non-
33 person felony;

34 (F) at least \$25,000 but less than \$50,000 is a severity level 7, non-
35 person felony; and

36 (G) less than \$25,000 is a severity level 8, nonperson felony.

37 (3) A conviction for an intentional violation of K.S.A. 17-12a301, 17-
38 12a401(a), ~~17-12a401(e)~~, 17-12a402(a), ~~17-12a402(d)~~, 17-12a403(a), ~~17-~~
39 ~~12a403(c)~~, ~~17-12a403(d)~~, or 17-12a404(a), ~~or 17-12a404(e)~~, and amend-
40 ments thereto, is:

41 ~~—(A) A severity level 5, nonperson felony if the violation resulted in a~~
42 ~~loss of \$100,000 or more;~~

43 ~~—(B) a severity level 6, nonperson felony if the violation resulted in a~~

- 1 loss of at least \$25,000 but less than \$100,000, or
 2 ~~—(C) a severity level 7, nonperson felony if the violation resulted in a~~
 3 ~~loss of less than \$25,000, if the violation resulted in a loss of an amount~~
 4 ~~of:~~
- 5 (A) \$100,000 or more is a severity level 5, nonperson felony;
 - 6 (B) at least \$75,000 but less than \$100,000 is a severity level 6, non-
 - 7 person felony;
 - 8 (C) at least \$50,000 but less than \$75,000 is a severity level 7, non-
 - 9 person felony;
 - 10 (D) at least \$25,000 but less than \$50,000 is a severity level 8, non-
 - 11 person felony;
 - 12 (E) at least \$2,000 but less than \$25,000 is a severity level 9, nonper-
 - 13 son felony; and
 - 14 (F) less than \$2,000 is a severity level 10, nonperson felony.
- 15 (4) A conviction for an intentional violation of ~~K.S.A. 17-12a505 or~~
 16 ~~17-12a506, and amendments thereto, is a severity level 8, nonperson~~
 17 ~~felony.:~~
- 18 (A) K.S.A. 17-12a404(e), 17-12a505 or 17-12a506, and amendments
 - 19 thereto, or an order to cease and desist issued by the administrator pur-
 - 20 suant to K.S.A. 17-12a412(c) or 17-12a604(a), and amendments thereto,
 - 21 is a severity level 6, nonperson felony.
 - 22 (B) K.S.A. 17-12a401(c) or 17-12a403(c), and amendments thereto,
 - 23 is a severity level 7, nonperson felony.
 - 24 (5) Any violation of K.S.A. 17-12a301, 17-12a401(a), ~~17-12a401(c),~~
 25 ~~17-12a402(a), 17-12a402(d),~~ 17-12a403(a), ~~17-12a403(c), 17-12a403(d),~~
 26 17-12a404(a), ~~17-12a404(e),~~ 17-12a501 or 17-12a502, and amendments
 27 thereto, resulting in a loss of \$25,000 or more shall have a presumptive
 28 sentence of imprisonment regardless of its location on the sentencing grid
 29 ~~block be presumed imprisonment.~~
 - 30 (b) *Statute of Limitations.* Except as provided by subsection (9) of
 31 K.S.A. 21-3106, and amendments thereto, no prosecution for any crime
 32 under this act may be commenced more than 10 years after the alleged
 33 violation if the victim is the Kansas public employees retirement system
 34 and no prosecution for any other crime under this act may be commenced
 35 more than five years after the alleged violation. A prosecution is com-
 36 menced when a complaint or information is filed, or an indictment re-
 37 turned, and a warrant thereon is delivered to the sheriff or other officer
 38 for execution, except that no prosecution shall be deemed to have been
 39 commenced if the warrant so issued is not executed without unreasonable
 40 delay.
 - 41 (c) *Criminal reference.* The administrator may refer such evidence as
 42 may be available concerning violations of this act or of any rules and
 43 regulations or order hereunder to the attorney general or the proper

1 county or district attorney, who may in the prosecutor's discretion, with
2 or without such a reference, institute the appropriate criminal proceed-
3 ings under this act. Upon receipt of such reference, the attorney general
4 or the county attorney or district attorney may request that a duly em-
5 ployed attorney of the administrator prosecute or assist in the prosecution
6 of such violation or violations on behalf of the state. Upon approval of the
7 administrator, such employee shall be appointed a special prosecutor for
8 the attorney general or the county attorney or district attorney to serve
9 without compensation from the attorney general or the county attorney
10 or district attorney. Such special prosecutor shall have all the powers and
11 duties prescribed by law for assistant attorneys general or assistant county
12 or district attorneys and such other powers and duties as are lawfully
13 delegated to such special prosecutor by the attorney general or the county
14 attorney or district attorney. If an attorney employed by the administrator
15 acts as a special prosecutor, the administrator may pay extradition and
16 witness expenses associated with the case.

17 (d) *No limitation on other criminal enforcement.* This act does not
18 limit the power of this state to punish a person for conduct that constitutes
19 a crime under other laws of this state.

20 Sec. 4. K.S.A. 17-1311a is hereby amended to read as follows: 17-
21 1311a. (a) Misuse of the permanent maintenance fund or any money
22 belonging thereto is using, lending or permitting another to use, moneys
23 in the fund in a manner not authorized by law, by a custodian or other
24 person having charge or control of such fund or moneys by virtue of his
25 position.

26 (b) Misuse of the permanent maintenance fund is a severity level 7,
27 ~~nonperson felony.~~ *in an amount of:*

- 28 (1) *\$100,000 or more is a severity level 5, nonperson felony;*
29 (2) *at least \$75,000 but less than \$100,000 is a severity level 6, non-*
30 *person felony;*
31 (3) *at least \$50,000 but less than \$75,000 is a severity level 7, non-*
32 *person felony;*
33 (4) *at least \$25,000 but less than \$50,000 is a severity level 8, non-*
34 *person felony;*
35 (5) *at least \$2,000 but less than \$25,000 is a severity level 9, nonper-*
36 *son felony;*
37 (6) *at least \$1,000 but less than \$2,000 is a severity level 10, nonper-*
38 *son felony;*
39 (7) *at least \$500 but less than \$1,000 is a class A nonperson misde-*
40 *meanor; and*
41 (8) *less than \$500 is a class B nonperson misdemeanor.*

42 Sec. 5. K.S.A. 19-3519 is hereby amended to read as follows: 19-
43 3519. (a) All claims, accounts and necessary expenses of the water district

1 lawfully incurred and approved shall be paid from appropriate available
 2 funds in bank accounts of the water district by voucher check supported
 3 by an appropriate purchase order or statement of service. All such claims
 4 shall be presented in writing with a full account of the items and may be
 5 the usual statement of account of the vendor or party rendering a service
 6 or other written statement showing the required information.

7 (b) ~~(1)~~ Any person who obtains money from the district by inten-
 8 tionally making a fraudulent claim for a sum of less than \$1,000 is guilty
 9 of a class A nonperson misdemeanor.

10 ~~(2)~~ Any person who obtains money from the district by intentionally
 11 making a fraudulent claim for at least \$1,000 but less than \$25,000 is
 12 guilty of a severity level 9, nonperson felony.

13 ~~(3)~~ Any person who obtains money from the district by intentionally
 14 making a fraudulent claim for \$25,000 or more is guilty of a severity level
 15 7, nonperson felony, in an amount of:

- 16 (1) \$100,000 or more is a severity level 5, nonperson felony;
- 17 (2) at least \$75,000 but less than \$100,000 is a severity level 6, non-
- 18 person felony;
- 19 (3) at least \$50,000 but less than \$75,000 is a severity level 7, non-
- 20 person felony;
- 21 (4) at least \$25,000 but less than \$50,000 is a severity level 8, non-
- 22 person felony;
- 23 (5) at least \$2,000 but less than \$25,000 is a severity level 9, nonper-
- 24 son felony;
- 25 (6) at least \$1,000 but less than \$2,000 is a severity level 10, nonper-
- 26 son felony;
- 27 (7) at least \$500 but less than \$1,000 is a class A nonperson misde-
- 28 meanor; and
- 29 (8) less than \$500 is a class B nonperson misdemeanor.

30 (c) The water district board shall see that there is kept a correct rec-
 31 ord of all voucher checks issued showing the number, date and amount
 32 thereof and the name of the person or persons to whom such checks are
 33 made payable and with appropriate reference to the applicable purchase
 34 order or other claim, account or expense record, including payroll re-
 35 cords. Any employee or officer authorized to sign or countersign voucher
 36 checks shall be covered by a surety bond in the form and amount as
 37 determined by the board.

38 Sec. 6. K.S.A. 21-2511 is hereby amended to read as follows: 21-
 39 2511. (a) Any person convicted as an adult or adjudicated as a juvenile
 40 offender because of the commission of any felony; a violation of subsec-
 41 tion (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508; a violation of
 42 K.S.A. 21-4310; a violation of K.S.A. 21-3424, and amendments thereto
 43 when the victim is less than 18 years of age; a violation of K.S.A. 21-3507,

1 and amendments thereto, when one of the parties involved is less than
2 18 years of age; a violation of subsection (b)(1) of K.S.A. 21-3513, and
3 amendments thereto, when one of the parties involved is less than 18
4 years of age; a violation of K.S.A. 21-3515, and amendments thereto,
5 when one of the parties involved is less than 18 years of age; or a violation
6 of K.S.A. 21-3517, and amendments thereto; including an attempt, con-
7 spiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or
8 21-3303 and amendments thereto, of any such offenses provided in this
9 subsection regardless of the sentence imposed, shall be required to sub-
10 mit specimens of blood or an oral or other biological sample authorized
11 by the Kansas bureau of investigation to the Kansas bureau of investiga-
12 tion in accordance with the provisions of this act, if such person is:

13 (1) Convicted as an adult or adjudicated as a juvenile offender be-
14 cause of the commission of a crime specified in subsection (a) on or after
15 the effective date of this act;

16 (2) ordered institutionalized as a result of being convicted as an adult
17 or adjudicated as a juvenile offender because of the commission of a crime
18 specified in subsection (a) on or after the effective date of this act; or

19 (3) convicted as an adult or adjudicated as a juvenile offender because
20 of the commission of a crime specified in this subsection before the ef-
21 fective date of this act and is presently confined as a result of such con-
22 viction or adjudication in any state correctional facility or county jail or is
23 presently serving a sentence under K.S.A. 21-4603, 21-4603d, 22-3717 or
24 K.S.A. ~~2007~~ 2009 Supp. 38-2361, and amendments thereto.

25 (b) Notwithstanding any other provision of law, the Kansas bureau of
26 investigation is authorized to obtain fingerprints and other identifiers for
27 all persons, whether juveniles or adults, covered by this act.

28 (c) Any person required by paragraphs (a)(1) and (a)(2) to provide
29 such specimen or sample shall be ordered by the court to have such
30 specimen or sample collected within 10 days after sentencing or
31 adjudication:

32 (1) If placed directly on probation, that person must provide such
33 specimen or sample, at a collection site designated by the Kansas bureau
34 of investigation. Collection of specimens shall be conducted by qualified
35 volunteers, contractual personnel or employees designated by the Kansas
36 bureau of investigation. Failure to cooperate with the collection of the
37 specimens and any deliberate act by that person intended to impede,
38 delay or stop the collection of the specimens shall be punishable as con-
39 tempt of court and constitute grounds to revoke probation;

40 (2) if sentenced to the secretary of corrections, such specimen or
41 sample will be obtained as soon as practical upon arrival at the correc-
42 tional facility; or

43 (3) if a juvenile offender is placed in the custody of the commissioner

1 of juvenile justice, in a youth residential facility or in a juvenile correc-
2 tional facility, such specimen or sample will be obtained as soon as prac-
3 tical upon arrival.

4 (d) Any person required by paragraph (a)(3) to provide such speci-
5 men or sample shall be required to provide such samples prior to final
6 discharge or conditional release at a collection site designated by the
7 Kansas bureau of investigation. Collection of specimens shall be con-
8 ducted by qualified volunteers, contractual personnel or employees des-
9 ignated by the Kansas bureau of investigation.

10 (e) (1) ~~On and after January 1, 2007 through June 30, 2008, any adult~~
11 ~~arrested or charged or juvenile placed in custody for or charged with the~~
12 ~~commission or attempted commission of any person felony or drug se-~~
13 ~~verity level 1 or 2 felony shall be required to submit such specimen or~~
14 ~~sample at the same time such person is fingerprinted pursuant to the~~
15 ~~booking procedure.~~

16 ~~(2)~~ On and after July 1, 2008, except as provided further, any adult
17 arrested or charged or juvenile placed in custody for or charged with the
18 commission or attempted commission of any felony; a violation of sub-
19 section (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508; a violation
20 of K.S.A. 21-4310; a violation of K.S.A. 21-3424, and amendments
21 thereto, when the victim is less than 18 years of age; a violation of K.S.A.
22 21-3507, and amendments thereto, when one of the parties involved is
23 less than 18 years of age; a violation of subsection (b)(1) of K.S.A. 21-
24 3513, and amendments thereto, when one of the parties involved is less
25 than 18 years of age; a violation of K.S.A. 21-3515, and amendments
26 thereto, when one of the parties involved is less than 18 years of age; or
27 a violation of K.S.A. 21-3517, and amendments thereto; shall be required
28 to submit such specimen or sample at the same time such person is fin-
29 gerprinted pursuant to the booking procedure.

30 ~~(3)~~ (2) Prior to taking such samples, the arresting, charging or cus-
31 todial law enforcement agency shall search the Kansas criminal history
32 files through the Kansas criminal justice information system to determine
33 if such person's sample is currently on file with the Kansas bureau of
34 investigation. In the event that it cannot reasonably be established that a
35 DNA sample for such person is on file at the Kansas bureau of investi-
36 gation, the arresting, charging or custodial law enforcement agency shall
37 cause a sample to be collected. If such person's sample is on file with the
38 Kansas bureau of investigation, the law enforcement agency is not re-
39 quired to take the sample.

40 ~~(4)~~ (3) If a court later determines that there was not probable cause
41 for the arrest, charge or placement in custody or the charges are otherwise
42 dismissed, and the case is not appealed, the Kansas bureau of investiga-
43 tion, upon petition by such person, shall expunge both the DNA sample

1 and the profile record of such person.

2 ~~(5)~~ (4) If a conviction against a person, who is required to submit
3 such specimen or sample, is expunged or a verdict of acquittal with regard
4 to such person is returned, the Kansas bureau of investigation shall, upon
5 petition by such person, expunge both the DNA sample and the profile
6 record of such person.

7 (f) All persons required to register as offenders pursuant to K.S.A.
8 22-4901 et seq., and amendments thereto, shall be required to submit
9 specimens of blood or an oral or other biological sample authorized by
10 the Kansas bureau of investigation to the Kansas bureau of investigation
11 in accordance with the provisions of this act.

12 (g) The Kansas bureau of investigation shall provide all specimen vi-
13 als, mailing tubes, labels and instructions necessary for the collection of
14 blood, oral or other biological samples. The collection of samples shall be
15 performed in a medically approved manner. No person authorized by this
16 section to withdraw blood, and no person assisting in the collection of
17 these samples shall be liable in any civil or criminal action when the act
18 is performed in a reasonable manner according to generally accepted
19 medical practices. The withdrawal of blood for purposes of this act may
20 be performed only by: (1) A person licensed to practice medicine and
21 surgery or a person acting under the supervision of any such licensed
22 person; (2) a registered nurse or a licensed practical nurse; or (3) any
23 qualified medical technician including, but not limited to, an emergency
24 medical technician-intermediate or mobile intensive care technician, as
25 those terms are defined in K.S.A. 65-6112, and amendments thereto, or
26 a phlebotomist. The samples shall thereafter be forwarded to the Kansas
27 bureau of investigation. The bureau shall analyze the samples to the ex-
28 tent allowed by funding available for this purpose.

29 (h) The DNA (deoxyribonucleic acid) records and DNA samples shall
30 be maintained by the Kansas bureau of investigation. The Kansas bureau
31 of investigation shall establish, implement and maintain a statewide au-
32 tomated DNA databank and DNA database capable of, but not limited
33 to, searching, matching and storing DNA records. The DNA database as
34 established by this act shall be compatible with the procedures specified
35 by the federal bureau of investigation's combined DNA index system
36 (CODIS). The Kansas bureau of investigation shall participate in the
37 CODIS program by sharing data and utilizing compatible test procedures,
38 laboratory equipment, supplies and computer software.

39 (i) The DNA records obtained pursuant to this act shall be confiden-
40 tial and shall be released only to authorized criminal justice agencies. The
41 DNA records shall be used only for law enforcement identification pur-
42 poses or to assist in the recovery or identification of human remains from
43 disasters or for other humanitarian identification purposes, including

1 identification of missing persons.

2 (j) (1) The Kansas bureau of investigation shall be the state central
3 repository for all DNA records and DNA samples obtained pursuant to
4 this act. The Kansas bureau of investigation shall promulgate rules and
5 regulations for: (A) The form and manner of the collection and mainte-
6 nance of DNA samples;

7 (B) a procedure which allows the defendant to petition to expunge
8 and destroy the DNA samples and profile record in the event of a dis-
9 missal of charges, expungement or acquittal at trial; and

10 (C) other procedures for the operation of this act.

11 (2) These rules and regulations also shall require compliance with
12 national quality assurance standards to ensure that the DNA records sat-
13 isfy standards of acceptance of such records into the national DNA iden-
14 tification index.

15 (3) The provisions of the Kansas administrative procedure act shall
16 apply to all actions taken under the rules and regulations so promulgated.

17 (k) The Kansas bureau of investigation is authorized to contract with
18 third parties for the purposes of implementing this section. Any other
19 party contracting to carry out the functions of this section shall be subject
20 to the same restrictions and requirements of this section, insofar as ap-
21 plicable, as the bureau, as well as any additional restrictions imposed by
22 the bureau.

23 (l) In the event that a person's DNA sample is lost or is not adequate
24 for any reason, the person shall provide another sample for analysis.

25 (m) Any person who is subject to the requirements of this section,
26 and who, after receiving notification of the requirement to provide a DNA
27 specimen, knowingly refuses to provide such DNA specimen, shall be
28 guilty of a class A nonperson misdemeanor.

29 Sec. 7. K.S.A. 21-3301 is hereby amended to read as follows: 21-
30 3301. (a) An attempt is any overt act toward the perpetration of a crime
31 done by a person who intends to commit such crime but fails in the
32 perpetration thereof or is prevented or intercepted in executing such
33 crime.

34 (b) It shall not be a defense to a charge of attempt that the circum-
35 stances under which the act was performed or the means employed or
36 the act itself were such that the commission of the crime was not possible.

37 (c) An attempt to commit an off-grid felony shall be ranked at ~~non-~~
38 ~~drug~~ severity level 1. An attempt to commit any other ~~nondrug~~ felony
39 shall be ranked on the ~~nondrug~~ scale at two severity levels below the
40 appropriate level for the underlying or completed crime. The lowest se-
41 verity level for an attempt to commit a ~~nondrug~~ felony shall be level 10.
42 The provisions of this subsection shall not apply to a violation of attempt-
43 ing to commit the crime of terrorism pursuant to K.S.A. 21-3449, and

1 amendments thereto, or of illegal use of weapons of mass destruction
2 pursuant to K.S.A. 21-3450, and amendments thereto.

3 ~~(d) An attempt to commit a felony which prescribes a sentence on~~
4 ~~the drug grid shall reduce the prison term prescribed in the drug grid~~
5 ~~block for an underlying or completed crime by six months.~~

6 ~~(e)~~ An attempt to commit a class A person misdemeanor is a class B
7 person misdemeanor. An attempt to commit a class A nonperson mis-
8 demeanor is a class B nonperson misdemeanor.

9 ~~(f)~~ (e) An attempt to commit a class B or C misdemeanor is a class C
10 misdemeanor.

11 Sec. 8. K.S.A. 21-3302 is hereby amended to read as follows: 21-
12 3302. (a) A conspiracy is an agreement with another person to commit a
13 crime or to assist in committing a crime. No person may be convicted of
14 a conspiracy unless an overt act in furtherance of such conspiracy is al-
15 leged and proved to have been committed by such person or by a co-
16 conspirator.

17 (b) It shall be a defense to a charge of conspiracy that the accused
18 voluntarily and in good faith withdrew from the conspiracy, and com-
19 municated the fact of such withdrawal to one or more of the accused
20 person's co-conspirators, before any overt act in furtherance of the con-
21 spiracy was committed by the accused or by a co-conspirator.

22 (c) Conspiracy to commit an off-grid felony shall be ranked at ~~non-~~
23 ~~drug~~ severity level 2. Conspiracy to commit any other ~~nondrug~~ felony
24 shall be ranked on the ~~nondrug~~ scale at two severity levels below the
25 appropriate level for the underlying or completed crime. The lowest se-
26 verity level for conspiracy to commit a ~~nondrug~~ felony shall be level 10.
27 The provisions of this subsection shall not apply to a violation of conspir-
28 acy to commit the crime of terrorism pursuant to K.S.A. 21-3449, and
29 amendments thereto, or of illegal use of weapons of mass destruction
30 pursuant to K.S.A. 21-3450, and amendments thereto.

31 ~~(d) Conspiracy to commit a felony which prescribes a sentence on~~
32 ~~the drug grid shall reduce the prison term prescribed in the drug grid~~
33 ~~block for an underlying or completed crime by six months.~~

34 ~~(e)~~ A conspiracy to commit a misdemeanor is a class C misdemeanor.

35 Sec. 9. K.S.A. 21-3303 is hereby amended to read as follows: 21-
36 3303. (a) Criminal solicitation is commanding, encouraging or requesting
37 another person to commit a felony, attempt to commit a felony or aid and
38 abet in the commission or attempted commission of a felony for the pur-
39 pose of promoting or facilitating the felony.

40 (b) It is immaterial under subsection (a) that the actor fails to com-
41 municate with the person solicited to commit a felony if the person's
42 conduct was designed to effect a communication.

43 (c) It is an affirmative defense that the actor, after soliciting another

1 person to commit a felony, persuaded that person not to do so or oth-
2 erwise prevented the commission of the felony, under circumstances
3 manifesting a complete and voluntary renunciation of the actor's criminal
4 purposes.

5 (d) Criminal solicitation to commit an off-grid felony shall be ranked
6 at ~~nondrug~~ severity level 3. Criminal solicitation to commit any other
7 ~~nondrug~~ felony shall be ranked on the ~~nondrug~~ scale at three severity
8 levels below the appropriate level for the underlying or completed crime.
9 The lowest severity level for criminal solicitation to commit a ~~nondrug~~
10 felony shall be level 10. The provisions of this subsection shall not apply
11 to a violation of criminal solicitation to commit the crime of terrorism
12 pursuant to K.S.A. 21-3449, and amendments thereto, or of illegal use of
13 weapons of mass destruction pursuant to K.S.A. 21-3450, and amend-
14 ments thereto.

15 ~~(e) Criminal solicitation to commit a felony which prescribes a sen-~~
16 ~~tence on the drug grid shall reduce the prison term prescribed in the~~
17 ~~drug grid block for an underlying or completed crime by six months.~~

18 Sec. 10. K.S.A. 21-3437 is hereby amended to read as follows: 21-
19 3437. (a) Mistreatment of a dependent adult is knowingly and intention-
20 ally committing one or more of the following acts:

21 (1) Infliction of physical injury, unreasonable confinement or cruel
22 punishment upon a dependent adult;

23 (2) taking unfair advantage of a dependent adult's physical or financial
24 resources for another individual's personal or financial advantage by the
25 use of undue influence, coercion, harassment, duress, deception, false
26 representation or false pretense by a caretaker or another person; or

27 (3) omitting or depriving treatment, goods or services by a caretaker
28 or another person which are necessary to maintain physical or mental
29 health of a dependent adult.

30 (b) No dependent adult is considered to be mistreated for the sole
31 reason that such dependent adult relies upon or is being furnished treat-
32 ment by spiritual means through prayer in lieu of medical treatment in
33 accordance with the tenets and practices of a recognized church or relig-
34 ious denomination of which such dependent adult is a member or
35 adherent.

36 (c) For purposes of this section: "Dependent adult" means an indi-
37 vidual 18 years of age or older who is unable to protect their own interest.
38 Such term shall include:

39 (1) Any resident of an adult care home including but not limited to
40 those facilities defined by K.S.A. 39-923 and amendments thereto;

41 (2) any adult cared for in a private residence;

42 (3) any individual kept, cared for, treated, boarded or otherwise ac-
43 commodated in a medical care facility;

- 1 (4) any individual with mental retardation or a developmental disa-
 2 bility receiving services through a community mental retardation facility
 3 or residential facility licensed under K.S.A. 75-3307b and amendments
 4 thereto;
- 5 (5) any individual with a developmental disability receiving services
 6 provided by a community service provider as provided in the develop-
 7 mental disability reform act; or
- 8 (6) any individual kept, cared for, treated, boarded or otherwise ac-
 9 commodated in a state psychiatric hospital or state institution for the
 10 mentally retarded.
- 11 (d) (1) Mistreatment of a dependent adult as defined in subsection
 12 (a)(1) is a severity level 6, person felony.
- 13 (2) Mistreatment of a dependent adult as defined in subsection (a)(2)
 14 is a severity level 6, person felony if the aggregate amount of the value
 15 of the resources is \$100,000 or more.
- 16 ~~(3) Mistreatment of a dependent adult as defined in subsection (a)(2)~~
 17 ~~is a severity level 7, person felony if the aggregate amount of the value~~
 18 ~~of the resources is at least \$25,000 but less than \$100,000.~~
- 19 ~~(4) Mistreatment of a dependent adult as defined in subsection (a)(2)~~
 20 ~~is a severity level 9, person felony if the aggregate amount of the value~~
 21 ~~of the resources is at least \$1,000 but less than \$25,000.~~
- 22 ~~(5) Mistreatment of a dependent adult as defined in subsection (a)(2)~~
 23 ~~is a class A person misdemeanor if the aggregate amount of the value of~~
 24 ~~the resources is less than \$1,000.~~
- 25 ~~(6)~~, if the aggregate amount of the value of the resources is:
- 26 (A) \$100,000 or more is a severity level 5, nonperson felony;
- 27 (B) at least \$75,000 but less than \$100,000 is a severity level 6, non-
 28 person felony;
- 29 (C) at least \$50,000 but less than \$75,000 is a severity level 7, non-
 30 person felony;
- 31 (D) at least \$25,000 but less than \$50,000 is a severity level 8, non-
 32 person felony;
- 33 (E) at least \$2,000 but less than \$25,000 is a severity level 9, nonper-
 34 son felony;
- 35 (F) at least \$1,000 but less than \$2,000 is a severity level 10, nonper-
 36 son felony;
- 37 (G) at least \$500 but less than \$1,000 is a class A nonperson misde-
 38 meanor; and
- 39 (H) less than \$500 is a class B nonperson misdemeanor.
- 40 (3) Mistreatment of a dependent adult as defined in subsection (a)(3)
 41 is a class A person misdemeanor.
- 42 ~~(7)~~ (4) Mistreatment of a dependent adult as defined in subsection
 43 (a)(2) is a severity level 9, person felony if the aggregate amount of the

1 value of the resources is less than \$1,000 and committed by a person who
2 has, within five years immediately preceding commission of the crime,
3 been convicted of mistreatment of a dependent adult two or more times.
4 Sec. 11. K.S.A. 2009 Supp. 21-36a01 is hereby amended to read as
5 follows: 21-36a01. As used in K.S.A. 2009 Supp. 21-36a01 through 21-
6 36a17, and amendments thereto:
7 (a) “Controlled substance” means any drug, substance or immediate
8 precursor included in any of the schedules designated in K.S.A. 65-4105,
9 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.
10 (b) (1) “Controlled substance analog” means a substance that is in-
11 tended for human consumption, and:
12 (A) The chemical structure of which is substantially similar to the
13 chemical structure of a controlled substance listed in or added to the
14 schedules designated in K.S.A. 65-4105 or 65-4107, and amendments
15 thereto;
16 (B) which has a stimulant, depressant or hallucinogenic effect on the
17 central nervous system substantially similar to the stimulant, depressant
18 or hallucinogenic effect on the central nervous system of a controlled
19 substance included in the schedules designated in K.S.A. 65-4105 or 65-
20 4107, and amendments thereto; or
21 (C) with respect to a particular individual, which the individual rep-
22 represents or intends to have a stimulant, depressant or hallucinogenic effect
23 on the central nervous system substantially similar to the stimulant, de-
24 pressant or hallucinogenic effect on the central nervous system of a con-
25 trolled substance included in the schedules designated in K.S.A. 65-4105
26 or 65-4107, and amendments thereto.
27 (2) “Controlled substance analog” does not include:
28 (A) A controlled substance;
29 (B) a substance for which there is an approved new drug application;
30 or
31 (C) a substance with respect to which an exemption is in effect for
32 investigational use by a particular person under section 505 of the federal
33 food, drug, and cosmetic act (21 U.S.C. 355) to the extent conduct with
34 respect to the substance is permitted by the exemption.
35 (c) “Cultivate” means the planting or promotion of growth of five or
36 more plants which contain or can produce controlled substances.
37 (d) “Distribute” means the actual, constructive or attempted transfer
38 from one person to another of some item whether or not there is an
39 agency relationship. “Distribute” includes, but is not limited to, sale, offer
40 for sale or any act that causes some item to be transferred from one person
41 to another. “Distribute” does not include acts of administering, dispens-
42 ing or prescribing a controlled substance as authorized by the pharmacy
43 act of the state of Kansas, the uniform controlled substances act, or oth-

1 erwise authorized by law.

2 (e) “Drug” means:

3 (1) Substances recognized as drugs in the official United States phar-
4 macopoeia, official homeopathic pharmacopoeia of the United States or
5 official national formulary or any supplement to any of them;

6 (2) substances intended for use in the diagnosis, cure, mitigation,
7 treatment or prevention of disease in man or animals;

8 (3) substances, other than food, intended to affect the structure or
9 any function of the body of man or animals; and

10 (4) substances intended for use as a component of any article speci-
11 fied in paragraph (1), (2) or (3). It does not include devices or their
12 components, parts or accessories.

13 (f) “Drug paraphernalia” means all equipment and materials of any
14 kind which are used, or primarily intended or designed for use in planting,
15 propagating, cultivating, growing, harvesting, manufacturing, compound-
16 ing, converting, producing, processing, preparing, testing, analyzing,
17 packaging, repackaging, storing, containing, concealing, injecting, ingest-
18 ing, inhaling or otherwise introducing into the human body a controlled
19 substance and in violation of this act. “Drug paraphernalia” shall include,
20 but is not limited to:

21 (1) Kits used or intended for use in planting, propagating, cultivating,
22 growing or harvesting any species of plant which is a controlled substance
23 or from which a controlled substance can be derived;

24 (2) kits used or intended for use in manufacturing, compounding,
25 converting, producing, processing or preparing controlled substances;

26 (3) isomerization devices used or intended for use in increasing the
27 potency of any species of plant which is a controlled substance;

28 (4) testing equipment used or intended for use in identifying or in
29 analyzing the strength, effectiveness or purity of controlled substances;

30 (5) scales and balances used or intended for use in weighing or meas-
31 uring controlled substances;

32 (6) diluents and adulterants, including, but not limited to, quinine
33 hydrochloride, mannitol, mannite, dextrose and lactose, which are used
34 or intended for use in cutting controlled substances;

35 (7) separation gins and sifters used or intended for use in removing
36 twigs and seeds from or otherwise cleaning or refining marijuana;

37 (8) blenders, bowls, containers, spoons and mixing devices used or
38 intended for use in compounding controlled substances;

39 (9) capsules, balloons, envelopes, bags and other containers used or
40 intended for use in packaging small quantities of controlled substances;

41 (10) containers and other objects used or intended for use in storing
42 or concealing controlled substances;

43 (11) hypodermic syringes, needles and other objects used or intended

- 1 for use in parenterally injecting controlled substances into the human
2 body;
- 3 (12) objects used or primarily intended or designed for use in in-
4 gesting, inhaling or otherwise introducing marijuana, cocaine, hashish,
5 hashish oil, phencyclidine (PCP), methamphetamine or amphetamine
6 into the human body, such as:
- 7 (A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with
8 or without screens, permanent screens, hashish heads or punctured metal
9 bowls;
- 10 (B) water pipes, bongos or smoking pipes designed to draw smoke
11 through water or another cooling device;
- 12 (C) carburetion pipes, glass or other heat resistant tubes or any other
13 device used or intended to be used, designed to be used to cause vapor-
14 ization of a controlled substance for inhalation;
- 15 (D) smoking and carburetion masks;
- 16 (E) roach clips, objects used to hold burning material, such as a ma-
17 rijuana cigarette, that has become too small or too short to be held in the
18 hand;
- 19 (F) miniature cocaine spoons and cocaine vials;
- 20 (G) chamber smoking pipes;
- 21 (H) carburetor smoking pipes;
- 22 (I) electric smoking pipes;
- 23 (J) air-driven smoking pipes;
- 24 (K) chillums;
- 25 (L) bongos;
- 26 (M) ice pipes or chillers;
- 27 (N) any smoking pipe manufactured to disguise its intended purpose;
- 28 (O) wired cigarette papers; or
- 29 (P) cocaine freebase kits.
- 30 (g) “Immediate precursor” means a substance which the board of
31 pharmacy has found to be and by rules and regulations designates as being
32 the principal compound commonly used or produced primarily for use
33 and which is an immediate chemical intermediary used or likely to be
34 used in the manufacture of a controlled substance, the control of which
35 is necessary to prevent, curtail or limit manufacture.
- 36 (h) “Isomer” means all enantiomers and diastereomers.
- 37 (i) “Manufacture” means the production, preparation, propagation,
38 compounding, conversion or processing of a controlled substance either
39 directly or indirectly or by extraction from substances of natural origin or
40 independently by means of chemical synthesis or by a combination of
41 extraction and chemical synthesis and includes any packaging or repack-
42 aging of the substance or labeling or relabeling of its container. “Manu-
43 facture” does not include the preparation or compounding of a controlled

- 1 substance by an individual for the individual's own lawful use or the prep-
2 aration, compounding, packaging or labeling of a controlled substance:
- 3 (1) By a practitioner or the practitioner's agent pursuant to a lawful
4 order of a practitioner as an incident to the practitioner's administering
5 or dispensing of a controlled substance in the course of the practitioner's
6 professional practice; or
- 7 (2) by a practitioner or by the practitioner's authorized agent under
8 such practitioner's supervision for the purpose of or as an incident to
9 research, teaching or chemical analysis or by a pharmacist or medical care
10 facility as an incident to dispensing of a controlled substance.
- 11 (j) "Marijuana" means all parts of all varieties of the plant Cannabis
12 whether growing or not, the seeds thereof, the resin extracted from any
13 part of the plant and every compound, manufacture, salt, derivative, mix-
14 ture or preparation of the plant, its seeds or resin. "Marijuana" does not
15 include the mature stalks of the plant, fiber produced from the stalks, oil
16 or cake made from the seeds of the plant, any other compound, manu-
17 facture, salt, derivative, mixture or preparation of the mature stalks, ex-
18 cept the resin extracted therefrom, fiber, oil or cake or the sterilized seed
19 of the plant which is incapable of germination.
- 20 (k) "*Minor*" means a person under 18 years of age.
- 21 ~~(l)~~ (l) "Narcotic drug" means any of the following whether produced
22 directly or indirectly by extraction from substances of vegetable origin or
23 independently by means of chemical synthesis or by a combination of
24 extraction and chemical synthesis:
- 25 (1) Opium and opiate and any salt, compound, derivative or prepa-
26 ration of opium or opiate;
- 27 (2) any salt, compound, isomer, derivative or preparation thereof
28 which is chemically equivalent or identical with any of the substances
29 referred to in paragraph (1) but not including the isoquinoline alkaloids
30 of opium;
- 31 (3) opium poppy and poppy straw;
- 32 (4) coca leaves and any salt, compound, derivative or preparation of
33 coca leaves and any salt, compound, isomer, derivative or preparation
34 thereof which is chemically equivalent or identical with any of these sub-
35 stances, but not including decocainized coca leaves or extractions of coca
36 leaves which do not contain cocaine or ecgonine.
- 37 ~~(m)~~ (m) "Opiate" means any substance having an addiction-forming or
38 addiction-sustaining liability similar to morphine or being capable of con-
39 version into a drug having addiction-forming or addiction-sustaining li-
40 ability. "Opiate" does not include, unless specifically designated as con-
41 trolled under K.S.A. 65-4102, and amendments thereto, the
42 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts
43 (dextromethorphan). "Opiate" does include its racemic and levorotatory

1 forms.

2 ~~(m)~~ (n) “Opium poppy” means the plant of the species *Papaver som-*
3 *niferum* L. except its seeds.

4 ~~(n)~~ (o) “Person” means individual, corporation, government or gov-
5 ernmental subdivision or agency, business trust, estate, trust, partnership,
6 association or any other legal entity.

7 ~~(o)~~ (p) “Poppy straw” means all parts, except the seeds, of the opium
8 poppy, after mowing.

9 ~~(p)~~ (q) “Possession” means having joint or exclusive control over an
10 item with knowledge of and intent to have such control or knowingly
11 keeping some item in a place where the person has some measure of
12 access and right of control.

13 (r) “*Presence of a minor*” means:

14 (1) *A minor is within close proximity to the illegal activity;*

15 (2) *the illegal activity is conducted in a place where minors can rea-*
16 *sonably be expected to be present; or*

17 (3) *in the minor’s dwelling.*

18 *This definition shall not be construed as requiring that a defendant*
19 *actually be aware of the presence of a minor or a minor actually be aware*
20 *of the illegal activity.*

21 ~~(q)~~ (s) “School property” means property upon which is located a
22 structure used by a unified school district or an accredited nonpublic
23 school for student instruction or attendance or extracurricular activities
24 of pupils enrolled in kindergarten or any of the grades one through 12.
25 This definition shall not be construed as requiring that school be in session
26 or that classes are actually being held at the time of the offense or that
27 children must be present within the structure or on the property during
28 the time of any alleged criminal act. If the structure or property meets
29 the above definition, the actual use of that structure or property at the
30 time alleged shall not be a defense to the crime charged or the sentence
31 imposed.

32 ~~(s)~~ (t) “Simulated controlled substance” means any product which
33 identifies itself by a common name or slang term associated with a con-
34 trolled substance and which indicates on its label or accompanying pro-
35 motional material that the product simulates the effect of a controlled
36 substance.

37 Sec. 12. K.S.A. 2009 Supp. 21-36a03 is hereby amended to read as
38 follows: 21-36a03. (a) It shall be unlawful for any person to manufacture
39 any controlled substance or controlled substance analog.

40 ~~(b) Violation or attempted violation of subsection (a) is a drug severity~~
41 ~~level 1 felony.~~

42 (b) (1) *Except as provided further, violation or attempted violation*
43 *of subsection (a) is a severity level 3, ~~person~~ nonperson felony.*

- 1 (2) *Violation of subsection (a) is a severity level 1, ~~person~~ **nonperson***
2 *felony if such substance being manufactured or attempted to be manu-*
3 *factured is any methamphetamine as defined by subsection (d)(3) or (f)(1)*
4 *of K.S.A. 65-4107, and amendments thereto.*
- 5 (c) The provisions of subsection (d) of K.S.A. 21-3301, and amend-
6 ments thereto, shall not apply to a violation of attempting to unlawfully
7 manufacture any controlled substance pursuant to this section.
- 8 ~~(c)~~ (d) For persons arrested and charged under this section, bail shall
9 be at least \$50,000 cash or surety, unless the court determines, on the
10 record, that the defendant is not likely to re-offend, the court imposes
11 pretrial supervision, or the defendant agrees to participate in a licensed
12 or certified drug treatment program.
- 13 ~~(d)~~ (e) The sentence of a person who violates this section shall not be
14 subject to statutory provisions for suspended sentence, community serv-
15 ice work or probation.
- 16 ~~(e)~~ (f) The sentence of a person who violates this section or K.S.A.
17 65-4159, prior to its repeal, shall not be reduced because these sections
18 prohibit conduct identical to that prohibited by K.S.A. 65-4161 or 65-
19 4163, prior to such sections repeal, or K.S.A. 2009 Supp. 21-36a05, and
20 amendments thereto.
- 21 Sec. 13. K.S.A. 2009 Supp. 21-36a05 is hereby amended to read as
22 follows: 21-36a05. (a) It shall be unlawful for any person to ~~cultivate,~~
23 distribute or possess with the intent to distribute any of the following
24 controlled substances or controlled substance analogs thereof:
- 25 (1) Opiates, opium or narcotic drugs, or any stimulant designated in
26 subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments
27 thereto;
- 28 (2) any depressant designated in subsection (e) of K.S.A. 65-4105,
29 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109
30 or subsection (b) of K.S.A. 65-4111, and amendments thereto;
- 31 (3) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
32 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.
33 65-4109, and amendments thereto;
- 34 (4) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
35 4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-
36 4109, and amendments thereto;
- 37 (5) any substance designated in subsection (g) of K.S.A. 65-4105 and
38 subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments
39 thereto; or
- 40 (6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
41 4109, and amendments thereto.
- 42 (b) It shall be unlawful for any person to distribute or possess with
43 the intent to distribute a controlled substance or a controlled substance

- 1 analog designated in K.S.A. 65-4113, and amendments thereto.
- 2 ~~(c) (1) Violation of subsection (a) is a drug severity level 3 felony;~~
3 ~~except that:~~
- 4 ~~—(A) Violation of subsection (a) on or within 1,000 feet of any school~~
5 ~~property is a drug severity level 2 felony;~~
- 6 ~~—(B) violation of subsection (a)(1) is a drug severity level 2 felony if~~
7 ~~that person has one prior conviction under subsection (a)(1), under K.S.A.~~
8 ~~65-4161 prior to its repeal, or under a substantially similar offense from~~
9 ~~another jurisdiction; and~~
- 10 ~~—(C) violation of subsection (a)(1) is a drug severity level 1 felony if~~
11 ~~that person has two prior convictions under subsection (a)(1), under~~
12 ~~K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense~~
13 ~~from another jurisdiction.~~
- 14 ~~—(2) Violation of subsection (b) is a class A nonperson misdemeanor;~~
15 ~~except that, violation of subsection (b) is a drug severity level 4 felony if~~
16 ~~the substance was distributed to or possessed with the intent to distribute~~
17 ~~to a child under 18 years of age.~~
- 18 ~~—(d) It shall not be a defense to charges arising under this section that~~
19 ~~the defendant was acting in an agency relationship on behalf of any other~~
20 ~~party in a transaction involving a controlled substance.~~
- 21 ~~(c) It shall be unlawful for any person to cultivate any controlled~~
22 ~~substance or controlled substance analog designated in subsection (a).~~
- 23 ~~(d) (1) Except as provided further, violation of subsection (a) is a:~~
- 24 ~~(A) Severity level 7, nonperson felony if the quantity of the material~~
25 ~~is less than 3.5 grams;~~
- 26 ~~(B) severity level 6, nonperson felony if the quantity of the material~~
27 ~~is 3.5 grams or more but less than 100 grams;~~
- 28 ~~(C) severity level 4, nonperson felony if the quantity of the material~~
29 ~~is 100 grams or more but less than 1 kilogram; and~~
- 30 ~~(D) severity level 2, person felony if the quantity of the material is 1~~
31 ~~kilogram or more.~~
- 32 ~~(2) Except as provided further, violation of subsection (a), with re-~~
33 ~~spect to material containing any quantity of marijuana, or an analog~~
34 ~~thereof, is a:~~
- 35 ~~(A) Severity level 7, nonperson felony if the quantity of the material~~
36 ~~is less than 25 grams;~~
- 37 ~~(B) severity level 6, nonperson felony if the quantity of the material~~
38 ~~is 25 grams or more but less than 450 grams;~~
- 39 ~~(C) severity level 4, nonperson felony if the quantity of the material~~
40 ~~is 450 grams or more but less than 30 kilograms; and~~
- 41 ~~(D) severity level 2, nonperson felony if the quantity of the material~~
42 ~~is 30 kilograms or more.~~
- 43 ~~(3) Except as provided further, violation of subsection (a), with re-~~

- 1 *spect to material containing any quantity of heroin, or an analog thereof,*
2 *is a:*
- 3 (A) *Severity level 7, nonperson felony if the quantity of the material*
4 *is 1 gram or less;*
- 5 (B) *severity level 6, nonperson felony if the quantity of the material*
6 *is more than 1 gram but less than 3.5 grams;*
- 7 (C) *severity level 4, nonperson felony if the quantity of the material*
8 *is 3.5 grams or more but less than 100 grams; and*
- 9 (D) *severity level 2, nonperson felony if the quantity of the material*
10 *is 100 grams or more.*
- 11 (4) *Except as provided further, violation of subsection (a), with re-*
12 *spect to material containing any quantity of a controlled substance or*
13 *controlled substance analog designated in K.S.A. 65-4105, 65-4107, 65-*
14 *4109 or 65-4111, and amendments thereto, distributed by dosage unit, is*
15 *a:*
- 16 (A) *Severity level 7, nonperson felony if the number of dosage units*
17 *is fewer than 10;*
- 18 (B) *severity level 6, nonperson felony if the number of dosage units*
19 *is 10 or more but fewer than 100;*
- 20 (C) *severity level 4, nonperson felony if the number of dosage units*
21 *is 100 or more but fewer than 1,000; and*
- 22 (D) *severity level 2, nonperson felony if the number of dosage units*
23 *is 1,000 or more.*
- 24 (5) *For any violation of subsection (a), the severity level of the offense*
25 *shall be increased one level if the offender is 18 or more years of age and*
26 *the controlled substance or controlled substance analog is distributed or*
27 *possessed with the intent to distribute to a minor, in the presence of a*
28 *minor or on or within 1,000 feet of any school property.*
- 29 (6) (A) *Except as provided further, violation of subsection (b) is a*
30 *class A nonperson misdemeanor.*
- 31 (B) *Violation of subsection (b) is a severity level 7, nonperson felony*
32 *if the substance is distributed to or possessed with the intent to distribute*
33 *to a minor.*
- 34 (7) *Violation of subsection (c) is a:*
- 35 (A) *Severity level 6, nonperson felony if the number of plants culti-*
36 *vated is greater than 4 but fewer than 50;*
- 37 (B) *severity level 4, nonperson felony if the number of plants culti-*
38 *vated is 50 or more but fewer than 100; and*
- 39 (C) *severity level 2, nonperson felony if the number of plants culti-*
40 *vated is 100 or more.*
- 41 ~~(e) *In any prosecution under this section, there shall be a rebuttable*~~
42 ~~*presumption of an intent to distribute if any person possesses the quan-*~~
43 ~~*ties of the following controlled substances or analogs thereof in the fol-*~~

1 ~~lowing amounts:~~

2 ~~(1) 450 grams or more of marijuana;~~

3 ~~(2) 3.5 grams or more of heroin;~~

4 ~~(3) 100 dosage units or more containing a controlled substance; or~~

5 ~~(4) 100 grams or more of any other controlled substance.~~

6 ~~(f) (e) It shall not be a defense to charges arising under this section~~
7 ~~that the defendant:~~

8 (1) Is acting in an agency relationship on behalf of any other party
9 in a transaction involving a controlled substance;

10 (2) did not know the quantity of the controlled substance; or

11 (3) did not know the specific controlled substance contained in the
12 material that is distributed or possessed with the intent of distribution.

13 ~~(g) (f) As used in this section:~~

14 (1) “Material” means the total amount of any substance, including a
15 compound or a mixture, which contains any quantity of a controlled
16 substance.

17 (2) “Dosage unit” means a controlled substance distributed or pos-
18 sessed with the intent to distribute as a discrete unit, including, but not
19 limited to, one pill, one capsule or one microdot, and not distributed by
20 weight.

21 (A) For steroids, or controlled substances in liquid solution legally
22 manufactured for prescription use, “dosage unit” means the smallest med-
23 ically-approved dosage unit, as determined by the label, materials pro-
24 vided by the manufacturer, a prescribing authority, licensed health care
25 professional or other qualified health authority.

26 (B) Except as provided further, for illegally manufactured controlled
27 substances in liquid solution or controlled substances in liquid products
28 not intended for human ingestion, “dosage unit” means 10 milligrams,
29 including the liquid carrier medium for controlled substances.

30 (C) For lysergic acid diethylamide (LSD) in liquid form, a “dosage
31 unit” means .4 milligrams, including the liquid carrier medium.

32 Sec. 14. K.S.A. 2009 Supp. 21-36a06 is hereby amended to read as
33 follows: 21-36a06. (a) It shall be unlawful for any person to possess any
34 opiates, opium or narcotic drugs, or any stimulant designated in subsec-
35 tion (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto,
36 or a controlled substance analog thereof.

37 (b) It shall be unlawful for any person to possess any of the following
38 controlled substances or controlled substance analogs thereof:

39 (1) Any depressant designated in subsection (e) of K.S.A. 65-4105,
40 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109
41 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

42 (2) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
43 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.

- 1 65-4109, and amendments thereto;
- 2 (3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
3 4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-
4 4109, and amendments thereto;
- 5 (4) any substance designated in subsection (g) of K.S.A. 65-4105 and
6 subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments
7 thereto; or
- 8 (5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
9 4109, and amendments thereto.
- 10 (c) (1) Violation of subsection (a) is a ~~drug~~ severity level ~~4~~ 7, *non-*
11 *person* felony;
- 12 (2) (A) *Except as provided further*, violation of subsection (b) is a
13 class A nonperson misdemeanor, ~~except that~~.
- 14 (B) Violation of subsection (b) is a ~~drug severity level 4~~ *severity level*
15 *7, nonperson* felony if that person has a prior conviction under such sub-
16 section, under K.S.A. 65-4162, prior to its repeal, under a substantially
17 similar offense from another jurisdiction, or under any city ordinance or
18 county resolution for a substantially similar offense if the substance in-
19 volved was 3, 4-methylenedioxyamphetamine (MDMA), marijuana
20 or tetrahydrocannabinol as designated in subsection (d) of K.S.A. 65-
21 4105, and amendments thereto.
- 22 (d) It shall not be a defense to charges arising under this section that
23 the defendant was acting in an agency relationship on behalf of any other
24 party in a transaction involving a controlled substance.
- 25 Sec. 15. K.S.A. 2009 Supp. 21-36a07 is hereby amended to read as
26 follows: 21-36a07. (a) It shall be unlawful for any person to knowingly or
27 intentionally use any communication facility:
- 28 (1) In committing, causing, or facilitating the commission of any fel-
29 ony under K.S.A. 2009 Supp. 21-36a03, 21-36a05 or 21-36a06, and
30 amendments thereto; or
- 31 (2) in any attempt to commit, any conspiracy to commit, or any crim-
32 inal solicitation of any felony under K.S.A. 2009 Supp. 21-36a03, 21-36a05
33 or 21-36a06, and amendments thereto. Each separate use of a commu-
34 nication facility may be charged as a separate offense under this
35 subsection.
- 36 (b) Violation of subsection (a) is a ~~nondrug~~ severity level 8, nonperson
37 felony.
- 38 (c) As used in this section, “communication facility” means any and
39 all public and private instrumentalities used or useful in the transmission
40 of writing, signs, signals, pictures or sounds of all kinds and includes tel-
41 ephone, wire, radio, computer, computer networks, beepers, pagers and
42 all other means of communication.
- 43 Sec. 16. K.S.A. 2009 Supp. 21-36a08 is hereby amended to read as

1 follows: 21-36a08. (a) Unlawfully obtaining and distributing a prescrip-
2 tion-only drug is:

3 (1) Making, altering or signing of a prescription order by a person
4 other than a practitioner or a mid-level practitioner;

5 (2) distribution of a prescription order, knowing it to have been made,
6 altered or signed by a person other than a practitioner or a mid-level
7 practitioner;

8 (3) possession of a prescription order with intent to distribute it and
9 knowing it to have been made, altered or signed by a person other than
10 a practitioner or a mid-level practitioner;

11 (4) possession of a prescription-only drug knowing it to have been
12 obtained pursuant to a prescription order made, altered or signed by a
13 person other than a practitioner or a mid-level practitioner; or

14 (5) providing false information to a practitioner or mid-level practi-
15 tioner for the purpose of obtaining a prescription-only drug.

16 (b) (1) *Except as provided further*, unlawfully obtaining and distrib-
17 uting a prescription-only drug is a class A nonperson misdemeanor, ~~except~~
18 ~~that~~.

19 (2) *Except as provided further*, unlawfully obtaining and distributing
20 a prescription-only drug is a ~~nondrug~~ severity level 6, nonperson felony
21 if that person is distributing, and such distribution involves selling, pos-
22 sessing with the intent to sell, or offering for sale the prescription-only
23 drug so obtained, ~~and~~.

24 (3) Unlawfully obtaining and distributing a prescription-only drug is
25 a ~~nondrug~~ severity level 9, nonperson felony if that person has a prior
26 conviction of paragraph (1) or K.S.A. 21-4214, prior to its repeal.

27 (c) As used in this section:

28 (1) “Pharmacist,” “practitioner,” “mid-level practitioner” and “pre-
29 scription-only drug” shall have the meanings ascribed thereto by K.S.A.
30 65-1626, and amendments thereto.

31 (2) “Prescription order” means an order transmitted in writing, orally,
32 telephonically or by other means of communication for a prescription-
33 only drug to be filled by a pharmacist. “Prescription order” does not mean
34 a drug dispensed pursuant to such an order.

35 (d) The provisions of this section shall not be applicable to prosecu-
36 tions involving prescription-only drugs which could be ~~bought~~ *brought*
37 under K.S.A. 2009 Supp. 21-36a05 or 21-36a06, and amendments
38 thereto.

39 Sec. 17. K.S.A. 2009 Supp. 21-36a09 is hereby amended to read as
40 follows: 21-36a09. (a) It shall be unlawful for any person to possess ephed-
41 rine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, io-
42 dine, anhydrous ammonia, pressurized ammonia or phenylpropanolam-
43 ine, or their salts, isomers or salts of isomers with an intent to use the

- 1 product to manufacture a controlled substance.
- 2 (b) It shall be unlawful for any person to use or possess with intent
3 to use any drug paraphernalia to:
- 4 (1) Manufacture, cultivate, plant, propagate, harvest, test, analyze or
5 distribute a controlled substance; or
- 6 (2) store, contain, conceal, inject, ingest, inhale or otherwise intro-
7 duce a controlled substance into the human body.
- 8 (c) It shall be unlawful for any person to use or possess with intent
9 to use anhydrous ammonia or pressurized ammonia in a container not
10 approved for that chemical by the Kansas department of agriculture.
- 11 (d) It shall be unlawful for any person to purchase, receive or oth-
12 erwise acquire at retail any compound, mixture or preparation containing
13 more than 3.6 grams of pseudoephedrine base or ephedrine base in any
14 single transaction or any compound, mixture or preparation containing
15 more than nine grams of pseudoephedrine base or ephedrine base within
16 any 30-day period.
- 17 (e) (1) Violation of subsection (a) is a ~~drug severity level 2~~ *severity*
18 *level 4, nonperson felony*;
- 19 (2) (A) *Except as provided further*, violation of subsection (b)(1) is a
20 ~~drug severity level 4 felony, except that~~ *severity level 7, nonperson felony*.
- 21 (B) Violation of subsection (b)(1) is a class A nonperson misdemeanor
22 if the drug paraphernalia was used to cultivate fewer than five marijuana
23 plants;
- 24 (3) Violation of subsection (b)(2) is a class A nonperson misde-
25 meanor;
- 26 (4) Violation of subsection (c) is a ~~drug severity level 4 felony,~~ *severity*
27 *level 7, nonperson felony*.
- 28 (5) Violation of subsection (d) is a class A nonperson misdemeanor.
- 29 (f) For persons arrested and charged under subsection (a) or (c), bail
30 shall be at least \$50,000 cash or surety, unless the court determines, on
31 the record, that the defendant is not likely to reoffend, the court imposes
32 pretrial supervision or the defendant agrees to participate in a licensed
33 or certified drug treatment program.
- 34 Sec. 18. K.S.A. 2009 Supp. 21-36a10 is hereby amended to read as
35 follows: 21-36a10. (a) It shall be unlawful for any person to advertise,
36 market, label, distribute or possess with the intent to distribute:
- 37 (1) Any product containing ephedrine, pseudoephedrine, red phos-
38 phorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pres-
39 surized ammonia or phenylpropanolamine or their salts, isomers or salts
40 of isomers if the person knows or reasonably should know that the pur-
41 chaser will use the product to manufacture a controlled substance; or
- 42 (2) any product containing ephedrine, pseudoephedrine or phenyl-
43 propanolamine, or their salts, isomers or salts of isomers for indication of

1 stimulation, mental alertness, weight loss, appetite control, energy or
2 other indications not approved pursuant to the pertinent federal over-
3 the-counter drug final monograph or tentative final monograph or ap-
4 proved new drug application.

5 (b) It shall be unlawful for any person to market, distribute or man-
6 ufacture with intent to distribute any drug paraphernalia, knowing or
7 under circumstances where one reasonably should know that it will be
8 used to manufacture or distribute a controlled substance in violation of
9 K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto.

10 (c) It shall be unlawful for any person to distribute, possess with in-
11 tent to distribute or manufacture with intent to distribute any drug par-
12 aphernalia, knowing or under circumstances where one reasonably should
13 know, that it will be used as such in violation of K.S.A. 2009 Supp. 21-
14 36a01 through 21-36a17, and amendments thereto, except subsection (b)
15 of K.S.A. 2009 Supp. 21-36a06, and amendments thereto.

16 (d) It shall be unlawful for any person to distribute, possess with
17 intent to distribute or manufacture with intent to distribute any drug
18 paraphernalia, knowing, or under circumstances where one reasonably
19 should know, that it will be used as such in violation of subsection (b) of
20 K.S.A. 2009 Supp. 21-36a06, and amendments thereto.

21 (e) (1) Violation of subsection (a) is a ~~drug severity level 2 felony;~~
22 *severity level 4, nonperson felony.*

23 (2) Violation of subsection (b) is a ~~drug severity level 4 felony;~~ *severity*
24 *level 7, nonperson felony.*

25 (3) (A) *Except as provided further,* violation of subsection (c) is a
26 *severity level 9, nonperson felony,* ~~except that.~~

27 (B) Violation of subsection (c) is a ~~drug severity level 4 felony if that~~
28 ~~person distributes or causes drug paraphernalia to be distributed to a~~
29 ~~person under 18 years of age or within 1,000 feet of any school property;~~
30 *severity level 7, nonperson felony if that person is 18 or more years of age*
31 *and distributes or causes drug paraphernalia to be distributed to a minor,*
32 *in the presence of a minor or on or within 1,000 feet of any school prop-*
33 *erty.*

34 (4) (A) *Except as provided further,* violation of subsection (d) is a
35 *class A nonperson misdemeanor,* ~~except that.~~

36 (B) Violation of subsection (d) is a ~~nondrug~~ *severity level 9, nonper-*
37 *son felony if that person distributes or causes drug paraphernalia to be*
38 *distributed to a person under 18 years of age or within 1,000 feet of any*
39 *school property; is 18 or more years of age and distributes or causes drug*
40 *paraphernalia to be distributed to a minor, in the presence of a minor or*
41 *on or within 1,000 feet of any school property.*

42 (f) For persons arrested and charged under subsection (a), bail shall
43 be at least \$50,000 cash or surety, unless the court determines, on the

1 record, that the defendant is not likely to re-offend, the court imposes
 2 pretrial supervision or the defendant agrees to participate in a licensed
 3 or certified drug treatment program.

4 (g) As used in this section, “or under circumstances where one rea-
 5 sonably should know” that an item will be used in violation of this section,
 6 shall include, but not be limited to, the following:

7 (1) Actual knowledge from prior experience or statements by
 8 customers;

9 (2) inappropriate or impractical design for alleged legitimate use;

10 (3) receipt of packaging material, advertising information or other
 11 manufacturer supplied information regarding the item’s use as drug par-
 12 aphernalia; or

13 (4) receipt of a written warning from a law enforcement or prose-
 14 cutorial agency having jurisdiction that the item has been previously de-
 15 termined to have been designed specifically for use as drug paraphernalia.

16 Sec. 19. K.S.A. 2009 Supp. 21-36a13 is hereby amended to read as
 17 follows: 21-36a13. (a) It shall be unlawful for any person to distribute,
 18 possess with the intent to distribute, or manufacture with the intent to
 19 distribute any simulated controlled substance.

20 (b) It shall be unlawful for any person to use or possess with intent
 21 to use any simulated controlled substance.

22 (c) (1) (A) *Except as provided further*, violation of subsection (a) is a
 23 ~~nondrug~~ severity level 9, nonperson felony, ~~except that~~.

24 (B) Violation of subsection (a) is a ~~nondrug~~ severity level 7, nonperson
 25 felony if that person is 18 or more years of age and ~~the violation occurs~~
 26 *the person distributes, possesses with the intent to distribute or manufac-*
 27 *tures with the intent to distribute to a minor, in the presence of a minor*
 28 *or on or within 1,000 feet of any school property.*

29 (2) Violation of subsection (b) is a class A nonperson misdemeanor.

30 Sec. 20. K.S.A. 2009 Supp. 21-36a14 is hereby amended to read as
 31 follows: 21-36a14. (a) It shall be unlawful for any person to distribute or
 32 possess with the intent to distribute any substance which is not a con-
 33 trolled substance:

34 (1) Upon an express representation that the substance is a controlled
 35 substance or that the substance is of such nature or appearance that the
 36 recipient will be able to distribute the substance as a controlled substance;
 37 or

38 (2) under circumstances which would give a reasonable person reason
 39 to believe that the substance is a controlled substance.

40 (b) (1) *Except as provided further*, violation of subsection (a) is a class
 41 A nonperson misdemeanor, ~~except that~~.

42 (2) Violation of subsection (a) is a ~~nondrug~~ severity level 9, nonperson
 43 felony if the distributor is 18 or more years of age, distributing to a person

1 under 18 years of age and at least three years older than the person under
2 18 years of age to whom the distribution is made.

3 (c) If any one of the following factors is established, there shall be a
4 presumption that distribution of a substance was under circumstances
5 which would give a reasonable person reason to believe that a substance
6 is a controlled substance:

7 (1) The substance was packaged in a manner normally used for the
8 illegal distribution of controlled substances;

9 (2) the distribution of the substance included an exchange of or de-
10 mand for money or other consideration for distribution of the substance
11 and the amount of the consideration was substantially in excess of the
12 reasonable value of the substance; or

13 (3) the physical appearance of the capsule or other material contain-
14 ing the substance is substantially identical to a specific controlled
15 substance.

16 Sec. 21. K.S.A. 2009 Supp. 21-36a16 is hereby amended to read as
17 follows: 21-36a16. (a) It shall be unlawful for any person to receive or
18 acquire proceeds or engage in transactions involving proceeds, known to
19 be derived from a violation of K.S.A. 2009 Supp. 21-36a01 through 21-
20 36a17, and amendments thereto, or any substantially similar offense from
21 another jurisdiction. The provisions of this subsection do not apply to any
22 transaction between an individual and that individual's counsel necessary
23 to preserve that individual's right to representation, as guaranteed by
24 section 10 of the bill of rights of the constitution of the state of Kansas
25 and by the sixth amendment to the United States constitution. This ex-
26 ception does not create any presumption against or prohibition of the
27 right of the state to seek and obtain forfeiture of any proceeds derived
28 from a violation of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and
29 amendments thereto.

30 (b) It shall be unlawful for any person to distribute, invest, conceal,
31 transport or maintain an interest in or otherwise make available anything
32 of value which that person knows is intended to be used for the purpose
33 of committing or furthering the commission of any crime in K.S.A. 2009
34 Supp. 21-36a01 through 21-36a17, and amendments thereto, or any sub-
35 stantially similar offense from another jurisdiction.

36 (c) It shall be unlawful for any person to direct, plan, organize, ini-
37 tiate, finance, manage, supervise or facilitate the transportation or transfer
38 of proceeds known to be derived from commission of any crime in K.S.A.
39 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, or any
40 substantially similar offense from another jurisdiction.

41 (d) It shall be unlawful for any person to conduct a financial trans-
42 action involving proceeds derived from commission of any crime in K.S.A.
43 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, or any

1 substantially similar offense from another jurisdiction, when the trans-
 2 action is designed in whole or in part to conceal or disguise the nature,
 3 location, source, ownership or control of the proceeds known to be de-
 4 rived from commission of any crime in K.S.A. 2009 Supp. 21-36a01
 5 through 21-36a17, and amendments thereto, or any substantially similar
 6 offense from another jurisdiction, or to avoid a transaction reporting re-
 7 quirement under state or federal law.

8 (e) ~~(1)~~ Violation of this section is a ~~drug severity level 4 felony~~.

9 (1) *Severity level 9, nonperson felony* if the value of the proceeds is
 10 less than \$5,000;

11 ~~(2) violation of this section is a drug severity level 3 felony~~ *severity*
 12 *level 6, nonperson felony* if the value of the proceeds is at least \$5,000
 13 but less than \$100,000;

14 ~~(3) violation of this section shall be a drug severity level 2 felony~~
 15 *severity level 5, nonperson felony* if the value of the proceeds is at least
 16 \$100,000 but less than \$500,000; *and*

17 ~~(4) violation of this section shall be a drug severity level 1 felony~~
 18 *severity level 4, nonperson felony* if the value of the proceeds is \$500,000
 19 or more.

20 Sec. 22. K.S.A. 21-3701 is hereby amended to read as follows: 21-
 21 3701. (a) Theft is any of the following acts done with intent to deprive
 22 the owner permanently of the possession, use or benefit of the owner's
 23 property:

24 (1) Obtaining or exerting unauthorized control over property;

25 (2) obtaining by deception control over property;

26 (3) obtaining by threat control over property; or

27 (4) obtaining control over stolen property knowing the property to
 28 have been stolen by another.

29 (b) (1) *Except as provided further*, theft of property of the value of:

30 (A) \$100,000 or more is a severity level 5, nonperson felony;

31 ~~(2) Theft of property of the value of at least \$25,000 but less than~~
 32 ~~\$100,000 is a severity level 7, nonperson felony.~~

33 ~~(3) Theft of property of the value of at least \$1,000 but less than~~
 34 ~~\$25,000 is a severity level 9, nonperson felony.~~

35 (B) *at least \$75,000 but less than \$100,000 is a severity level 6, non-*
 36 *person felony;*

37 (C) *at least \$50,000 but less than \$75,000 is a severity level 7, non-*
 38 *person felony;*

39 (D) *at least \$25,000 but less than \$50,000 is a severity level 8, non-*
 40 *person felony;*

41 (E) *at least \$2,000 but less than \$25,000 is a severity level 9, nonper-*
 42 *son felony;*

43 (F) *at least \$1,000 but less than \$2,000 is a severity level 10, nonper-*

1 *son felony;*

2 (G) *at least \$500 but less than \$1,000 is a class A nonperson misde-*
3 *meanor; and*

4 (H) *less than \$500 is a class B nonperson misdemeanor.*

5 ~~(4)~~ (2) Theft of property regardless of the value from three separate
6 mercantile establishments within a period of 72 hours as part of the same
7 act or transaction or in two or more acts or transactions connected to-
8 gether or constituting parts of a common scheme or course of conduct is
9 a severity level 9, nonperson felony.

10 ~~(5) Theft of property of the value of less than \$1,000 is a class A~~
11 ~~nonperson misdemeanor.~~

12 ~~(6)~~ (3) Theft of property of the value of less than \$1,000 is a severity
13 level 9, nonperson felony if committed by a person who has been con-
14 victed of theft two or more times.

15 (c) Conviction of a violation of a municipal ordinance prohibiting acts
16 which constitute theft as defined by this section shall be considered a
17 conviction of theft for the purpose of determining the number of prior
18 convictions and the classification of the crime under this section.

19 Sec. 23. K.S.A. 21-3704 is hereby amended to read as follows: 21-
20 3704. (a) Theft of services is obtaining services from another by deception,
21 threat, coercion, stealth, tampering or use of false token or device.

22 (b) “Services” within the meaning of this section, includes, but is not
23 limited to, labor, professional service, cable television service, public or
24 municipal utility or transportation service, telephone service, lodging, en-
25 tertainment and the supplying of equipment for use. For purposes of this
26 section, rural water districts and rural electric cooperatives shall be con-
27 sidered public utilities.

28 (c) “Tampering” within the meaning of this section, includes, but is
29 not limited to:

30 (1) Making a connection of any wire, conduit or device, to any service
31 or transmission line owned by a public or municipal utility, or by a cable
32 television service provider;

33 (2) defacing, puncturing, removing, reversing or altering any meter
34 or any connections, for the purpose of securing unauthorized or unmea-
35 sured electricity, natural gas, water, telephone service or cable television
36 service;

37 (3) preventing any such meters from properly measuring or
38 registering;

39 (4) knowingly taking, receiving, using or converting to such person’s
40 own use, or the use of another, any electricity, water or natural gas which
41 has not been measured; or any telephone or cable television service which
42 has not been authorized; or

43 (5) causing, procuring, permitting, aiding or abetting any person to

1 do any of the preceding acts.

2 (d) In any prosecution under this section, the existence of any of the
3 connections of meters, alterations or use of unauthorized or unmeasured
4 electricity, natural gas, water, telephone service or cable television serv-
5 ice, specified in subsection (c), shall be prima facie evidence of intent to
6 violate the provisions of this section by the person or persons using or
7 receiving the direct benefits from the use of the electricity, natural gas,
8 water, telephone service or cable television service passing through such
9 connections or meters, or using the electricity, natural gas, water, tele-
10 phone service or cable television service which has not been authorized
11 or measured.

12 (e) (1) Theft of services of the value of:

13 (A) \$100,000 or more is a severity level 5, nonperson felony;

14 ~~(2) Theft of services of the value of at least \$25,000 but less than~~
15 ~~\$100,000 is a severity level 7, nonperson felony.~~

16 ~~(3) Theft of services of the value of at least \$1,000 but less than~~
17 ~~\$25,000 is a severity level 9, nonperson felony.~~

18 ~~(4) Theft of services of the value of less than \$1,000 is a class A~~
19 ~~nonperson misdemeanor.~~

20 (B) *at least \$75,000 but less than \$100,000 is a severity level 6, non-*
21 *person felony;*

22 (C) *at least \$50,000 but less than \$75,000 is a severity level 7, non-*
23 *person felony;*

24 (D) *at least \$25,000 but less than \$50,000 is a severity level 8, non-*
25 *person felony;*

26 (E) *at least \$2,000 but less than \$25,000 is a severity level 9, nonper-*
27 *son felony;*

28 (F) *at least \$1,000 but less than \$2,000 is a severity level 10, nonper-*
29 *son felony;*

30 (G) *at least \$500 but less than \$1,000 is a class A nonperson misde-*
31 *meanor; and*

32 (H) *less than \$500 is a class B nonperson misdemeanor.*

33 Sec. 24. K.S.A. 21-3707 is hereby amended to read as follows: 21-
34 3707. (a) Giving a worthless check is the making, drawing, issuing or
35 delivering or causing or directing the making, drawing, issuing or deliv-
36 ering of any check, order or draft on any bank, credit union, savings and
37 loan association or depository for the payment of money or its equivalent
38 with intent to defraud and knowing, at the time of the making, drawing,
39 issuing or delivering of such check, order or draft, that the maker or
40 drawer has no deposit in or credits with the drawee or has not sufficient
41 funds in, or credits with, the drawee for the payment of such check, order
42 or draft in full upon its presentation.

43 (b) In any prosecution against the maker or drawer of a check, order

1 or draft payment, of which has been refused by the drawee on account
2 of insufficient funds, the making, drawing, issuing or delivering of such
3 check shall be prima facie evidence of intent to defraud and of knowledge
4 of insufficient funds in, or on deposit with, the drawee: (1) Unless the
5 maker or drawer pays the holder thereof the amount due thereon and a
6 service charge not exceeding \$30 for each check, within seven days after
7 notice has been given to the maker or drawer that such check, draft or
8 order has not been paid by the drawee. As used in this section, “notice”
9 includes oral or written notice to the person entitled thereto. Written
10 notice shall be presumed to have been given when deposited as restricted
11 matter in the United States mail, addressed to the person to be given
12 notice at such person’s address as it appears on such check, draft or order;
13 or (2) if a postdated date is placed on the check, order or draft without
14 the knowledge or consent of the payee.

15 (c) In addition to all other costs and fees allowed by law, each prosec-
16 cuting attorney who takes any action under the provisions of this section
17 may collect from the issuer in such action an administrative handling cost,
18 except in cases filed in a court of appropriate jurisdiction. The cost shall
19 not exceed \$10 for each check. If the issuer of the check is convicted in
20 district court, the administrative handling costs may be assessed as part
21 of the court costs in the matter. The moneys collected pursuant to this
22 subsection shall be deposited into a trust fund which shall be administered
23 by the board of county commissioners. The funds shall be expended only
24 with the approval of the board of county commissioners, but may be used
25 to help fund the normal operating expenses of the county or district at-
26 torney’s office.

27 (d) It shall not be a defense to a prosecution under this section that
28 the check, draft or order upon which such prosecution is based:

29 (1) Was postdated, unless such check, draft or order was presented
30 for payment prior to the postdated date; or

31 (2) was given to a payee who had knowledge or had been informed,
32 when the payee accepted such check, draft or order, that the maker did
33 not have sufficient funds in the hands of the drawee to pay such check,
34 draft or order upon presentation, unless such check, draft or order was
35 presented for payment prior to the date the maker informed the payee
36 there would be sufficient funds.

37 (e) (1) ~~(A) Except as provided further, giving a worthless check is a~~
38 ~~severity level 7, nonperson felony, if the check, draft or order is drawn~~
39 ~~for \$25,000 or more.~~

40 (A) \$100,000 or more is a severity level 5, nonperson felony;

41 (B) at least \$75,000 but less than \$100,000 is a severity level 6, non-
42 person felony;

43 (C) at least \$50,000 but less than \$75,000 is a severity level 7, non-

1 person felony;

2 (D) at least \$25,000 but less than \$50,000 is a severity level 8, non-

3 person felony;

4 (E) at least \$2,000 but less than \$25,000 is a severity level 9, nonper-

5 son felony;

6 (F) at least \$1,000 but less than \$2,000 is a severity level 10, nonper-

7 son felony;

8 (G) at least \$500 but less than \$1,000 is a class A nonperson misde-

9 meanor; and

10 (H) less than \$500 is a class B nonperson misdemeanor.

11 ~~(B)~~ (2) Giving a worthless check more than once within a seven-day

12 period is a severity level 7, nonperson felony, if the combined total of the

13 checks, drafts or orders is ~~\$25,000 or more.~~

14 (A) At least \$1,000 but less than \$2,000 is a severity level 10, non-

15 person felony; and

16 (B) at least \$500 but less than \$1,000 is a class A nonperson misde-

17 meanor.

18 ~~(2) (A) Giving a worthless check is a severity level 9, nonperson fel-~~

19 ~~ony if the check, draft or order is drawn for at least \$1,000 but less than~~

20 ~~\$25,000.~~

21 ~~(B) Giving a worthless check more than once within a seven-day pe-~~

22 ~~riod is a severity level 9, nonperson felony, if the combined total of the~~

23 ~~checks, drafts or orders is at least \$1,000 but less than \$25,000.~~

24 ~~(3) Giving a worthless check is a class A nonperson misdemeanor if~~

25 ~~the check, draft or order is drawn for less than \$1,000.~~

26 ~~(4) (3) Giving a worthless check, draft or order drawn for less than~~

27 ~~\$1,000 is a severity level 9, nonperson felony if committed by a person~~

28 ~~who has, within five years immediately preceding commission of the~~

29 ~~crime, been convicted of giving a worthless check two or more times.~~

30 Sec. 25. K.S.A. 21-3720 is hereby amended to read as follows: 21-

31 3720. (a) Criminal damage to property is by means other than by fire or

32 explosive:

33 (1) Intentionally injuring, damaging, mutilating, defacing, destroying,

34 or substantially impairing the use of any property in which another has

35 an interest without the consent of such other person; or

36 (2) injuring, damaging, mutilating, defacing, destroying, or substan-

37 tially impairing the use of any property with intent to injure or defraud

38 an insurer or lienholder.

39 (b) (1) *Except as provided further*, criminal damage to property is a

40 severity level 7, nonperson felony, if the property is damaged to the extent

41 of \$25,000 or more.

42 ~~(2) Criminal damage to property is a severity level 9, nonperson fel-~~

43 ~~ony if the property is damaged to the extent of at least \$1,000 but less~~

- 1 ~~than \$25,000.~~
- 2 (A) \$100,000 or more is a severity level 5, nonperson felony;
- 3 (B) at least \$75,000 but less than \$100,000 is a severity level 6, non-
- 4 person felony;
- 5 (C) at least \$50,000 but less than \$75,000 is a severity level 7, non-
- 6 person felony;
- 7 (D) at least \$25,000 but less than \$50,000 is a severity level 8, non-
- 8 person felony;
- 9 (E) at least \$2,000 but less than \$25,000 is a severity level 9, nonper-
- 10 son felony;
- 11 (F) at least \$1,000 but less than \$2,000 is a severity level 10, nonper-
- 12 son felony;
- 13 (G) at least \$500 but less than \$1,000 is a class A nonperson misde-
- 14 meanor; and
- 15 (H) less than \$500 is a class B nonperson misdemeanor.
- 16 ~~(2)~~ (2) Criminal damage to property is a class B nonperson misde-
- 17 meanor if the property damaged is of the value of less than ~~\$1,000~~ \$500
- 18 or is of the value of ~~\$1,000~~ \$500 or more and is damaged to the extent
- 19 of less than ~~\$1,000~~ \$500.
- 20 Sec. 26. K.S.A. 21-3729 is hereby amended to read as follows: 21-
- 21 3729. (a) Criminal use of a financial card is any of the following acts done
- 22 with intent to defraud and for the purpose of obtaining money, goods,
- 23 property, services or communication services:
- 24 (1) Using a financial card without the consent of the cardholder; or
- 25 (2) knowingly using a financial card, or the number or description
- 26 thereof, which has been revoked or canceled; or
- 27 (3) using a falsified, mutilated, altered or nonexistent financial card
- 28 or a number or description thereof.
- 29 (b) For the purposes of this section:
- 30 (1) "Financial card" means an identification card, plate, instrument,
- 31 device or number issued by a business organization authorizing the card-
- 32 holder to purchase, lease or otherwise obtain money, goods, property,
- 33 services or communication services or to conduct other financial
- 34 transactions.
- 35 (2) "Cardholder" means the person or entity to whom or for whose
- 36 benefit a financial card is issued.
- 37 (c) For the purposes of subsection (a)(2), a financial card shall be
- 38 deemed canceled or revoked when notice in writing thereof has been
- 39 received by the named holder thereof as shown on such financial card or
- 40 by the records of the company.
- 41 (d) ~~(1)~~ (2) Criminal use of a financial card is a severity level 7, nonperson
- 42 felony, if the money, goods, property, services or communication services
- 43 obtained within any seven-day period are of the value of ~~\$25,000 or more.~~

1 ~~—(2) Criminal use of a financial card is a severity level 9, nonperson~~
 2 ~~felony if the money, goods, property, services or communication services~~
 3 ~~obtained within any seven-day period are of the value of at least \$1,000~~
 4 ~~but less than \$25,000.~~
 5 ~~—(3) Criminal use of a financial card is a class A nonperson misde-~~
 6 ~~meanor if the money, goods, property, services or communication services~~
 7 ~~obtained within a seven-day period are of the value of less than \$1,000.:~~
 8 (1) \$100,000 or more is a severity level 5, nonperson felony;
 9 (2) at least \$75,000 but less than \$100,000 is a severity level 6, non-
 10 person felony;
 11 (3) at least \$50,000 but less than \$75,000 is a severity level 7, non-
 12 person felony;
 13 (4) at least \$25,000 but less than \$50,000 is a severity level 8, non-
 14 person felony;
 15 (5) at least \$2,000 but less than \$25,000 is a severity level 9, nonper-
 16 son felony;
 17 (6) at least \$1,000 but less than \$2,000 is a severity level 10, nonper-
 18 son felony;
 19 (7) at least \$500 but less than \$1,000 is a class A nonperson misde-
 20 meanor; and
 21 (8) less than \$500 is a class B nonperson misdemeanor.
 22 Sec. 27. K.S.A. 21-3734 is hereby amended to read as follows: 21-
 23 3734. (a) Impairing a security interest is:
 24 (1) Damaging, destroying or concealing any personal property subject
 25 to a security interest with intent to defraud the secured party;
 26 (2) selling, exchanging or otherwise disposing of any personal prop-
 27 erty subject to a security interest without the written consent of the se-
 28 cured party, where such sale, exchange or other disposition is not au-
 29 thorized by the secured party under the terms of the security agreement;
 30 or
 31 (3) failure to account to the secured party for the proceeds of the
 32 sale, exchange or other disposition of any personal property subject to a
 33 security interest, where such sale, exchange or other disposition is au-
 34 thorized and such accounting for proceeds is required by the secured
 35 party under the terms of the security agreement or otherwise.
 36 (b) ~~(1) Impairing a security interest is a severity level 7, nonperson~~
 37 ~~felony, when the personal property subject to the security interest is of~~
 38 ~~the value of \$25,000 or more and is subject to a security interest of~~
 39 ~~\$25,000 or more.~~
 40 ~~—(2) Impairing a security interest is a severity level 9, nonperson felony~~
 41 ~~when the personal property subject to the security interest is of the value~~
 42 ~~of at least \$1,000 and is subject to a security interest of at least \$1,000~~
 43 ~~and either the value of the property or the security interest is less than~~

1 ~~\$25,000.~~

2 ~~—(3) Impairing a security interest is a class A nonperson misdemeanor~~
 3 ~~when the personal property subject to the security interest is of the value~~
 4 ~~of less than \$1,000, or of the value of \$1,000 or more but subject to a~~
 5 ~~security interest of less than \$1,000.~~

6 (1) *\$100,000 or more is a severity level 5, nonperson felony;*

7 (2) *at least \$75,000 but less than \$100,000 is a severity level 6, non-*
 8 *person felony;*

9 (3) *at least \$50,000 but less than \$75,000 is a severity level 7, non-*
 10 *person felony;*

11 (4) *at least \$25,000 but less than \$50,000 is a severity level 8, non-*
 12 *person felony;*

13 (5) *at least \$2,000 but less than \$25,000 is a severity level 9, nonper-*
 14 *son felony;*

15 (6) *at least \$1,000 but less than \$2,000 is a severity level 10, nonper-*
 16 *son felony;*

17 (7) *at least \$500 but less than \$1,000 is a class A nonperson misde-*
 18 *meanor; and*

19 (8) *less than \$500 is a class B nonperson misdemeanor.*

20 Sec. 28. K.S.A. 21-3761 is hereby amended to read as follows: 21-
 21 3761. (a) It shall be unlawful for any person to:

22 (1) Without consent of the owner or the owner's agent, enter or re-
 23 main on railroad property, knowing that it is railroad property; or

24 (2) maliciously or wantonly cause in any manner the derailment of a
 25 train, railroad car or rail-mounted work equipment.

26 Violation of this subsection is a class A nonperson misdemeanor.

27 (b) Any person violating subsection (a) which results in a demonstra-
 28 ble monetary loss, damage or destruction of railroad property when such
 29 loss is valued at ~~more than \$1,500 upon conviction shall be guilty of a~~
 30 ~~severity level 8, nonperson felony.~~

31 (1) *\$100,000 or more is a severity level 5, nonperson felony;*

32 (2) *at least \$75,000 but less than \$100,000 is a severity level 6, non-*
 33 *person felony;*

34 (3) *at least \$50,000 but less than \$75,000 is a severity level 7, non-*
 35 *person felony;*

36 (4) *at least \$25,000 but less than \$50,000 is a severity level 8, non-*
 37 *person felony;*

38 (5) *at least \$2,000 but less than \$25,000 is a severity level 9, nonper-*
 39 *son felony;*

40 (6) *at least \$1,000 but less than \$2,000 is a severity level 10, nonper-*
 41 *son felony;*

42 (7) *at least \$500 but less than \$1,000 is a class A nonperson misde-*
 43 *meanor; and*

- 1 (8) *less than \$500 is a class B nonperson misdemeanor.*
- 2 (c) Subsection (a) shall not be construed to interfere with the lawful
3 use of a public or private crossing.
- 4 (d) Nothing in this section shall be construed as limiting a represen-
5 tative or member of a labor organization which represents or is seeking
6 to represent the employees of the railroad, from conducting such business
7 as provided under the railway labor act (45 U.S.C. 151, et seq.) and other
8 federal labor laws.
- 9 (e) As used in this section “railroad property” includes, but is not
10 limited to, any train, locomotive, railroad car, caboose, rail-mounted work
11 equipment, rolling stock, work equipment, safety device, switch, elec-
12 tronic signal, microwave communication equipment, connection, railroad
13 track, rail, bridge, trestle, right-of-way or other property that is owned,
14 leased, operated or possessed by a railroad company.
- 15 Sec. 29. K.S.A. 21-3763 is hereby amended to read as follows: 21-
16 3763. (a) Counterfeiting is intentionally manufacturing, using, displaying,
17 advertising, distributing, offering for sale, selling or possessing with intent
18 to sell or distribute any item or services bearing or identified by a coun-
19 terfeit mark.
- 20 (b) A person having possession, custody or control of more than 25
21 items bearing a counterfeit mark shall be presumed to possess such items
22 with intent to sell or distribute.
- 23 (c) Any state or federal certificate of registration of any intellectual
24 property shall be prima facie evidence of the facts stated therein.
- 25 (d) As used in this section:
- 26 (1) “Counterfeit mark” means:
- 27 (A) Any unauthorized reproduction or copy of intellectual property;
28 or
- 29 (B) intellectual property affixed to any item knowingly sold, offered
30 for sale, manufactured or distributed, or identifying services offered or
31 rendered, without the authority of the owner of the intellectual property.
- 32 (2) “Intellectual property” means any trademark, service mark or
33 trade name as such terms are defined in K.S.A. ~~2007~~ **2009** Supp. 81-202,
34 and amendments thereto.
- 35 (3) “Retail value” means the counterfeiter’s regular selling price for
36 the item or service bearing or identified by the counterfeit mark. In the
37 case of items bearing a counterfeit mark which are components of a fin-
38 ished product, the retail value shall be the counterfeiter’s regular selling
39 price of the finished product on or in which the component would be
40 utilized.
- 41 (4) The quantity or retail value of items or services shall include the
42 aggregate quantity or retail value of all items bearing, or services identi-
43 fied by, every counterfeit mark the defendant manufactures, uses, dis-

- 1 plays, advertises, distributes, offers for sale, sells or possesses.
- 2 (e) (1) *Except as provided further*, counterfeiting of the retail value
3 of ~~less than \$1,000 is a class A nonperson misdemeanor.~~
- 4 (A) *\$100,000 or more is a severity level 5, nonperson felony;*
- 5 (B) *at least \$75,000 but less than \$100,000 is a severity level 6, non-*
6 *person felony;*
- 7 (C) *at least \$50,000 but less than \$75,000 is a severity level 7, non-*
8 *person felony;*
- 9 (D) *at least \$25,000 but less than \$50,000 is a severity level 8, non-*
10 *person felony;*
- 11 (E) *at least \$2,000 but less than \$25,000 is a severity level 9, nonper-*
12 *son felony;*
- 13 (F) *at least \$1,000 but less than \$2,000 is a severity level 10, nonper-*
14 *son felony;*
- 15 (G) *at least \$500 but less than \$1,000 is a class A nonperson misde-*
16 *meanor; and*
- 17 (H) *less than \$500 is a class B nonperson misdemeanor.*
- 18 (2) Counterfeiting ~~of the retail value of at least \$1,000 but less than~~
19 ~~\$25,000~~, that involves more than 100 but less than 1,000 items bearing a
20 counterfeit mark; or on a second violation of subsection (e)(1)(F),
21 (e)(1)(G) or (e)(1)(H) if the offender has a previous conviction of this
22 section, is a severity level 9, nonperson felony.
- 23 (3) Counterfeiting ~~of the retail value of \$25,000 or more, that involves~~
24 ~~1,000 or more items bearing a counterfeit mark, or on a third or subse-~~
25 ~~quent violation~~ of subsection (e)(1)(D), (e)(1)(E), (e)(1)(F), (e)(1)(G) or
26 (e)(1)(H) if the offender has two previous convictions of any combination
27 of subsection (e)(1)(D), (e)(1)(E), (e)(1)(F), (e)(1)(G) or (e)(1)(H), is a
28 severity level 7, nonperson felony.
- 29 (f) This section shall be part of and supplemental to the Kansas crim-
30 inal code.
- 31 Sec. 30. K.S.A. 21-3846 is hereby amended to read as follows: 21-
32 3846. (a) Making a false claim, statement, or representation to the med-
33 icaid program is, knowingly and with intent to defraud, engaging in a
34 pattern of making, presenting, submitting, offering or causing to be made,
35 presented, submitted or offered:
- 36 (1) Any false or fraudulent claim for payment for any goods, service,
37 item, facility, accommodation for which payment may be made, in whole
38 or in part, under the medicaid program, whether or not the claim is
39 allowed or allowable;
- 40 (2) any false or fraudulent statement or representation for use in de-
41 termining payments which may be made, in whole or in part, under the
42 medicaid program, whether or not the claim is allowed or allowable;
- 43 (3) any false or fraudulent report or filing which is or may be used in

- 1 computing or determining a rate of payment for any goods, service, item,
2 facility or accommodation, for which payment may be made, in whole or
3 in part, under the medicaid program, whether or not the claim is allowed
4 or allowable;
- 5 (4) any false or fraudulent statement or representation made in con-
6 nection with any report or filing which is or may be used in computing
7 or determining a rate of payment for any goods, service, item, facility or
8 accommodation for which payment may be made, in whole or in part,
9 under the medicaid program, whether or not the claim is allowed or
10 allowable;
- 11 (5) any statement or representation for use by another in obtaining
12 any goods, service, item, facility or accommodation for which payment
13 may be made, in whole or in part, under the medicaid program, knowing
14 the statement or representation to be false, in whole or in part, by com-
15 mission or omission, whether or not the claim is allowed or allowable;
- 16 (6) any claim for payment, for any goods, service, item, facility, or
17 accommodation, which is not medically necessary in accordance with pro-
18 fessionally recognized parameters or as otherwise required by law, for
19 which payment may be made, in whole or in part, under the medicaid
20 program, whether or not the claim is allowed or allowable; or
- 21 (7) any wholly or partially false or fraudulent book, record, document,
22 data or instrument, which is required to be kept or which is kept as
23 documentation for any goods, service, item, facility or accommodation or
24 of any cost or expense claimed for reimbursement for any goods, service,
25 item, facility or accommodation for which payment is, has been, or can
26 be sought, in whole or in part, under the medicaid program, whether or
27 not the claim is allowed or allowable.
- 28 (8) Any wholly or partially false or fraudulent book, record, docu-
29 ment, data or instrument to any properly identified law enforcement of-
30 ficer, any properly identified employee or authorized representative of
31 the attorney general, or to any properly identified employee or agent of
32 the department of social and rehabilitation services, or its fiscal agent, in
33 connection with any audit or investigation involving any claim for payment
34 or rate of payment for any goods, service, item, facility or accommodation
35 payable, in whole or in part, under the medicaid program.
- 36 (9) Any false or fraudulent statement or representation made, with
37 the intent to influence any acts or decision of any official, employee or
38 agent of a state or federal agency having regulatory or administrative
39 authority over the Kansas medicaid program.
- 40 (b) (1) As defined by subsection (a)(1) through (a)(7), making a false
41 claim, statement or representation to the medicaid program where the
42 aggregate amount of payments illegally claimed is ~~\$25,000 or more is a~~
43 ~~severity level 7, nonperson felony.~~

- 1 ~~—(2) As defined by subsection (a)(1) through (a)(7), making a false~~
 2 ~~claim, statement or representation to the medicaid program where the~~
 3 ~~aggregate amount of payments illegally claimed is at least \$1,000 but less~~
 4 ~~than \$25,000 is a severity level 9, nonperson felony.~~
 5 ~~—(3) As defined by subsection (a)(1) through (a)(7), making a false~~
 6 ~~claim, statement or representation to the medicaid program where the~~
 7 ~~aggregate amount of payments illegally claimed is less than \$1,000 is a~~
 8 ~~class A misdemeanor:~~
 9 ~~(4) (A) \$100,000 or more is a severity level 5, nonperson felony;~~
 10 ~~(B) at least \$75,000 but less than \$100,000 is a severity level 6, non-~~
 11 ~~person felony;~~
 12 ~~(C) at least \$50,000 but less than \$75,000 is a severity level 7, non-~~
 13 ~~person felony;~~
 14 ~~(D) at least \$25,000 but less than \$50,000 is a severity level 8, non-~~
 15 ~~person felony;~~
 16 ~~(E) at least \$2,000 but less than \$25,000 is a severity level 9, nonper-~~
 17 ~~son felony;~~
 18 ~~(F) at least \$1,000 but less than \$2,000 is a severity level 10, nonper-~~
 19 ~~son felony;~~
 20 ~~(G) at least \$500 but less than \$1,000 is a class A nonperson misde-~~
 21 ~~meanor; and~~
 22 ~~(H) less than \$500 is a class B nonperson misdemeanor.~~
 23 (2) As defined by subsections (a)(8) and (a)(9), making a false claim,
 24 statement or representation to the medicaid program is a severity level
 25 9, nonperson felony.
 26 (c) In determining what is medically necessary pursuant to subsection
 27 (a)(6) ~~of this section~~, the attorney general may contract with or consult
 28 with qualified health care providers and other qualified individuals to
 29 identify professionally recognized parameters for the diagnosis or treat-
 30 ment of the recipient's condition, illness or injury.
 31 Sec. 31. K.S.A. 21-3902 is hereby amended to read as follows: 21-
 32 3902. (a) Official misconduct is any of the following acts committed by a
 33 public officer or employee in the officer or employee's public capacity or
 34 under color of the officer or employee's office or employment:
 35 (1) Using or authorizing the use of any aircraft, as defined by K.S.A.
 36 3-201, and amendments thereto, vehicle, as defined by K.S.A. 8-1485,
 37 and amendments thereto, or vessel, as defined by K.S.A. 32-1102, and
 38 amendments thereto, under the officer's or employee's control or direc-
 39 tion, or in the officer's or employee's custody, exclusively for the private
 40 benefit or gain of the officer or employee or another.
 41 (2) Knowingly and willfully failing to serve civil process when re-
 42 quired by law.
 43 (3) Using confidential information acquired in the course of and re-

1 lated to the officer's or employee's office or employment for the private
 2 benefit or gain of the officer or employee or another or to maliciously
 3 cause harm to another. As used in this section, "confidential" means any
 4 information that is not subject to mandatory disclosure pursuant to K.S.A.
 5 45-221, and amendments thereto.

6 (4) Except as authorized by law, knowingly, willfully and with the
 7 intent to reduce or eliminate competition among bidders or prospective
 8 bidders on any contract or proposed contract: (A) Disclosing confidential
 9 information regarding proposals or communications from bidders or pro-
 10 spective bidders on any contract or proposed contract; (B) accepting any
 11 bid or proposal on a contract or proposed contract after the deadline for
 12 acceptance of such bid or proposal; or (C) altering any bid or proposal
 13 submitted by a bidder on a contract or proposed contract.

14 (5) Except as authorized by law, knowingly destroying, tampering
 15 with or concealing evidence of a crime.

16 (6) Knowingly and willfully submitting to a governmental entity a
 17 claim for expenses which is false or duplicates expenses for which a claim
 18 is submitted to such governmental entity, another governmental or pri-
 19 vate entity.

20 (b) The provisions of subsection (a)(1) shall not apply to any use of
 21 persons or property which:

22 (1) At the time of the use, is authorized by law or by formal written
 23 policy of the governmental entity; or

24 (2) constitutes misuse of public funds, as defined in K.S.A. 21-3910
 25 and amendments thereto.

26 (c) (1) Official misconduct as defined in subsections (a)(1) through
 27 (a)(4) is a class A nonperson misdemeanor.

28 (2) Official misconduct as defined in subsection (a)(5) is: (A) A se-
 29 verity level 8, nonperson felony if the evidence is evidence of a crime
 30 which is a felony; and (B) a class A nonperson misdemeanor if the evi-
 31 dence is evidence of a crime which is a misdemeanor.

32 (3) Official misconduct as defined in subsection (a)(6) is: ~~(A) A se-~~
 33 ~~verity level 7, nonperson felony if the claim is for \$25,000 or more; (B) a~~
 34 ~~severity level 9, nonperson felony if the claim is for at least \$1,000 but~~
 35 ~~less than \$25,000, and (C) a class A nonperson misdemeanor for a claim~~
 36 ~~of less than \$1,000.~~

37 ~~(4) if the claim is for:~~

38 (A) \$100,000 or more is a severity level 5, nonperson felony;

39 (B) at least \$75,000 but less than \$100,000 is a severity level 6, non-
 40 person felony;

41 (C) at least \$50,000 but less than \$75,000 is a severity level 7, non-
 42 person felony;

43 (D) at least \$25,000 but less than \$50,000 is a severity level 8, non-

- 1 *person felony;*
 2 (E) *at least \$2,000 but less than \$25,000 is a severity level 9, nonper-*
 3 *son felony;*
 4 (F) *at least \$1,000 but less than \$2,000 is a severity level 10, nonper-*
 5 *son felony;*
 6 (G) *at least \$500 but less than \$1,000 is a class A nonperson misde-*
 7 *meanor; and*
 8 (H) *less than \$500 is a class B nonperson misdemeanor.*
 9 (d) Upon conviction of official misconduct a public officer or em-
 10 ployee shall forfeit such officer or employee's office or employment.
 11 Sec. 32. K.S.A. 21-3904 is hereby amended to read as follows: 21-
 12 3904. (a) Presenting a false claim is knowingly and with intent to defraud
 13 presenting a claim or demand which is false in whole or in part, to a
 14 public officer or body authorized to audit, allow or pay such claim.
 15 (b) ~~(1) Presenting a false claim for \$25,000 or more is a severity level~~
 16 ~~7, nonperson felony.~~
 17 ~~(2) Presenting a false claim for at least \$1,000 but less than \$25,000~~
 18 ~~is a severity level 9, nonperson felony.~~
 19 ~~(3) Presenting a false claim for less than \$1,000 is a class A nonperson~~
 20 ~~misdemeanor.~~
 21 (1) *\$100,000 or more is a severity level 5, nonperson felony;*
 22 (2) *at least \$75,000 but less than \$100,000 is a severity level 6, non-*
 23 *person felony;*
 24 (3) *at least \$50,000 but less than \$75,000 is a severity level 7, non-*
 25 *person felony;*
 26 (4) *at least \$25,000 but less than \$50,000 is a severity level 8, non-*
 27 *person felony;*
 28 (5) *at least \$2,000 but less than \$25,000 is a severity level 9, nonper-*
 29 *son felony;*
 30 (6) *at least \$1,000 but less than \$2,000 is a severity level 10, nonper-*
 31 *son felony;*
 32 (7) *at least \$500 but less than \$1,000 is a class A nonperson misde-*
 33 *meanor; and*
 34 (8) *less than \$500 is a class B nonperson misdemeanor.*
 35 Sec. 33. K.S.A. 21-3905 is hereby amended to read as follows: 21-
 36 3905. (a) Permitting a false claim is the auditing, allowing, or paying of
 37 any claim or demand made upon the state or any subdivision thereof or
 38 other governmental instrumentality within the state by a public officer or
 39 public employee who knows such claim or demand is false or fraudulent
 40 in whole or in part.
 41 (b) ~~(1) Permitting a false claim for \$25,000 or more is a severity level~~
 42 ~~7, nonperson felony.~~
 43 ~~(2) Permitting a false claim for at least \$1,000 but less than \$25,000~~

1 ~~is a severity level 9, nonperson felony.~~
2 ~~—(3) Permitting a false claim for less than \$1,000 is a class A nonperson~~
3 ~~misdemeanor.~~
4 ~~—(4):~~
5 (1) *\$100,000 or more is a severity level 5, nonperson felony;*
6 (2) *at least \$75,000 but less than \$100,000 is a severity level 6, non-*
7 *person felony;*
8 (3) *at least \$50,000 but less than \$75,000 is a severity level 7, non-*
9 *person felony;*
10 (4) *at least \$25,000 but less than \$50,000 is a severity level 8, non-*
11 *person felony;*
12 (5) *at least \$2,000 but less than \$25,000 is a severity level 9, nonper-*
13 *son felony;*
14 (6) *at least \$1,000 but less than \$2,000 is a severity level 10, nonper-*
15 *son felony;*
16 (7) *at least \$500 but less than \$1,000 is a class A nonperson misde-*
17 *meanor; and*
18 (8) *less than \$500 is a class B nonperson misdemeanor.*
19 (c) Upon conviction of permitting a false claim, a public officer or
20 public employee shall forfeit the officer or employee's office or
21 employment.
22 Sec. 34. K.S.A. 21-3910 is hereby amended to read as follows: 21-
23 3910. (a) Misuse of public funds is knowingly using, lending or permitting
24 another to use public money in a manner not authorized by law, by a
25 custodian or other person having control of public money by virtue of
26 such person's official position.
27 (b) As used in this section, "public money" means any money or ne-
28 gotiable instrument which belongs to the state of Kansas or any political
29 subdivision thereof.
30 (c) ~~(1)~~ Misuse of public funds where the aggregate amount of money
31 paid or claimed in violation of this section is ~~\$100,000 or more is a severity~~
32 ~~level 5, nonperson felony.~~
33 ~~—(2) Misuse of public funds where the aggregate amount of money~~
34 ~~paid or claimed in violation of this section is at least \$25,000 but less than~~
35 ~~\$100,000 is a severity level 7, nonperson felony.~~
36 ~~—(3) Misuse of public funds where the aggregate amount of money~~
37 ~~paid or claimed in violation of this section is at least \$1,000 but less than~~
38 ~~\$25,000 is a severity level 9, nonperson felony.~~
39 ~~—(4) Misuse of public funds where the aggregate amount of money~~
40 ~~paid or claimed in violation of this section is less than \$1,000 is a class A~~
41 ~~nonperson misdemeanor.~~
42 (1) *\$100,000 or more is a severity level 5, nonperson felony;*
43 (2) *at least \$75,000 but less than \$100,000 is a severity level 6, non-*

- 1 *person felony;*
2 (3) *at least \$50,000 but less than \$75,000 is a severity level 7, non-*
3 *person felony;*
4 (4) *at least \$25,000 but less than \$50,000 is a severity level 8, non-*
5 *person felony;*
6 (5) *at least \$2,000 but less than \$25,000 is a severity level 9, nonper-*
7 *son felony;*
8 (6) *at least \$1,000 but less than \$2,000 is a severity level 10, nonper-*
9 *son felony;*
10 (7) *at least \$500 but less than \$1,000 is a class A nonperson misde-*
11 *meanor; and*
12 (8) *less than \$500 is a class B nonperson misdemeanor.*
13 (d) Upon conviction of misuse of public funds, the convicted person
14 shall forfeit the person's official position.
15 Sec. 35. K.S.A. 21-4018 is hereby amended to read as follows: 21-
16 4018. (a) Identity theft is knowingly and with intent to defraud for any
17 benefit, obtaining, possessing, transferring, using or attempting to obtain,
18 possess, transfer or use, one or more identification documents or personal
19 identification number of another person other than that issued lawfully
20 for the use of the possessor.
21 (b) "Identification documents" has the meaning provided in K.S.A.
22 21-3830, and amendments thereto.
23 (c) (1) Except as provided further, identity theft is a severity level 8,
24 nonperson felony. ~~If the monetary loss to the victim or victims is more~~
25 ~~than \$100,000, identity theft is a severity level 5, nonperson felony.~~
26 (2) *Identity theft, if the monetary loss to the victim or victims is:*
27 (A) *\$100,000 or more is a severity level 5, nonperson felony;*
28 (B) *at least \$75,000 but less than \$100,000 is a severity level 6, non-*
29 *person felony;*
30 (C) *at least \$50,000 but less than \$75,000 is a severity level 7, non-*
31 *person felony;*
32 (D) *at least \$25,000 but less than \$50,000 is a severity level 8, non-*
33 *person felony;*
34 (E) *at least \$2,000 but less than \$25,000 is a severity level 9, nonper-*
35 *son felony;*
36 (F) *at least \$1,000 but less than \$2,000 is a severity level 10, nonper-*
37 *son felony;*
38 (G) *at least \$500 but less than \$1,000 is a class A nonperson misde-*
39 *meanor; and*
40 (H) *less than \$500 is a class B nonperson misdemeanor.*
41 (d) Identity fraud is:
42 (1) Willfully and knowingly supplying false information intending that
43 the information be used to obtain an identification document;

- 1 (2) making, counterfeiting, altering, amending or mutilating any iden-
 2 tification document:
- 3 (A) Without lawful authority; and
 4 (B) with the intent to deceive; or
 5 (3) willfully and knowingly obtaining, possessing, using, selling or fur-
 6 nishing or attempting to obtain, possess or furnish to another for any
 7 purpose of deception an identification document.
- 8 (e) Identity fraud is a severity level 8, nonperson felony.
 9 (f) This section shall be part of and supplemental to the Kansas crim-
 10 inal code.
- 11 Sec. 36. K.S.A. 21-4111 is hereby amended to read as follows: 21-
 12 4111. (a) Criminal desecration is:
- 13 (1) Obtaining or attempting to obtain unauthorized control of a dead
 14 body or remains of any human being or the coffin, urn or other article
 15 containing a dead body or remains of any human being;
- 16 (2) by means other than by fire or explosive:
- 17 (A) Damaging, defacing or destroying the flag, ensign or other symbol
 18 of the United States or this state in which another has a property interest
 19 without the consent of such other person;
- 20 (B) damaging, defacing or destroying any public monument or
 21 structure;
- 22 (C) damaging, defacing or destroying any tomb, monument, memo-
 23 rial, marker, grave, vault, crypt gate, tree, shrub, plant or any other prop-
 24 erty in a cemetery; or
- 25 (D) damaging, defacing or destroying any place of worship.
- 26 (b) (1) Criminal desecration as described in subsections (a)(2)(B),
 27 (a)(2)(C) and (a)(2)(D) ~~is, if the property is damaged to the extent of:~~
- 28 ~~(A) A severity level 7, nonperson felony if the property is damaged~~
 29 ~~to the extent of \$25,000 or more;~~
- 30 ~~—(B)—a severity level 9, nonperson felony if the property is damaged to~~
 31 ~~the extent of at least \$1,000 but less than \$25,000; and~~
- 32 ~~—(C)—a class A nonperson misdemeanor if the property is damaged to~~
 33 ~~the extent of less than \$1,000.~~
- 34 (A) *\$100,000 or more is a severity level 5, nonperson felony;*
 35 (B) *at least \$75,000 but less than \$100,000 is a severity level 6, non-*
 36 *person felony;*
 37 (C) *at least \$50,000 but less than \$75,000 is a severity level 7, non-*
 38 *person felony;*
 39 (D) *at least \$25,000 but less than \$50,000 is a severity level 8, non-*
 40 *person felony;*
 41 (E) *at least \$2,000 but less than \$25,000 is a severity level 9, nonper-*
 42 *son felony;*
 43 (F) *at least \$1,000 but less than \$2,000 is a severity level 10, nonper-*

1 *son felony;*

2 (G) *at least \$500 but less than \$1,000 is a class A nonperson misde-*
3 *meanor; and*

4 (H) *less than \$500 is a class B nonperson misdemeanor.*

5 (2) Criminal desecration as described in subsections (a)(1) and
6 (a)(2)(A) is a class A nonperson misdemeanor.

7 Sec. 37. K.S.A. 21-4503a is hereby amended to read as follows: 21-
8 4503a. (a) A person who has been convicted of a felony may, in addition
9 to the sentence authorized by law, be ordered to pay a fine which shall
10 be fixed by the court as follows:

11 (1) For any off-grid felony crime ~~or any felony ranked in severity level~~
12 ~~1 of the drug grid as provided in K.S.A. 21-4705 and amendments thereto,~~
13 a sum not exceeding \$500,000.

14 (2) For any felony ranked in severity levels 1 through 5 ~~of the non-drug~~
15 ~~grid as provided in K.S.A. 21-4704 and amendments thereto or in severity~~
16 ~~levels 2 or 3 of the drug grid as provided in K.S.A. 21-4705 and amend-~~
17 ~~ments thereto,~~ a sum not exceeding \$300,000.

18 (3) For any felony ranked in severity levels 6 through 10 ~~of the non-~~
19 ~~drug grid as provided in K.S.A. 21-4704 and amendments thereto or in~~
20 ~~severity level 4 of the drug grid as provided in K.S.A. 21-4705 and amend-~~
21 ~~ments thereto,~~ a sum not exceeding \$100,000.

22 (b) A person who has been convicted of a misdemeanor, in addition
23 to or instead of the imprisonment authorized by law, may be sentenced
24 to pay a fine which shall be fixed by the court as follows:

25 (1) For a class A misdemeanor, a sum not exceeding \$2,500.

26 (2) For a class B misdemeanor, a sum not exceeding \$1,000.

27 (3) For a class C misdemeanor, a sum not exceeding \$500.

28 (4) For an unclassified misdemeanor, any sum authorized by the stat-
29 ute that defines the crime. If no penalty is provided in such law, the fine
30 shall not exceed the fine provided herein for a class C misdemeanor.

31 (c) As an alternative to any of the above fines, the fine imposed may
32 be fixed at any greater sum not exceeding double the pecuniary gain
33 derived from the crime by the offender.

34 (d) A person who has been convicted of a traffic infraction may be
35 sentenced to pay a fine which shall be fixed by the court, not exceeding
36 \$500.

37 (e) A person who has been convicted of a cigarette or tobacco in-
38 fraction shall be sentenced to pay a fine of \$25.

39 (f) The provisions of this section shall apply to crimes committed on
40 or after July 1, 1993.

41 Sec. 38. K.S.A. 2009 Supp. 21-4603d is hereby amended to read as
42 follows: 21-4603d. (a) Whenever any person has been found guilty of a
43 crime, the court may adjudge any of the following:

- 1 (1) Commit the defendant to the custody of the secretary of correc-
2 tions if the current crime of conviction is a felony and the sentence pre-
3 sumes imprisonment, or the sentence imposed is a dispositional departure
4 to imprisonment; or, if confinement is for a misdemeanor, to jail for the
5 term provided by law;
- 6 (2) impose the fine applicable to the offense;
- 7 (3) release the defendant on probation if the current crime of con-
8 viction and criminal history fall within a presumptive nonprison category
9 or through a departure for substantial and compelling reasons subject to
10 such conditions as the court may deem appropriate. In felony cases except
11 for violations of K.S.A. 8-1567, and amendments thereto, the court may
12 include confinement in a county jail not to exceed 60 days, which need
13 not be served consecutively, as a condition of an original probation sen-
14 tence and up to 60 days in a county jail upon each revocation of the
15 probation sentence, or community corrections placement;
- 16 (4) assign the defendant to a community correctional services pro-
17 gram as provided in K.S.A. 75-5291, and amendments thereto, or through
18 a departure for substantial and compelling reasons subject to such con-
19 ditions as the court may deem appropriate, including orders requiring full
20 or partial restitution;
- 21 (5) assign the defendant to a conservation camp for a period not to
22 exceed six months as a condition of probation followed by a six-month
23 period of follow-up through adult intensive supervision by a community
24 correctional services program, if the offender successfully completes the
25 conservation camp program;
- 26 (6) assign the defendant to a house arrest program pursuant to K.S.A.
27 21-4603b and amendments thereto;
- 28 (7) order the defendant to attend and satisfactorily complete an al-
29 colhol or drug education or training program as provided by subsection
30 (3) of K.S.A. 21-4502, and amendments thereto;
- 31 (8) order the defendant to repay the amount of any reward paid by
32 any crime stoppers chapter, individual, corporation or public entity which
33 materially aided in the apprehension or conviction of the defendant; repay
34 the amount of any costs and expenses incurred by any law enforcement
35 agency in the apprehension of the defendant, if one of the current crimes
36 of conviction of the defendant includes escape, as defined in K.S.A. 21-
37 3809, and amendments thereto, or aggravated escape, as defined in K.S.A.
38 21-3810, and amendments thereto; repay expenses incurred by a fire dis-
39 trict, fire department or fire company responding to a fire which has been
40 determined to be arson under K.S.A. 21-3718 or 21-3719, and amend-
41 ments thereto, if the defendant is convicted of such crime; repay the
42 amount of any public funds utilized by a law enforcement agency to pur-
43 chase controlled substances from the defendant during the investigation

1 which leads to the defendant's conviction; or repay the amount of any
2 medical costs and expenses incurred by any law enforcement agency or
3 county. Such repayment of the amount of any such costs and expenses
4 incurred by a county, law enforcement agency, fire district, fire depart-
5 ment or fire company or any public funds utilized by a law enforcement
6 agency shall be deposited and credited to the same fund from which the
7 public funds were credited to prior to use by the county, law enforcement
8 agency, fire district, fire department or fire company;

9 (9) order the defendant to pay the administrative fee authorized by
10 K.S.A. 22-4529, and amendments thereto, unless waived by the court;

11 (10) order the defendant to pay a domestic violence special program
12 fee authorized by K.S.A. 20-369, and amendments thereto;

13 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6),
14 (7), (8), (9) and (10); or

15 (12) suspend imposition of sentence in misdemeanor cases.

16 (b) (1) In addition to or in lieu of any of the above, the court shall
17 order the defendant to pay restitution, which shall include, but not be
18 limited to, damage or loss caused by the defendant's crime, unless the
19 court finds compelling circumstances which would render a plan of res-
20 titution unworkable. In regard to a violation of K.S.A. 21-4018, and
21 amendments thereto, such damage or loss shall include, but not be limited
22 to, attorney fees and costs incurred to repair the credit history or rating
23 of the person whose personal identification documents were obtained and
24 used in violation of such section, and to satisfy a debt, lien or other ob-
25 ligation incurred by the person whose personal identification documents
26 were obtained and used in violation of such section. If the court finds a
27 plan of restitution unworkable, the court shall state on the record in detail
28 the reasons therefor.

29 (2) If the court orders restitution, the restitution shall be a judgment
30 against the defendant which may be collected by the court by garnishment
31 or other execution as on judgments in civil cases. If, after 60 days from
32 the date restitution is ordered by the court, a defendant is found to be in
33 noncompliance with the plan established by the court for payment of
34 restitution, and the victim to whom restitution is ordered paid has not
35 initiated proceedings in accordance with K.S.A. 60-4301 et seq., and
36 amendments thereto, the court shall assign an agent procured by the
37 attorney general pursuant to K.S.A. 75-719, and amendments thereto, to
38 collect the restitution on behalf of the victim. The administrative judge
39 of each judicial district may assign such cases to an appropriate division
40 of the court for the conduct of civil collection proceedings.

41 (c) In addition to or in lieu of any of the above, the court shall order
42 the defendant to submit to and complete an alcohol and drug evaluation,
43 and pay a fee therefor, when required by subsection (4) of K.S.A. 21-

1 4502, and amendments thereto.

2 (d) In addition to any of the above, the court shall order the defend-
3 ant to reimburse the county general fund for all or a part of the expend-
4 itures by the county to provide counsel and other defense services to the
5 defendant. Any such reimbursement to the county shall be paid only after
6 any order for restitution has been paid in full. In determining the amount
7 and method of payment of such sum, the court shall take account of the
8 financial resources of the defendant and the nature of the burden that
9 payment of such sum will impose. A defendant who has been required
10 to pay such sum and who is not willfully in default in the payment thereof
11 may at any time petition the court which sentenced the defendant to
12 waive payment of such sum or any unpaid portion thereof. If it appears
13 to the satisfaction of the court that payment of the amount due will im-
14 pose manifest hardship on the defendant or the defendant's immediate
15 family, the court may waive payment of all or part of the amount due or
16 modify the method of payment.

17 (e) In imposing a fine the court may authorize the payment thereof
18 in installments. ~~In releasing a defendant on probation, the court shall~~
19 ~~direct that the defendant be under the supervision of a court services~~
20 ~~officer.~~ If the court commits the defendant to the custody of the secretary
21 of corrections or to jail, the court may specify in its order the amount of
22 restitution to be paid and the person to whom it shall be paid if restitution
23 is later ordered as a condition of parole, conditional release or postrelease
24 supervision.

25 (f) (1) When a new felony is committed while the offender is incar-
26 cerated and serving a sentence for a felony, or while the offender is on
27 probation, assignment to a community correctional services program, pa-
28 role, conditional release, or postrelease supervision for a felony, a new
29 sentence shall be imposed pursuant to the consecutive sentencing
30 requirements of K.S.A. 21-4608, and amendments thereto, and the court
31 may sentence the offender to imprisonment for the new conviction, even
32 when the new crime of conviction otherwise presumes a nonprison sen-
33 tence. In this event, imposition of a prison sentence for the new crime
34 does not constitute a departure.

35 (2) When a new felony is committed while the offender is incarcer-
36 ated in a juvenile correctional facility pursuant to K.S.A. 38-1671 prior to
37 its repeal or K.S.A. 2009 Supp. 38-2373, and amendments thereto, for an
38 offense, which if committed by an adult would constitute the commission
39 of a felony, upon conviction, the court shall sentence the offender to
40 imprisonment for the new conviction, even when the new crime of con-
41 viction otherwise presumes a nonprison sentence. In this event, imposi-
42 tion of a prison sentence for the new crime does not constitute a depart-
43 ure. The conviction shall operate as a full and complete discharge from

1 any obligations, except for an order of restitution, imposed on the of-
2 fender arising from the offense for which the offender was committed to
3 a juvenile correctional facility.

4 (3) When a new felony is committed while the offender is on release
5 for a felony pursuant to the provisions of article 28 of chapter 22 of the
6 Kansas Statutes Annotated, or similar provisions of the laws of another
7 jurisdiction, a new sentence may be imposed pursuant to the consecutive
8 sentencing requirements of K.S.A. 21-4608, and amendments thereto,
9 and the court may sentence the offender to imprisonment for the new
10 conviction, even when the new crime of conviction otherwise presumes
11 a nonprison sentence. In this event, imposition of a prison sentence for
12 the new crime does not constitute a departure.

13 (g) Prior to imposing a dispositional departure for a defendant whose
14 offense is classified in the presumptive nonprison grid block of ~~either the~~
15 ~~sentencing guideline guidelines~~ grid, prior to sentencing a defendant to
16 incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G of
17 the sentencing guidelines grid ~~for nondrug crimes or in grid blocks 3-E,~~
18 ~~3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes,~~
19 prior to sentencing a defendant to incarceration whose offense is classified
20 in grid blocks ~~4-E or 4-F~~ 7-E or 7-F of the ~~sentencing guideline guidelines~~
21 ~~grid for drug crimes~~ and whose offense does not meet the requirements
22 of K.S.A. 21-4729, and amendments thereto, prior to revocation of a non-
23 prison sanction of a defendant whose offense is classified in grid blocks
24 4-E or 4-F of the ~~sentencing guideline guidelines~~ grid for drug crimes,
25 *prior to such grid's repeal, or classified in grid blocks 7-E or 7-F of the*
26 *sentencing guidelines grid* and whose offense does not meet the require-
27 ments of K.S.A. 21-4729, and amendments thereto, or prior to revocation
28 of a nonprison sanction of a defendant whose offense is classified in the
29 presumptive nonprison grid block of ~~either the~~ ~~sentencing guideline~~
30 ~~guidelines~~ grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines
31 ~~grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the~~
32 ~~sentencing guidelines grid for drug crimes,~~ the court shall consider place-
33 ment of the defendant in the Labette correctional conservation camp,
34 conservation camps established by the secretary of corrections pursuant
35 to K.S.A. 75-52,127, and ~~amendment~~ *amendments* thereto, or a com-
36 munity intermediate sanction center. Pursuant to this paragraph the de-
37 fendant shall not be sentenced to imprisonment if space is available in a
38 conservation camp or a community intermediate sanction center and the
39 defendant meets all of the conservation camp's or a community inter-
40 mediate sanction center's placement criteria unless the court states on
41 the record the reasons for not placing the defendant in a conservation
42 camp or a community intermediate sanction center.

43 (h) The court in committing a defendant to the custody of the sec-

1 retary of corrections shall fix a term of confinement within the limits
2 provided by law. In those cases where the law does not fix a term of
3 confinement for the crime for which the defendant was convicted, the
4 court shall fix the term of such confinement.

5 (i) In addition to any of the above, the court shall order the defendant
6 to reimburse the state general fund for all or a part of the expenditures
7 by the state board of indigents' defense services to provide counsel and
8 other defense services to the defendant. In determining the amount and
9 method of payment of such sum, the court shall take account of the
10 financial resources of the defendant and the nature of the burden that
11 payment of such sum will impose. A defendant who has been required
12 to pay such sum and who is not willfully in default in the payment thereof
13 may at any time petition the court which sentenced the defendant to
14 waive payment of such sum or any unpaid portion thereof. If it appears
15 to the satisfaction of the court that payment of the amount due will im-
16 pose manifest hardship on the defendant or the defendant's immediate
17 family, the court may waive payment of all or part of the amount due or
18 modify the method of payment. The amount of attorney fees to be in-
19 cluded in the court order for reimbursement shall be the amount claimed
20 by appointed counsel on the payment voucher for indigents' defense serv-
21 ices or the amount prescribed by the board of indigents' defense services
22 reimbursement tables as provided in K.S.A. 22-4522, and amendments
23 thereto, whichever is less.

24 (j) This section shall not deprive the court of any authority conferred
25 by any other Kansas statute to decree a forfeiture of property, suspend
26 or cancel a license, remove a person from office, or impose any other civil
27 penalty as a result of conviction of crime.

28 (k) An application for or acceptance of probation or assignment to a
29 community correctional services program shall not constitute an acqui-
30 escence in the judgment for purpose of appeal, and any convicted person
31 may appeal from such conviction, as provided by law, without regard to
32 whether such person has applied for probation, suspended sentence or
33 assignment to a community correctional services program.

34 (l) The secretary of corrections is authorized to make direct place-
35 ment to the Labette correctional conservation camp or a conservation
36 camp established by the secretary pursuant to K.S.A. 75-52,127, and
37 amendments thereto, of an inmate sentenced to the secretary's custody
38 if the inmate: (1) Has been sentenced to the secretary for a probation
39 revocation, as a departure from the presumptive nonimprisonment grid
40 block of ~~either the~~ *the* sentencing grid, for an offense which is classified in
41 grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid ~~for nondrug~~
42 ~~crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing~~
43 ~~guidelines grid for drug crimes~~, or for an offense which is classified in

1 gridblocks ~~4-E or 4-F~~ 7-E or 7-F of the sentencing guidelines grid for
2 ~~drug crimes~~ and such offense does not meet the requirements of K.S.A.
3 21-4729, and amendments thereto, and (2) otherwise meets admission
4 criteria of the camp. If the inmate successfully completes a conservation
5 camp program, the secretary of corrections shall report such completion
6 to the sentencing court and the county or district attorney. The inmate
7 shall then be assigned by the court to six months of follow-up supervision
8 conducted by the appropriate community corrections services program.
9 The court may also order that supervision continue thereafter for the
10 length of time authorized by K.S.A. 21-4611 and amendments thereto.

11 (m) When it is provided by law that a person shall be sentenced pur-
12 suant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of
13 this section shall not apply.

14 (n) Except as provided by subsection (f) of K.S.A. 21-4705, and
15 amendments thereto, in addition to any of the above, for felony violations
16 of K.S.A. 2009 Supp. 21-36a06, and amendments thereto, the court shall
17 require the defendant who meets the requirements established in K.S.A.
18 21-4729, and amendments thereto, to participate in a certified drug abuse
19 treatment program, as provided in K.S.A. 2009 Supp. 75-52,144, and
20 amendments thereto, including but not limited to, an approved after-care
21 plan. If the defendant fails to participate in or has a pattern of intentional
22 conduct that demonstrates the offender's refusal to comply with or par-
23 ticipate in the treatment program, as established by judicial finding, the
24 defendant shall be subject to revocation of probation and the defendant
25 shall serve the underlying prison sentence as established in K.S.A. ~~21-~~
26 ~~4705~~ 21-4704, and amendments thereto. For those offenders who are
27 convicted on or after the effective date of this act, upon completion of
28 the underlying prison sentence, the defendant shall not be subject to a
29 period of postrelease supervision. The amount of time spent participating
30 in such program shall not be credited as service on the underlying prison
31 sentence.

32 (o) (1) Except as provided in paragraph (3), in addition to any other
33 penalty or disposition imposed by law, upon a conviction for unlawful
34 possession of a controlled substance or controlled substance analog in
35 violation of K.S.A. 2009 Supp. 21-36a06, and amendments thereto, in
36 which the trier of fact makes a finding that the unlawful possession oc-
37 curred while transporting the controlled substance or controlled sub-
38 stance analog in any vehicle upon a highway or street, the offender's
39 driver's license or privilege to operate a motor vehicle on the streets and
40 highways of this state shall be suspended for one year.

41 (2) Upon suspension of a license pursuant to this subsection, the
42 court shall require the person to surrender the license to the court, which
43 shall transmit the license to the division of motor vehicles of the depart-

1 ment of revenue, to be retained until the period of suspension expires.
2 At that time, the licensee may apply to the division for return of the
3 license. If the license has expired, the person may apply for a new license,
4 which shall be issued promptly upon payment of the proper fee and sat-
5 isfaction of other conditions established by law for obtaining a license
6 unless another suspension or revocation of the person's privilege to op-
7 erate a motor vehicle is in effect.

8 (3) (A) In lieu of suspending the driver's license or privilege to op-
9 erate a motor vehicle on the highways of this state of any person as pro-
10 vided in paragraph (1), the judge of the court in which such person was
11 convicted may enter an order which places conditions on such person's
12 privilege of operating a motor vehicle on the highways of this state, a
13 certified copy of which such person shall be required to carry any time
14 such person is operating a motor vehicle on the highways of this state.
15 Any such order shall prescribe the duration of the conditions imposed,
16 which in no event shall be for a period of more than one year.

17 (B) Upon entering an order restricting a person's license hereunder,
18 the judge shall require such person to surrender such person's driver's
19 license to the judge who shall cause it to be transmitted to the division
20 of vehicles, together with a copy of the order. Upon receipt thereof, the
21 division of vehicles shall issue without charge a driver's license which shall
22 indicate on its face that conditions have been imposed on such person's
23 privilege of operating a motor vehicle and that a certified copy of the
24 order imposing such conditions is required to be carried by the person
25 for whom the license was issued any time such person is operating a motor
26 vehicle on the highways of this state. If the person convicted is a nonres-
27 ident, the judge shall cause a copy of the order to be transmitted to the
28 division and the division shall forward a copy of it to the motor vehicle
29 administrator, of such person's state of residence. Such judge shall furnish
30 to any person whose driver's license has had conditions imposed on it
31 under this paragraph a copy of the order, which shall be recognized as a
32 valid Kansas driver's license until such time as the division shall issue the
33 restricted license provided for in this paragraph.

34 (C) Upon expiration of the period of time for which conditions are
35 imposed pursuant to this subsection, the licensee may apply to the divi-
36 sion for the return of the license previously surrendered by such licensee.
37 In the event such license has expired, such person may apply to the di-
38 vision for a new license, which shall be issued immediately by the division
39 upon payment of the proper fee and satisfaction of the other conditions
40 established by law, unless such person's privilege to operate a motor ve-
41 hicle on the highways of this state has been suspended or revoked prior
42 thereto. If any person shall violate any of the conditions imposed under
43 this paragraph, such person's driver's license or privilege to operate a

1 motor vehicle on the highways of this state shall be revoked for a period
2 of not less than 60 days nor more than one year by the judge of the court
3 in which such person is convicted of violating such conditions.

4 (4) As used in this subsection, “highway” and “street” have the mean-
5 ings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto.

6 (p) *If an offender, who is convicted of a class A misdemeanor con-*
7 *tained in chapter 21 of the Kansas Statutes Annotated, and amendments*
8 *thereto, or a second conviction of a violation of K.S.A. 8-1567, and amend-*
9 *ments thereto, is placed on probation, the court shall assign the offender*
10 *to court services for supervision.*

11 Sec. 39. K.S.A. 2009 Supp. 21-4611 is hereby amended to read as
12 follows: 21-4611. (a) The period of suspension of sentence, probation or
13 assignment to community corrections fixed by the court shall not exceed
14 five years in felony cases involving crimes committed prior to July 1, 1993,
15 or two years in misdemeanor cases, subject to renewal and extension for
16 additional fixed periods not exceeding five years in such felony cases, nor
17 two years in misdemeanor cases. In no event shall the total period of
18 probation, suspension of sentence or assignment to community correc-
19 tions for a felony committed prior to July 1, 1993, exceed the greatest
20 maximum term provided by law for the crime, except that where the
21 defendant is convicted of nonsupport of a child, the period may be con-
22 tinued as long as the responsibility for support continues. Probation, sus-
23 pension of sentence or assignment to community corrections may be ter-
24 minated by the court at any time and upon such termination or upon
25 termination by expiration of the term of probation, suspension of sentence
26 or assignment to community corrections, an order to this effect shall be
27 entered by the court. The provisions of K.S.A. 75-5291, and amendments
28 thereto, shall be applicable to any assignment to a community correctional
29 services program pursuant to this section.

30 (b) The district court having jurisdiction of the offender may parole
31 any misdemeanant sentenced to confinement in the county jail. The pe-
32 riod of such parole shall be fixed by the court and shall not exceed two
33 years and shall be terminated in the manner provided for termination of
34 suspended sentence and probation.

35 (c) For all crimes committed on or after July 1, 1993, the duration of
36 probation in felony cases sentenced for the following severity levels on
37 the sentencing guidelines grid ~~for nondrug crimes and the sentencing~~
38 ~~guidelines grid for drug crimes~~ is as follows:

39 (1) ~~For nondrug crimes the recommended duration of probation is:~~

40 ~~(A)~~ Thirty-six months for crimes in crime severity levels 1 through 5;
41 ~~and~~

42 ~~(B)~~ (2) 24 months for crimes in crime severity levels 6 and 7.

43 ~~(2)~~ (3) For drug crimes the recommended duration of probation is

1 36 months for crimes in crime severity levels 1 and 2, *prior to such level's*
2 *repeal*.

3 ~~(3)~~ (4) Except as otherwise provided, in felony cases sentenced at
4 severity levels 9 and 10 on the sentencing guidelines grid ~~for nondrug~~
5 ~~crimes~~ and severity level 4 on the sentencing guidelines grid for drug
6 crimes, *prior to such level's repeal*, if a nonprison sanction is imposed,
7 the court shall order the defendant to serve a period of probation of up
8 to 12 months in length.

9 ~~(4)~~ (5) In felony cases sentenced at severity level 8 on the sentencing
10 guidelines grid ~~for nondrug crimes~~, severity level 3 on the sentencing
11 guidelines grid for drug crimes, *prior to such level's repeal*, and felony
12 cases sentenced pursuant to K.S.A. 21-4729, and amendments thereto, if
13 a nonprison sanction is imposed, the court shall order the defendant to
14 serve a period of probation, or assignment to a community correctional
15 services program, as provided under K.S.A. 75-5291 et seq., and amend-
16 ments thereto, of up to 18 months in length.

17 ~~(5)~~ (6) If the court finds and sets forth with particularity the reasons
18 for finding that the safety of the members of the public will be jeopardized
19 or that the welfare of the inmate will not be served by the length of the
20 probation terms provided in subsections ~~(c)(3) and (c)(4) and (c)(5)~~, the
21 court may impose a longer period of probation. Such an increase shall
22 not be considered a departure and shall not be subject to appeal.

23 ~~(6)~~ (7) Except as provided in subsections ~~(c)(7) and (c)(8) and (c)(9)~~,
24 the total period in all cases shall not exceed 60 months, or the maximum
25 period of the prison sentence that could be imposed whichever is longer.
26 Nonprison sentences may be terminated by the court at any time.

27 ~~(7)~~ (8) If the defendant is convicted of nonsupport of a child, the
28 period may be continued as long as the responsibility for support contin-
29 ues. If the defendant is ordered to pay full or partial restitution, the period
30 may be continued as long as the amount of restitution ordered has not
31 been paid.

32 ~~(8)~~ (9) The court may modify or extend the offender's period of su-
33 pervision, pursuant to a modification hearing and a judicial finding of
34 necessity. Such extensions may be made for a maximum period of five
35 years or the maximum period of the prison sentence that could be im-
36 posed, whichever is longer, inclusive of the original supervision term.

37 ~~(d)~~ The provisions of subsection (c), as amended by this act, shall be
38 applied retroactively. The sentencing court shall direct that a review of
39 all persons serving a nonprison sanction for a crime in severity levels 8,
40 9 or 10 of the sentencing guidelines grid for nondrug crimes or a crime
41 in severity levels 3 or 4 of the sentencing guidelines grid for drug crimes
42 be conducted. On or before September 1, 2000, the duration of such
43 person's probation shall be modified in conformity with the provisions of

1 ~~subsection (c).~~

2 Sec. 40. K.S.A. 2009 Supp. 21-4619 is hereby amended to read as
3 follows: 21-4619. (a) (1) Except as provided in subsections (b) and (c),
4 any person convicted in this state of a traffic infraction, cigarette or to-
5 bacco infraction, misdemeanor or a class D or E felony, or for crimes
6 committed on or after July 1, 1993, ~~nondrug~~ crimes ranked in severity
7 levels 6 through 10 or any felony ranked in severity level 4 of the drug
8 grid, *prior to such grid's repeal*, may petition the convicting court for the
9 expungement of such conviction or related arrest records if three or more
10 years have elapsed since the person: (A) Satisfied the sentence imposed;
11 or (B) was discharged from probation, a community correctional services
12 program, parole, postrelease supervision, conditional release or a sus-
13 pended sentence.

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

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

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

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

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

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

- 1 (5) any crime punishable as a felony wherein a motor vehicle was
2 used in the perpetration of such crime;
- 3 (6) failing to stop at the scene of an accident and perform the duties
4 required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto,
5 or required by a law of another state which is in substantial conformity
6 with those statutes;
- 7 (7) violating the provisions of K.S.A. 40-3104, and amendments
8 thereto, relating to motor vehicle liability insurance coverage; or
- 9 (8) a violation of K.S.A. 21-3405b, prior to its repeal.
- 10 (c) There shall be no expungement of convictions for the following
11 offenses or of convictions for an attempt to commit any of the following
12 offenses: (1) Rape as defined in K.S.A. 21-3502, and amendments thereto;
13 (2) indecent liberties with a child as defined in K.S.A. 21-3503, and
14 amendments thereto; (3) aggravated indecent liberties with a child as
15 defined in K.S.A. 21-3504, and amendments thereto; (4) criminal sodomy
16 as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, and amend-
17 ments thereto; (5) aggravated criminal sodomy as defined in K.S.A. 21-
18 3506, and amendments thereto; (6) indecent solicitation of a child as
19 defined in K.S.A. 21-3510, and amendments thereto; (7) aggravated in-
20 decent solicitation of a child as defined in K.S.A. 21-3511, and amend-
21 ments thereto; (8) sexual exploitation of a child as defined in K.S.A. 21-
22 3516, and amendments thereto; (9) aggravated incest as defined in K.S.A.
23 21-3603, and amendments thereto; (10) endangering a child as defined
24 in K.S.A. 21-3608, and amendments thereto; (11) aggravated endangering
25 a child as defined in K.S.A. 21-3608a, and amendments thereto; (12)
26 abuse of a child as defined in K.S.A. 21-3609, and amendments thereto;
27 (13) capital murder as defined in K.S.A. 21-3439, and amendments
28 thereto; (14) murder in the first degree as defined in K.S.A. 21-3401, and
29 amendments thereto; (15) murder in the second degree as defined in
30 K.S.A. 21-3402, and amendments thereto; (16) voluntary manslaughter
31 as defined in K.S.A. 21-3403, and amendments thereto; (17) involuntary
32 manslaughter as defined in K.S.A. 21-3404, and amendments thereto;
33 (18) involuntary manslaughter while driving under the influence of al-
34 cohol or drugs as defined in K.S.A. 21-3442, and amendments thereto;
35 (19) sexual battery as defined in K.S.A. 21-3517, and amendments
36 thereto, when the victim was less than 18 years of age at the time the
37 crime was committed; (20) aggravated sexual battery as defined in K.S.A.
38 21-3518, and amendments thereto; (21) a violation of K.S.A. 8-1567, and
39 amendments thereto, including any diversion for such violation; (22) a
40 violation of K.S.A. 8-2,144, and amendments thereto, including any di-
41 version for such violation; or (23) any conviction for any offense in effect
42 at any time prior to the effective date of this act, that is comparable to
43 any offense as provided in this subsection.

1 (d) When a petition for expungement is filed, the court shall set a
2 date for a hearing of such petition and shall cause notice of such hearing
3 to be given to the prosecuting attorney and the arresting law enforcement
4 agency. The petition shall state: (1) The defendant's full name;
5 (2) the full name of the defendant at the time of arrest, conviction or
6 diversion, if different than the defendant's current name;
7 (3) the defendant's sex, race and date of birth;
8 (4) the crime for which the defendant was arrested, convicted or
9 diverted;
10 (5) the date of the defendant's arrest, conviction or diversion; and
11 (6) the identity of the convicting court, arresting law enforcement
12 authority or diverting authority. Except as provided further, there shall
13 be no docket fee for filing a petition pursuant to this section. On and
14 after July 1, 2009 through June 30, 2010, the supreme court may impose
15 a charge, not to exceed \$10 per case, to fund the costs of non-judicial
16 personnel. The charge established in this section shall be the only fee
17 collected or moneys in the nature of a fee collected for the case. Such
18 charge shall only be established by an act of the legislature and no other
19 authority is established by law or otherwise to collect a fee. All petitions
20 for expungement shall be docketed in the original criminal action. Any
21 person who may have relevant information about the petitioner may tes-
22 tify at the hearing. The court may inquire into the background of the
23 petitioner and shall have access to any reports or records relating to the
24 petitioner that are on file with the secretary of corrections or the Kansas
25 parole board.

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

29 (1) The petitioner has not been convicted of a felony in the past two
30 years and no proceeding involving any such crime is presently pending
31 or being instituted against the petitioner;
32 (2) the circumstances and behavior of the petitioner warrant the
33 expungement; and
34 (3) the expungement is consistent with the public welfare.

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

- 1 (1) Upon conviction for any subsequent crime, the conviction that
2 was expunged may be considered as a prior conviction in determining the
3 sentence to be imposed;
- 4 (2) the petitioner shall disclose that the arrest, conviction or diversion
5 occurred if asked about previous arrests, convictions or diversions:
- 6 (A) In any application for licensure as a private detective, private
7 detective agency, certification as a firearms trainer pursuant to K.S.A.
8 2009 Supp. 75-7b21, and amendments thereto, or employment as a de-
9 tective with a private detective agency, as defined by K.S.A. 75-7b01, and
10 amendments thereto; as security personnel with a private patrol operator,
11 as defined by K.S.A. 75-7b01, and amendments thereto; or with an insti-
12 tution, as defined in K.S.A. 76-12a01, and amendments thereto, of the
13 department of social and rehabilitation services;
- 14 (B) in any application for admission, or for an order of reinstatement,
15 to the practice of law in this state;
- 16 (C) to aid in determining the petitioner's qualifications for employ-
17 ment with the Kansas lottery or for work in sensitive areas within the
18 Kansas lottery as deemed appropriate by the executive director of the
19 Kansas lottery;
- 20 (D) to aid in determining the petitioner's qualifications for executive
21 director of the Kansas racing and gaming commission, for employment
22 with the commission or for work in sensitive areas in parimutuel racing
23 as deemed appropriate by the executive director of the commission, or
24 to aid in determining qualifications for licensure or renewal of licensure
25 by the commission;
- 26 (E) to aid in determining the petitioner's qualifications for the fol-
27 lowing under the Kansas expanded lottery act: (i) Lottery gaming facility
28 manager or prospective manager, racetrack gaming facility manager or
29 prospective manager, licensee or certificate holder; or (ii) an officer, di-
30 rector, employee, owner, agent or contractor thereof;
- 31 (F) upon application for a commercial driver's license under K.S.A.
32 8-2,125 through 8-2,142, and amendments thereto;
- 33 (G) to aid in determining the petitioner's qualifications to be an em-
34 ployee of the state gaming agency;
- 35 (H) to aid in determining the petitioner's qualifications to be an em-
36 ployee of a tribal gaming commission or to hold a license issued pursuant
37 to a tribal-state gaming compact;
- 38 (I) in any application for registration as a broker-dealer, agent, in-
39 vestment adviser or investment adviser representative all as defined in
40 K.S.A. 17-12a102, and amendments thereto;
- 41 (J) in any application for employment as a law enforcement officer as
42 defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; or
- 43 (K) for applications received on and after July 1, 2006, to aid in de-

1 terminating the petitioner's qualifications for a license to carry a concealed
2 weapon pursuant to the personal and family protection act, K.S.A. 2009
3 Supp. 75-7c01 et seq., and amendments thereto;

4 (3) the court, in the order of expungement, may specify other cir-
5 cumstances under which the conviction is to be disclosed;

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

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

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

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

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

34 (1) The person whose record was expunged;

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

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

41 (4) the secretary of social and rehabilitation services, or a designee of
42 the secretary, for the purpose of obtaining information relating to em-
43 ployment in an institution, as defined in K.S.A. 76-12a01, and amend-

1 ments thereto, of the department of social and rehabilitation services of
2 any person whose record has been expunged;

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

5 (6) a prosecuting attorney, and such request is accompanied by a
6 statement that the request is being made in conjunction with a prosecu-
7 tion of an offense that requires a prior conviction as one of the elements
8 of such offense;

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

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

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

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

34 (11) the Kansas sentencing commission;

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

40 (13) the Kansas securities commissioner or a designee of the com-
41 missioner, and the request is accompanied by a statement that the request
42 is being made in conjunction with an application for registration as a
43 broker-dealer, agent, investment adviser or investment adviser represen-

1 tative by such agency and the application was submitted by the person
2 whose record has been expunged;

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

7 (15) a law enforcement agency and the request is accompanied by a
8 statement that the request is being made to aid in determining eligibility
9 for employment as a law enforcement officer as defined by K.S.A. 22-
10 2202, and amendments thereto; or

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

15 Sec. 41. K.S.A. 21-4638 is hereby amended to read as follows: 21-
16 4638. When it is provided by law that a person shall be sentenced pur-
17 suant to this section, such person shall be sentenced to imprisonment for
18 life and shall not be eligible for probation or suspension, modification or
19 reduction of sentence. Except as otherwise provided, in addition, a person
20 sentenced pursuant to this section shall not be eligible for parole prior to
21 serving 40 years' imprisonment, and such 40 years' imprisonment shall
22 not be reduced by the application of good time credits. For crimes com-
23 mitted on and after July 1, 1999, a person sentenced pursuant to this
24 section shall not be eligible for parole prior to serving 50 years' impris-
25 onment, and such 50 years' imprisonment shall not be reduced by the
26 application of good time credits. For crimes committed on or after July
27 1, 2006, a mandatory minimum term of imprisonment of 50 years shall
28 not apply if the court finds that the defendant, because of the defendant's
29 criminal history classification, is subject to presumptive imprisonment
30 pursuant to the sentencing guidelines grid ~~for nondrug crimes~~ and the
31 sentencing range exceeds 600 months. In such case, the defendant is
32 required to serve a mandatory minimum term equal to the sentence es-
33 tablished pursuant to the sentencing range. Upon sentencing a defendant
34 pursuant to this section, the court shall commit the defendant to the
35 custody of the secretary of corrections and the court shall state in the
36 sentencing order of the judgment form or journal entry, whichever is
37 delivered with the defendant to the correctional institution, that the de-
38 fendant has been sentenced pursuant to K.S.A. 21-4638 and amendments
39 thereto.

40 Sec. 42. K.S.A. 21-4643 is hereby amended to read as follows: 21-
41 4643. (a) (1) Except as provided in subsection (b) or (d), a defendant who
42 is 18 years of age or older and is convicted of the following crimes com-
43 mitted on or after July 1, 2006, shall be sentenced to a term of impris-

- 1 onment for life with a mandatory minimum term of imprisonment of not
2 less than 25 years unless the court determines that the defendant should
3 be sentenced as determined in paragraph (2):
- 4 (A) Aggravated trafficking, as defined in K.S.A. 21-3447, and amend-
5 ments thereto, if the victim is less than 14 years of age;
- 6 (B) rape, as defined in subsection (a)(2) of K.S.A. 21-3502, and
7 amendments thereto;
- 8 (C) aggravated indecent liberties with a child, as defined in subsec-
9 tion (a)(3) of K.S.A. 21-3504, and amendments thereto;
- 10 (D) aggravated criminal sodomy, as defined in subsection (a)(1) or
11 (a)(2) of K.S.A. 21-3506, and amendments thereto;
- 12 (E) promoting prostitution, as defined in K.S.A. 21-3513, and amend-
13 ments thereto, if the prostitute is less than 14 years of age;
- 14 (F) sexual exploitation of a child, as defined in subsection (a)(5) or
15 (a)(6) of K.S.A. 21-3516, and amendments thereto; and
- 16 (G) an attempt, conspiracy or criminal solicitation, as defined in
17 K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of an of-
18 fense defined in paragraphs (A) through (F).
- 19 (2) The provision of paragraph (1) requiring a mandatory minimum
20 term of imprisonment of not less than 25 years shall not apply if the court
21 finds:
- 22 (A) The defendant is an aggravated habitual sex offender and sen-
23 tenced pursuant to K.S.A. 21-4642, and amendments thereto; or
- 24 (B) the defendant, because of the defendant's criminal history clas-
25 sification, is subject to presumptive imprisonment pursuant to the sen-
26 tencing guidelines grid ~~for non-drug crimes~~ and the sentencing range ex-
27 ceeds 300 months. In such case, the defendant is required to serve a
28 mandatory minimum term equal to the sentence established pursuant to
29 the sentencing range.
- 30 (b) (1) On and after July 1, 2006, if a defendant who is 18 years of
31 age or older is convicted of a crime listed in subsection (a)(1) and such
32 defendant has previously been convicted of a crime listed in subsection
33 (a)(1), a crime in effect at any time prior to the effective date of this act
34 which is substantially the same as a crime listed in subsection (a)(1) or a
35 crime under a law of another jurisdiction which is substantially the same
36 as a crime listed in subsection (a)(1), the court shall sentence the de-
37 fendant to a term of imprisonment for life with a mandatory minimum
38 term of imprisonment of not less than 40 years. The provisions of this
39 paragraph shall not apply to a crime committed under K.S.A. 21-3522,
40 and amendments thereto, or a crime under a law of another jurisdiction
41 which is substantially the same as K.S.A. 21-3522, and amendments
42 thereto.
- 43 (2) The provision of paragraph (1) requiring a mandatory minimum

1 term of imprisonment of not less than 40 years shall not apply if the court
2 finds:

3 (A) The defendant is an aggravated habitual sex offender and sen-
4 tenced pursuant to K.S.A. 21-4642, and amendments thereto; or

5 (B) the defendant, because of the defendant's criminal history clas-
6 sification, is subject to presumptive imprisonment pursuant to the sen-
7 tencing guidelines grid ~~for non-drug crimes~~ and the sentencing range ex-
8 ceeds 480 months. In such case, the defendant is required to serve a
9 mandatory minimum term equal to the sentence established pursuant to
10 the sentencing range.

11 (c) When a person is sentenced pursuant to subsection (a) or (b),
12 such person shall be sentenced to a mandatory minimum term of im-
13 prisonment of not less than 25 years, 40 years or be sentenced as deter-
14 mined in subsection (a)(2) or subsection (b)(2), whichever is applicable,
15 and shall not be eligible for probation or suspension, modification or
16 reduction of sentence. In addition, a person sentenced pursuant to this
17 section shall not be eligible for parole prior to serving such mandatory
18 term of imprisonment, and such imprisonment shall not be reduced by
19 the application of good time credits.

20 (d) On or after July 1, 2006, for a first time conviction of an offense
21 listed in paragraph (a)(1), the sentencing judge shall impose the manda-
22 tory minimum term of imprisonment provided by subsection (a), unless
23 the judge finds substantial and compelling reasons, following a review of
24 mitigating circumstances, to impose a departure. If the sentencing judge
25 departs from such mandatory minimum term of imprisonment, the judge
26 shall state on the record at the time of sentencing the substantial and
27 compelling reasons for the departure. The departure sentence shall be
28 the sentence pursuant to the sentencing guidelines act, K. S. A. 21-4701
29 et seq., and amendments thereto, and no sentence of a mandatory min-
30 imum term of imprisonment shall be imposed hereunder. as used in this
31 subsection, mitigating circumstances shall include, but are not limited to,
32 the following:

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

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

36 (3) The victim was an accomplice in the crime committed by another
37 person, and the defendant's participation was relatively minor.

38 (4) The defendant acted under extreme distress or under the sub-
39 stantial domination of another person.

40 (5) The capacity of the defendant to appreciate the criminality of the
41 defendant's conduct or to conform the defendant's conduct to the
42 requirements of law was substantially impaired.

43 (6) The age of the defendant at the time of the crime.

- 1 Sec. 43. K.S.A. 21-4703 is hereby amended to read as follows: 21-
2 4703. As used in this act:
- 3 (a) “Aggravating factors” mean substantial and compelling reasons
4 justifying an exceptional sentence whereby the sentencing court may im-
5 pose a departure sentence outside the standard sentencing range for a
6 crime. Aggravating factors may result in dispositional or durational de-
7 partures and shall be stated on the record by the court;
- 8 (b) “commission” means the Kansas sentencing commission;
- 9 (c) “criminal history” means and includes adult felony, class A mis-
10 demeanor, class B person misdemeanor, or select misdemeanor convic-
11 tions and comparable juvenile adjudications possessed by an offender at
12 the time such offender is sentenced;
- 13 (d) “criminal history score” means the summation of the convictions
14 described as criminal history that place an offender in one of the criminal
15 history score categories listed on the horizontal axis of the sentencing
16 guidelines grid ~~for nondrug crimes and the sentencing guidelines grid for~~
17 ~~drug crimes~~;
- 18 (e) “decay factor” means prior convictions that are no longer consid-
19 ered as part of an offender’s criminal history score;
- 20 (f) “departure” means a sentence which is inconsistent with the pre-
21 sumptive sentence for an offender;
- 22 (g) “dispositional departure” means a sentence which is inconsistent
23 with the presumptive sentence by imposing a nonprison sanction when
24 the presumptive sentence is prison or prison when the presumptive sen-
25 tence is nonimprisonment;
- 26 (h) “dispositional line” means the solid black line on the sentencing
27 guidelines grid ~~for nondrug crimes and the sentencing guidelines grid for~~
28 ~~drug crimes~~ which separates the grid blocks in which the presumptive
29 sentence is a term of imprisonment and postrelease supervision from the
30 grid blocks in which the presumptive sentence is nonimprisonment which
31 may include local custodial sanctions;
- 32 (i) “durational departure” means a sentence which is inconsistent
33 with the presumptive sentence as to term of imprisonment, or term of
34 nonimprisonment;
- 35 (j) “good time” means a method of behavior control or sanctions util-
36 ized by the department of corrections. Good time can result in a decrease
37 of up to 20% of the prison part of the sentence.
- 38 (k) “grid” means the sentencing guidelines grid ~~for nondrug crimes~~
39 ~~as provided in K.S.A. 21-4704 or the sentencing guidelines grid for drug~~
40 ~~crimes as provided in K.S.A. 21-4705, or both, and amendments thereto~~;
- 41 (l) “grid block” means a box on the grid formed by the intersection
42 of the crime severity ranking of a current crime of conviction and an
43 offender’s criminal history classification;

- 1 (m) “imprisonment” means imprisonment in a facility operated by
2 the Kansas department of corrections;
- 3 (n) “mitigating factors” means substantial and compelling reasons jus-
4 tifying an exceptional sentence whereby the sentencing court may impose
5 a departure sentence outside of the standard sentencing range for an
6 offense. Mitigating factors may result in dispositional or durational de-
7 partures and shall be stated on the record by the court;
- 8 (o) “nonimprisonment,” “nonprison” or “nonprison sanction” means
9 probation, community corrections, conservation camp, house arrest or
10 any other community based disposition;
- 11 (p) “postrelease supervision” means the release of a prisoner to the
12 community after having served a period of imprisonment or equivalent
13 time served in a facility where credit for time served is awarded as set
14 forth by the court, subject to conditions imposed by the Kansas parole
15 board and to the secretary of correction’s supervision;
- 16 (q) “presumptive sentence” means the sentence provided in a grid
17 block for an offender classified in that grid block by the combined effect
18 of the crime severity ranking of the current crime of conviction and the
19 offender’s criminal history;
- 20 (r) “prison” means a facility operated by the Kansas department of
21 corrections; and
- 22 (s) “sentencing range” means the sentencing court’s discretionary
23 range in imposing a nonappealable sentence.
- 24 Sec. 44. K.S.A. 2009 Supp. 21-4704 is hereby amended to read as
25 follows: 21-4704. (a) For purposes of sentencing, the following sentencing
26 guidelines grid ~~for non-drug crimes~~ shall be applied in felony cases for
27 crimes committed on or after July 1, 1993:
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SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	6 5 5

LEGEND
Presumptive Probation
6 Months
Presumptive Imprisonment

- 1 (b) The provisions of this section shall be applicable to the sentencing
2 guidelines grid ~~for nondrug crimes~~. Sentences expressed in such grid
3 represent months of imprisonment.
- 4 (c) The sentencing guidelines grid is a two-dimensional crime severity
5 and criminal history classification tool. The grid's vertical axis is the crime
6 severity scale which classifies current crimes of conviction. The grid's
7 horizontal axis is the criminal history scale which classifies criminal
8 histories.
- 9 (d) The sentencing guidelines grid ~~for nondrug crimes~~ as provided in
10 this section defines presumptive punishments for felony convictions, sub-
11 ject to judicial discretion to deviate for substantial and compelling reasons
12 and impose a different sentence in recognition of aggravating and miti-
13 gating factors as provided in this act. The appropriate punishment for a
14 felony conviction should depend on the severity of the crime of conviction
15 when compared to all other crimes and the offender's criminal history.
- 16 (e) (1) The sentencing court has discretion to sentence at any place
17 within the sentencing range. The sentencing judge shall select the center
18 of the range in the usual case and reserve the upper and lower limits for
19 aggravating and mitigating factors insufficient to warrant a departure.
- 20 (2) In presumptive imprisonment cases, the sentencing court shall
21 pronounce the complete sentence which shall include the prison sen-
22 tence, the maximum potential reduction to such sentence as a result of
23 good time and the period of postrelease supervision at the sentencing
24 hearing. Failure to pronounce the period of postrelease supervision shall
25 not negate the existence of such period of postrelease supervision.
- 26 (3) In presumptive nonprison cases, the sentencing court shall pro-
27 nounce the prison sentence as well as the duration of the nonprison sanc-
28 tion at the sentencing hearing.
- 29 (f) (1) Each grid block states the presumptive sentencing range for
30 an offender whose crime of conviction and criminal history place such
31 offender in that grid block. If an offense is classified in a grid block below
32 the dispositional line, the presumptive disposition shall be
33 nonimprisonment.
- 34 (2) (A) If an offense is classified in a grid block above the disposi-
35 tional line, the presumptive disposition shall be imprisonment. If an of-
36 fense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose
37 an optional nonprison sentence upon making the following findings on
38 the record:
- 39 ~~(1)~~ (i) An appropriate treatment *or behavior modification* program
40 exists which is likely to be more effective than the presumptive prison
41 term in reducing the risk of offender recidivism; and
- 42 ~~(2)~~ (ii) the recommended ~~treatment~~ program is available and the of-
43 fender can be admitted to such program within a reasonable period of

1 time; or

2 ~~(B)~~ (iii) the nonprison sanction will serve community safety interests
3 by promoting offender reformation.

4 **(B) Any party requesting the nonprison sentence be served by**
5 **attending and successfully completing a treatment or behavioral**
6 **modification program shall notify the court and opposing counsel**
7 **prior to sentencing of the proposed program. The presentence**
8 **investigation report by the court services officer shall verify the**
9 **availability of the program and the adequacy of the provider of**
10 **such program and the treatment or behavioral modification plan.**

11 ~~(B)~~ (C) Any decision made by the court regarding the imposition of
12 an optional nonprison sentence if the offense is classified in grid blocks
13 5-H, 5-I or 6-G shall not be considered a departure and shall not be
14 subject to appeal.

15 (g) The sentence for the violation of K.S.A. 21-3415, and amend-
16 ments thereto, aggravated battery against a law enforcement officer com-
17 mitted prior to July 1, 2006, or K.S.A. 21-3411, and amendments thereto,
18 aggravated assault against a law enforcement officer, which places the
19 defendant's sentence in grid block 6-H or 6-I shall be presumed impris-
20 onment. The court may impose an optional nonprison sentence upon
21 making a finding on the record that the nonprison sanction will serve
22 community safety interests by promoting offender reformation. Any deci-
23 sion made by the court regarding the imposition of the optional non-
24 prison sentence, if the offense is classified in grid block 6-H or 6-I, shall
25 not be considered departure and shall not be subject to appeal.

26 (h) When a firearm is used to commit any person felony, the of-
27 fender's sentence shall be presumed imprisonment. The court may im-
28 pose an optional nonprison sentence upon making a finding on the record
29 that the nonprison sanction will serve community safety interests by pro-
30 moting offender reformation. Any decision made by the court regarding
31 the imposition of the optional nonprison sentence shall not be considered
32 a departure and shall not be subject to appeal.

33 (i) The sentence for the violation of the felony provision of K.S.A. 8-
34 1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4)
35 of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments
36 thereto, shall be as provided by the specific mandatory sentencing
37 requirements of that section and shall not be subject to the provisions of
38 this section or K.S.A. 21-4707 and amendments thereto. If because of the
39 offender's criminal history classification the offender is subject to pre-
40 sumptive imprisonment or if the judge departs from a presumptive pro-
41 bation sentence and the offender is subject to imprisonment, the provi-
42 sions of this section and K.S.A. 21-4707, and amendments thereto, shall
43 apply and the offender shall not be subject to the mandatory sentence as

1 provided in K.S.A. 21-3710, and amendments thereto. Notwithstanding
2 the provisions of any other section, the term of imprisonment imposed
3 for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3)
4 of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710,
5 K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall not
6 be served in a state facility in the custody of the secretary of corrections,
7 except that the term of imprisonment for felony violations of K.S.A. 8-
8 1567, and amendments thereto, may be served in a state correctional
9 facility designated by the secretary of corrections if the secretary deter-
10 mines that substance abuse treatment resources and facility capacity is
11 available. The secretary's determination regarding the availability of treat-
12 ment resources and facility capacity shall not be subject to review.

13 (j) (1) The sentence for any persistent sex offender whose current
14 convicted crime carries a presumptive term of imprisonment shall be
15 double the maximum duration of the presumptive imprisonment term.
16 The sentence for any persistent sex offender whose current conviction
17 carries a presumptive nonprison term shall be presumed imprisonment
18 and shall be double the maximum duration of the presumptive impris-
19 onment term.

20 (2) Except as otherwise provided in this subsection, as used in this
21 subsection, "persistent sex offender" means a person who: (A) (i) Has
22 been convicted in this state of a sexually violent crime, as defined in K.S.A.
23 22-3717 and amendments thereto; and (ii) at the time of the conviction
24 under paragraph (A) (i) has at least one conviction for a sexually violent
25 crime, as defined in K.S.A. 22-3717 and amendments thereto in this state
26 or comparable felony under the laws of another state, the federal gov-
27 ernment or a foreign government; or (B) (i) has been convicted of rape,
28 K.S.A. 21-3502, and amendments thereto; and (ii) at the time of the
29 conviction under paragraph (B) (i) has at least one conviction for rape in
30 this state or comparable felony under the laws of another state, the federal
31 government or a foreign government.

32 (3) Except as provided in paragraph (2)(B), the provisions of this sub-
33 section shall not apply to any person whose current convicted crime is a
34 severity level 1 or 2 felony.

35 (k) If it is shown at sentencing that the offender committed any felony
36 violation for the benefit of, at the direction of, or in association with any
37 criminal street gang, with the specific intent to promote, further or assist
38 in any criminal conduct by gang members, the offender's sentence shall
39 be presumed imprisonment. Any decision made by the court regarding
40 the imposition of the optional nonprison sentence shall not be considered
41 a departure and shall not be subject to appeal. As used in this subsection,
42 "criminal street gang" means any organization, association or group of
43 three or more persons, whether formal or informal, having as one of its

1 primary activities the commission of one or more person felonies or felony
2 violations of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amend-
3 ments thereto, which has a common name or common identifying sign
4 or symbol, whose members, individually or collectively engage in or have
5 engaged in the commission, attempted commission, conspiracy to commit
6 or solicitation of two or more person felonies or felony violations of K.S.A.
7 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, or any
8 substantially similar offense from another jurisdiction.

9 (l) Except as provided in subsection (o), the sentence for a violation
10 of subsection (a) of K.S.A. 21-3715 and amendments thereto when such
11 person being sentenced has a prior conviction for a violation of subsection
12 (a) or (b) of K.S.A. 21-3715 or 21-3716 and amendments thereto shall be
13 presumed imprisonment.

14 (m) The sentence for a violation of K.S.A. 22-4903 or subsection (d)
15 of K.S.A. 21-3812, and amendments thereto, shall be presumptive im-
16 prisonment. If an offense under such sections is classified in grid blocks
17 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison
18 sentence upon making the following findings on the record:

19 (1) An appropriate treatment program exists which is likely to be
20 more effective than the presumptive prison term in reducing the risk of
21 offender recidivism, such program is available and the offender can be
22 admitted to such program within a reasonable period of time; or

23 (2) the nonprison sanction will serve community safety interests by
24 promoting offender reformation.

25 Any decision made by the court regarding the imposition of an optional
26 nonprison sentence pursuant to this section shall not be considered a
27 departure and shall not be subject to appeal.

28 (n) The sentence for a third or subsequent violation of subsection (b)
29 of K.S.A. 21-3705, and amendments thereto, shall be presumptive im-
30 prisonment. Such sentence shall not be considered a departure and shall
31 not be subject to appeal.

32 (o) The sentence for a felony violation of K.S.A. 21-3701 or 21-3715,
33 and amendments thereto, when such person being sentenced has no prior
34 convictions for a violation of K.S.A. 21-3701 or 21-3715, and amendments
35 thereto; or the sentence for a felony violation of K.S.A. 21-3701, and
36 amendments thereto, when such person being sentenced has one or two
37 prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-
38 3716, and amendments thereto; or the sentence for a felony violation of
39 K.S.A. 21-3715, and amendments thereto, when such person being sen-
40 tenced has one prior felony conviction for a violation of K.S.A. 21-3701,
41 21-3715 or 21-3716, and amendments thereto, shall be the sentence as
42 provided by this section, except that the court may order an optional
43 nonprison sentence for a defendant to participate in a drug treatment

1 program, including, but not limited to, an approved after-care plan, if the
2 court makes the following findings on the record:

3 (1) Substance abuse was an underlying factor in the commission of
4 the crime;

5 (2) substance abuse treatment in the community is likely to be more
6 effective than a prison term in reducing the risk of offender recidivism;
7 and

8 (3) participation in an intensive substance abuse treatment program
9 will serve community safety interests.

10 A defendant sentenced to an optional nonprison sentence under this
11 subsection shall be supervised by community correctional services. The
12 provisions of subsection (f)(1) of K.S.A. 21-4729, and amendments
13 thereto, shall apply to a defendant sentenced under this subsection.

14 The sentence under this subsection shall not be considered a departure
15 and shall not be subject to appeal.

16 (p) The sentence for a felony violation of K.S.A. 21-3701, and amend-
17 ments thereto, when such person being sentenced has any combination
18 of three or more prior felony convictions for violations of K.S.A. 21-3701,
19 21-3715 or 21-3716 and amendments thereto, or the sentence for a vio-
20 lation of K.S.A. 21-3715, and amendments thereto, when such person
21 being sentenced has any combination of two or more prior convictions
22 for violations of K.S.A. 21-3701, 21-3715 and 21-3716, and amendments
23 thereto, shall be presumed imprisonment and the defendant shall be sen-
24 tenced to prison as provided by this section, except that the court may
25 recommend that an offender be placed in the custody of the secretary of
26 corrections, in a facility designated by the secretary to participate in an
27 intensive substance abuse treatment program, upon making the following
28 findings on the record:

29 (1) Substance abuse was an underlying factor in the commission of
30 the crime;

31 (2) substance abuse treatment with a possibility of an early release
32 from imprisonment is likely to be more effective than a prison term in
33 reducing the risk of offender recidivism; and

34 (3) participation in an intensive substance abuse treatment program
35 with the possibility of an early release from imprisonment will serve com-
36 munity safety interests by promoting offender reformation.

37 The intensive substance abuse treatment program shall be determined
38 by the secretary of corrections, but shall be for a period of at least four
39 months. Upon the successful completion of such intensive treatment pro-
40 gram, the offender shall be returned to the court and the court may
41 modify the sentence by directing that a less severe penalty be imposed
42 in lieu of that originally adjudged within statutory limits. If the offender's
43 term of imprisonment expires, the offender shall be placed under the

1 applicable period of postrelease supervision.

2 The sentence under this subsection shall not be considered a departure
3 and shall not be subject to appeal.

4 (q) The sentence for a violation of subsection (a)(2) of K.S.A. 21-
5 3413, and amendments thereto, shall be presumptive imprisonment and
6 shall be served consecutively to any other term or terms of imprisonment
7 imposed. Such sentence shall not be considered a departure and shall not
8 be subject to appeal.

9 (r) *If an offender is convicted of a violation of article 36a of chapter*
10 *21 of the Kansas Statutes Annotated, and amendments thereto, and such*
11 *offender's crime of conviction and criminal history place such offender in*
12 *a grid block with a maximum presumptive sentence greater than 204*
13 *months, such offender shall not be sentenced to a term of imprisonment*
14 *greater than 204 months. Such sentence shall not be considered a depart-*
15 *ure and shall not be subject to appeal.*

16 (s) (1) ~~Subject to~~ **[Notwithstanding]** *the provisions of subsection (r),*
17 *the sentence for a person who is convicted of a drug offense who has been*
18 *convicted of:*

19 (A) *One prior drug offense, or any substantially similar offense from*
20 *another jurisdiction, shall be presumed imprisonment and may be up to*
21 *double the maximum duration of the presumptive imprisonment term; or*

22 (B) *two or more prior drug offenses, or any substantially similar of-*
23 *fense from another jurisdiction, shall be presumed imprisonment and may*
24 *be up to triple the maximum duration of the presumptive imprisonment*
25 *term.*

26 (2) *Such sentence shall not be considered a departure and shall not*
27 *be subject to appeal.*

28 (3) *As used in this subsection, "drug offense" means a violation of*
29 *subsection (d)(1)(B), (d)(1)(C), (d)(1)(D), (d)(2)(B), (d)(2)(C), (d)(2)(D),*
30 *(d)(3)(B), (d)(3)(C), (d)(3)(D), (d)(4)(B), (d)(4)(C), or (d)(4)(D) of K.S.A.*
31 *21-36a05, and amendments thereto.*

32 **(t) The sentencing court shall not distinguish between the controlled substances cocaine base (9041L000) and cocaine hydrochloride (9041L005) when sentencing within the sentencing range of the grid block.**

36 Sec. 45. K.S.A. 21-4706 is hereby amended to read as follows: 21-
37 4706. (a) For crimes committed on or after July 1, 1993, the sentences
38 of imprisonment shall represent the time a person shall actually serve,
39 subject to a reduction of up to 15% of the primary sentence for good
40 time as authorized by law. For crimes committed on or after January 1,
41 2008, the sentences of imprisonment shall represent the time a person
42 shall actually serve, subject to a reduction of up to 20% of the primary
43 sentence for good time for drug severity level 3 or 4, *prior to such level's*

1 *repeal*, or ~~non-drug~~ severity level 7 through 10 crimes and a reduction for
2 program credit as authorized by K.S.A. 21-4722, and amendments
3 thereto.

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

5 (c) Violations of K.S.A. 21-3401, 21-3439, 21-3449, 21-3450 and 21-
6 3801, and amendments thereto, are off-grid crimes for the purpose of
7 sentencing. Except as otherwise provided by K.S.A. 21-4622 through 21-
8 4627, and 21-4629 through 21-4631, and amendments thereto, the sen-
9 tence shall be imprisonment for life and shall not be subject to statutory
10 provisions for suspended sentence, community service or probation.

11 (d) As identified in K.S.A. 21-3447, 21-3502, 21-3504, 21-3506, 21-
12 3513 and 21-3516, and amendments thereto, if the offender is 18 years
13 of age or older and the victim is under 14 years of age, such violations
14 are off-grid crimes for the purposes of sentencing. Except as provided in
15 K.S.A. 21-4642, and amendments thereto, the sentence shall be impris-
16 onment for life pursuant to K.S.A. 21-4643, and amendments thereto.

17 Sec. 46. K.S.A. 21-4707 is hereby amended to read as follows: 21-
18 4707. (a) The crime severity scale contained in the sentencing guidelines
19 ~~grid for non-drug crimes~~ as provided in K.S.A. 21-4704 and amendments
20 thereto consists of 10 levels of crimes. Crimes listed within each level are
21 considered to be relatively equal in severity. Level 1 crimes are the most
22 severe crimes and level 10 crimes are the least severe crimes. If a person
23 is convicted of two or more crimes, then the severity level shall be de-
24 termined by the most severe crime of conviction.

25 (b) When the statutory definition of a crime includes a broad range
26 of criminal conduct, the crime may be subclassified factually in more than
27 one crime category to capture the full range of criminal conduct covered
28 by the crime.

29 (c) The provisions of this subsection shall be applicable with regard
30 to ranking offenses according to the crime severity scale as provided in
31 this section:

32 (1) When considering an unranked offense in relation to the crime
33 severity scale, the sentencing judge should refer to comparable offenses
34 on the crime severity scale.

35 (2) Except for off-grid felony crimes, which are classified as person
36 felonies, all felony crimes omitted from the crime severity scale shall be
37 considered nonperson felonies.

38 (3) All unclassified felonies shall be scored as level 10 nonperson
39 crimes.

40 (4) The offense severity level of a crime for which the court has ac-
41 cepted a plea of guilty or nolo contendere pursuant to K.S.A. 22-3210
42 and amendments thereto, or of a crime of which the defendant has been
43 convicted shall not be elevated or enhanced for sentencing purposes as a

1 result of the discovery of prior convictions or any other basis for such
 2 enhancement subsequent to the acceptance of the plea or conviction. Any
 3 such prior convictions discovered after the plea has been accepted by the
 4 court shall be counted in the determination of the criminal history of the
 5 offender.

6 **(d) No plea bargaining agreement may be entered into**
 7 **whereby the prosecutor agrees to decline to use a prior drug conviction**
 8 **of the defendant to elevate or enhance the severity level of**
 9 **a drug crime as provided in K.S.A. 2009 Supp. 21-36a03, 21-36a05**
 10 **or 21-36a06, and amendments thereto, or agrees to exclude any**
 11 **prior conviction from the defendant's criminal history.**

12 Sec. 47. K.S.A. 21-4709 is hereby amended to read as follows: 21-
 13 4709. The criminal history scale is represented in abbreviated form on
 14 the horizontal axis of the sentencing guidelines grid ~~for nondrug crimes~~
 15 ~~and the sentencing guidelines grid for drug crimes~~. The relative severity
 16 of each criminal history category decreases from left to right on ~~such grids~~
 17 *the grid*. Criminal history category A is the most serious classification.
 18 Criminal history category I is the least serious classification. The criminal
 19 history categories in the criminal history scale are:

20 Criminal

21 History

22 Category

Descriptive Criminal History

- 23 A The offender's criminal history includes three or more adult convictions or juvenile
 24 adjudications, in any combination, for person felonies.
- 25 B The offender's criminal history includes two adult convictions or juvenile adjudica-
 26 tions, in any combination, for person felonies.
- 27 C The offender's criminal history includes one adult conviction or juvenile adjudication
 28 for a person felony, and one or more adult conviction or juvenile adjudication for a
 29 nonperson felony.
- 30 D The offender's criminal history includes one adult conviction or juvenile adjudication
 31 for a person felony, but no adult conviction or juvenile adjudications for a nonperson
 32 felony.
- 33 E The offender's criminal history includes three or more adult convictions or juvenile
 34 adjudications for nonperson felonies, but no adult conviction or juvenile adjudication
 35 for a person felony.
- 36 F The offender's criminal history includes two adult convictions or juvenile adjudica-
 37 tions for nonperson felonies, but no adult conviction or juvenile adjudication for a
 38 person felony.
- 39 G The offender's criminal history includes one adult conviction or juvenile adjudication
 40 for a nonperson felony, but no adult conviction or juvenile adjudication for a person
 41 felony.

42

43

1 H The offender's criminal history includes two or more adult convictions or juvenile
2 adjudications for nonperson and/or select misdemeanors, and no more than two adult
3 convictions or juvenile adjudications for person misdemeanors, but no adult convic-
4 tion or juvenile adjudication for either a person or nonperson felony.

5 I The offender's criminal history includes no prior record; or, one adult conviction or
6 juvenile adjudication for a person, nonperson, or select misdemeanor, but no adult
7 conviction or juvenile adjudication for either a person or nonperson felony.

8 Sec. 48. K.S.A. 21-4710 is hereby amended to read as follows: 21-
9 4710. (a) Criminal history categories contained in the sentencing guide-
10 lines grid ~~for nondrug crimes and the sentencing guidelines grid for drug~~
11 ~~crimes~~ are based on the following types of prior convictions: Person felony
12 adult convictions, nonperson felony adult convictions, person felony ju-
13 venile adjudications, nonperson felony juvenile adjudications, person mis-
14 demeanor adult convictions, nonperson class A misdemeanor adult con-
15 victions, person misdemeanor juvenile adjudications, nonperson class A
16 misdemeanor juvenile adjudications, select class B nonperson misde-
17 meanor adult convictions, select class B nonperson misdemeanor juvenile
18 adjudications and convictions and adjudications for violations of municipal
19 ordinances or county resolutions which are comparable to any crime clas-
20 sified under the state law of Kansas as a person misdemeanor, select
21 nonperson class B misdemeanor or nonperson class A misdemeanor. A
22 prior conviction is any conviction, other than another count in the current
23 case which was brought in the same information or complaint or which
24 was joined for trial with other counts in the current case pursuant to
25 K.S.A. 22-3203 and amendments thereto, which occurred prior to sen-
26 tencing in the current case regardless of whether the offense that led to
27 the prior conviction occurred before or after the current offense or the
28 conviction in the current case.

29 (b) A class B nonperson select misdemeanor is a special classification
30 established for weapons violations. Such classification shall be considered
31 and scored in determining an offender's criminal history classification.

32 (c) Except as otherwise provided, all convictions, whether sentenced
33 consecutively or concurrently, shall be counted separately in the of-
34 fender's criminal history.

35 (d) Except as provided in K.S.A. 21-4716, and amendments thereto,
36 the following are applicable to determining an offender's criminal history
37 classification:

38 (1) Only verified convictions will be considered and scored.

39 (2) All prior adult felony convictions, including expungements, will
40 be considered and scored.

41 (3) There will be no decay factor applicable for adult convictions.

42 (4) Except as otherwise provided, a juvenile adjudication, which
43 would have been a nonperson class D or E felony if committed before

1 July 1, 1993, or a ~~non~~*drug severity* level 6, 7, 8, 9 or 10, or drug level 4,
2 *prior to such level's repeal*, nonperson felony if committed on or after
3 July 1, 1993, or a misdemeanor if committed by an adult, will decay if
4 the current crime of conviction is committed after the offender reaches
5 the age of 25.

6 (5) For convictions of crimes committed before July 1, 1993, a ju-
7 venile adjudication which would constitute a class A, B or C felony, if
8 committed by an adult, will not decay. For convictions of crimes com-
9 mitted on or after July 1, 1993, a juvenile adjudication which would con-
10 stitute an off-grid felony, a ~~non~~*drug severity* level 1, 2, 3, 4 or 5 felony,
11 or a drug severity level 1, 2 or 3 felony, *prior to such level's repeal*, if
12 committed by an adult, will not decay.

13 (6) All juvenile adjudications which would constitute a person felony
14 will not decay or be forgiven.

15 (7) All person misdemeanors, class A nonperson misdemeanors and
16 class B select nonperson misdemeanors, and all municipal ordinance and
17 county resolution violations comparable to such misdemeanors, shall be
18 considered and scored.

19 (8) Unless otherwise provided by law, unclassified felonies and mis-
20 demeanors, shall be considered and scored as nonperson crimes for the
21 purpose of determining criminal history.

22 (9) Prior convictions of a crime defined by a statute which has since
23 been repealed shall be scored using the classification assigned at the time
24 of such conviction.

25 (10) Prior convictions of a crime defined by a statute which has since
26 been determined unconstitutional by an appellate court shall not be used
27 for criminal history scoring purposes.

28 (11) Prior convictions of any crime shall not be counted in determin-
29 ing the criminal history category if they enhance the severity level or
30 applicable penalties, elevate the classification from misdemeanor to fel-
31 ony, or are elements of the present crime of conviction. Except as oth-
32 erwise provided, all other prior convictions will be considered and scored.

33 Sec. 49. K.S.A. 21-4711 is hereby amended to read as follows: 21-
34 4711. In addition to the provisions of K.S.A. 21-4710 and amendments
35 thereto, the following shall apply in determining an offender's criminal
36 history classification as contained in the presumptive sentencing guide-
37 lines grid ~~for non~~*drug crimes* and the presumptive sentencing guidelines
38 grid for drug crimes, *prior to the grid's repeal*:

39 (a) Every three prior adult convictions or juvenile adjudications of
40 class A and class B person misdemeanors in the offender's criminal his-
41 tory, or any combination thereof, shall be rated as one adult conviction
42 or one juvenile adjudication of a person felony for criminal history pur-
43 poses. Every three prior adult convictions or juvenile adjudications of

1 assault as defined in K.S.A. 21-3408, and amendments thereto, occurring
2 within a period commencing three years prior to the date of conviction
3 for the current crime of conviction shall be rated as one adult conviction
4 or one juvenile adjudication of a person felony for criminal history
5 purposes.

6 (b) A conviction of subsection (a)(1) of K.S.A. 21-4204, and amend-
7 ments thereto, criminal possession of firearms by a person who is both
8 addicted to and an unlawful user of a controlled substance, subsection
9 (a)(4) of K.S.A. 21-4204, and amendments thereto, possession of a firearm
10 on school grounds or K.S.A. 21-4218, and amendments thereto, posses-
11 sion of a firearm on the grounds or in the state capitol building, will be
12 scored as a select class B nonperson misdemeanor conviction or adjudi-
13 cation and shall not be scored as a person misdemeanor for criminal
14 history purposes.

15 (c) (1) If the current crime of conviction was committed before July
16 1, 1996, and is for subsection (b) of K.S.A. 21-3404, *and amendments*
17 *thereto*, involuntary manslaughter in the commission of K.S.A. 8-1567,
18 and amendments thereto, driving under the influence, then, each prior
19 adult conviction or juvenile adjudication for K.S.A. 8-1567, and amend-
20 ments thereto, shall count as one person felony for criminal history
21 purposes.

22 (2) If the current crime of conviction was committed on or after July
23 1, 1996, and is for a violation of an act described in K.S.A. 21-3442, and
24 amendments thereto, each prior adult conviction, diversion in lieu of
25 criminal prosecution or juvenile adjudication for: (A) An act described in
26 K.S.A. 8-1567, and amendments thereto; or (B) a violation of a law of
27 another state or an ordinance of any city, or resolution of any county,
28 which prohibits the act described in K.S.A. 8-1567, and amendments
29 thereto, shall count as one person felony for criminal history purposes.

30 (d) Prior burglary adult convictions and juvenile adjudications will be
31 scored for criminal history purposes as follows:

32 (1) As a prior person felony if the prior conviction or adjudication
33 was classified as a burglary as described in subsection (a) of K.S.A. 21-
34 3715, and amendments thereto.

35 (2) As a prior nonperson felony if the prior conviction or adjudication
36 was classified as a burglary as described in subsection (b) or (c) of K.S.A.
37 21-3715, and amendments thereto.

38 The facts required to classify prior burglary adult convictions and ju-
39 venile adjudications must be established by the state by a preponderance
40 of the evidence.

41 (e) Out-of-state convictions and juvenile adjudications will be used in
42 classifying the offender's criminal history. An out-of-state crime will be
43 classified as either a felony or a misdemeanor according to the convicting

1 jurisdiction. If a crime is a felony in another state, it will be counted as a
2 felony in Kansas. The state of Kansas shall classify the crime as person or
3 nonperson. In designating a crime as person or nonperson comparable
4 offenses shall be referred to. If the state of Kansas does not have a com-
5 parable offense, the out-of-state conviction shall be classified as a non-
6 person crime. Convictions or adjudications occurring within the federal
7 system, other state systems, the District of Columbia, foreign, tribal or
8 military courts are considered out-of-state convictions or adjudications.
9 The facts required to classify out-of-state adult convictions and juvenile
10 adjudications must be established by the state by a preponderance of the
11 evidence.

12 (f) Except as provided in subsections (4), (5) and (6) of K.S.A. 21-
13 4710, and amendments thereto, juvenile adjudications will be applied in
14 the same manner as adult convictions. Out-of-state juvenile adjudications
15 will be treated as juvenile adjudications in Kansas.

16 (g) A prior felony conviction of an attempt, a conspiracy or a solici-
17 tation as provided in K.S.A. 21-3301, 21-3302 or 21-3303, and amend-
18 ments thereto, to commit a crime shall be treated as a person or non-
19 person crime in accordance with the designation assigned to the
20 underlying crime.

21 (h) Drug crimes *designated as a drug severity level, prior to the repeal*
22 *of the grid for drug crimes*, are designated as nonperson crimes for crim-
23 inal history scoring.

24 Sec. 50. K.S.A. 2009 Supp. 21-4717 is hereby amended to read as
25 follows: 21-4717. (a) The following aggravating factors, which apply to
26 drug crimes committed on or after July 1, 1993, *through June 30, 2009,*
27 *and to K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments*
28 *thereto, on and after July 1, 2009*, under the sentencing guidelines system,
29 may be considered in determining whether substantial and compelling
30 reasons for departure exist:

31 (1) The crime was committed as part of a major organized drug man-
32 ufacture, cultivation or distribution activity. Two or more of the following
33 nonexclusive factors constitute evidence of major organized drug manu-
34 facture, cultivation or distribution activity:

35 (A) The offender derived a substantial amount of money or asset
36 ownership from the illegal drug distribution activity.

37 (B) The presence of a substantial quantity or variety of weapons or
38 explosives at the scene of arrest or associated with the illegal drug activity.

39 (C) The presence of drug transaction records or customer lists that
40 indicate a drug distribution activity of major size.

41 (D) The presence of manufacturing or distribution materials such as,
42 but not limited to, drug recipes, precursor chemicals, laboratory equip-
43 ment, lighting, irrigation systems, ventilation, power-generation, scales or

1 packaging material.

2 (E) Building acquisitions or building modifications including but not
3 limited to painting, wiring, plumbing or lighting which advanced or fa-
4 cilitated the commission of the offense.

5 (F) Possession of large amounts of illegal drugs or substantial quan-
6 tities of controlled substances.

7 (G) A showing that the offender has engaged in repeated criminal
8 acts associated with the manufacture, cultivation or distribution of con-
9 trolled substances.

10 (2) The offender possessed illegal drugs:

11 (A) With the intent to distribute or which were distributed or offered
12 for distribution to a person under 18 years of age; or

13 (B) with the intent to distribute or which were distributed or offered
14 for distribution in the immediate presence of a person under 18 years of
15 age.

16 (3) The offender, 18 or more years of age, employs, hires, uses, per-
17 suades, induces, entices or coerces any individual under 16 years of age
18 to violate or assist in avoiding detection or apprehension for violation of
19 any provision of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and
20 amendments thereto, or any attempt, conspiracy or solicitation as defined
21 in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, to com-
22 mit a violation of any provision of K.S.A. 2009 Supp. 21-36a01 through
23 21-36a17, and amendments thereto, regardless of whether the offender
24 knew the age of the individual under 16 years of age.

25 (4) The offender was incarcerated during the commission of the
26 offense.

27 (b) In determining whether aggravating factors exist as provided in
28 this section, the court shall review the victim impact statement.

29 Sec. 51. K.S.A. 21-4720 is hereby amended to read as follows: 21-
30 4720. (a) The provisions of subsections (a), (b), (c), (d), (e) and (h) of
31 K.S.A. 21-4608, and amendments thereto, regarding multiple sentences
32 shall apply to the sentencing of offenders for crimes committed on or
33 after July 1, 1993, pursuant to the sentencing guidelines system as pro-
34 vided in this act. The mandatory consecutive requirements contained in
35 subsections (c), (d) and (e) shall not apply if such application would result
36 in a manifest injustice.

37 (b) The sentencing judge shall otherwise have discretion to impose
38 concurrent or consecutive sentences in multiple conviction cases. The
39 sentencing judge shall state on the record if the sentence is to be served
40 concurrently or consecutively. In cases where consecutive sentences may
41 be imposed by the sentencing judge, the following shall apply:

42 (1) When the sentencing judge imposes multiple sentences consec-
43 utively, the consecutive sentences shall consist of an imprisonment term

1 which is the sum of the consecutive imprisonment terms, and a super-
2 vision term. The postrelease supervision term will be based on the longest
3 supervision term imposed for any of the crimes.

4 (2) The sentencing judge must establish a base sentence for the pri-
5 mary crime. The primary crime is the crime with the highest crime se-
6 verity ranking. An off-grid crime shall not be used as the primary crime
7 in determining the base sentence when imposing multiple sentences. If
8 sentences for off-grid and on-grid convictions are ordered to run consec-
9 utively, the offender shall not begin to serve the on-grid sentence until
10 paroled from the off-grid sentence, and the postrelease supervision term
11 will be based on the off-grid crime. If more than one crime of conviction
12 is classified in the same crime category, the sentencing judge must des-
13 ignate which crime will serve as the primary crime. ~~In the instance of~~
14 ~~sentencing with both the drug grid and the nondrug grid and simulta-~~
15 ~~neously having a presumption of imprisonment and probation, the sen-~~
16 ~~tencing judge will use the crime which presumes imprisonment as the~~
17 ~~primary crime. In the instance of sentencing with both the drug grid and~~
18 ~~the nondrug grid and simultaneously having a presumption of either both~~
19 ~~probation or both imprisonment, the sentencing judge will use the crime~~
20 ~~with the longest sentence term within the grid block range as the primary~~
21 ~~crime.~~

22 (3) The base sentence is set using the total criminal history score
23 assigned.

24 (4) The total prison sentence imposed in a case involving multiple
25 convictions arising from multiple counts within an information, complaint
26 or indictment cannot exceed twice the base sentence. This limit shall
27 apply only to the total sentence, and it shall not be necessary to reduce
28 the duration of any of the nonbase sentences imposed to be served con-
29 secutively to the base sentence. The postrelease supervision term will
30 reflect only the longest such term assigned to any of the crimes for which
31 consecutive sentences are imposed. Supervision periods will not be
32 aggregated.

33 (5) Nonbase sentences will not have criminal history scores applied,
34 as calculated in the criminal history I column of the grid, but base sen-
35 tences will have the full criminal history score assigned. In the event a
36 conviction designated as the primary crime in a multiple conviction case
37 is reversed on appeal, the appellate court shall remand the multiple con-
38 viction case for resentencing. Upon resentencing, if the case remains a
39 multiple conviction case the court shall follow all of the provisions of this
40 section concerning the sentencing of multiple conviction cases.

41 (6) If the sentence for the primary crime is a prison term, the entire
42 imprisonment term of the consecutive sentences will be served in prison.

43 (7) If the sentence for the consecutive sentences is a prison term, the

1 postrelease supervision term is a term of postrelease supervision as es-
2 tablished for the primary crime.

3 (8) If the sentence for the primary crime is a nonprison sentence, a
4 nonprison term will be imposed for each crime conviction, but the non-
5 prison terms shall not be aggregated or served consecutively even though
6 the underlying prison sentences have been ordered to be served consec-
7 utively. Upon revocation of the nonprison sentence, the offender shall
8 serve the prison sentences consecutively as provided in this section.

9 (c) The following shall apply for a departure from the presumptive
10 sentence based on aggravating factors within the context of consecutive
11 sentences:

12 (1) The court may depart from the presumptive limits for consecutive
13 sentences only if the judge finds substantial and compelling reasons to
14 impose a departure sentence for any of the individual crimes being sen-
15 tenced consecutively.

16 (2) When a departure sentence is imposed for any of the individual
17 crimes sentenced consecutively, the imprisonment term of that departure
18 sentence shall not exceed twice the maximum presumptive imprisonment
19 term that may be imposed for that crime.

20 (3) The total imprisonment term of the consecutive sentences, in-
21 cluding the imprisonment term for the departure crime, shall not exceed
22 twice the maximum presumptive imprisonment term of the departure
23 sentence following aggravation.

24 Sec. 52. K.S.A. 21-4722 is hereby amended to read as follows: 21-
25 4722. (a) For purposes of determining release of an inmate, the following
26 shall apply with regard to good time calculations:

27 (1) A system shall be developed whereby good behavior by inmates
28 is the expected norm and negative behavior will be punished; and

29 (2) the amount of good time which can be earned by an inmate and
30 subtracted from any sentence is limited to: (A) For a crime committed
31 on or after July 1, 1993, an amount equal to 15% of the prison part of
32 the sentence; or (B) for a drug severity level 3 or 4, *prior to such level's*
33 *repeal*, or a ~~non-drug~~ severity level 7 through 10 crime committed on or
34 after January 1, 2008, an amount equal to 20% of the prison part of the
35 sentence.

36 (b) Any time which is earned and subtracted from the prison part of
37 the sentence of any inmate pursuant to good time calculation shall be
38 added to such inmate's postrelease supervision obligation.

39 (c) The secretary of corrections is hereby authorized to adopt rules
40 and regulations to carry out the provisions of this section regarding good
41 time calculations. Such rules and regulations shall provide circumstances
42 upon which an inmate may earn good time credits and for the forfeiture
43 of earned credits and such circumstances may include factors substantially

- 1 related to program and work participation and conduct and the inmate's
2 willingness to examine and confront the past behavior patterns that re-
3 sulted in the commission of the inmate's crimes.
- 4 (d) An inmate shall not be awarded good time credits pursuant to
5 this section for any review period established by the secretary of correc-
6 tions in which a court finds that the inmate has done any of the following
7 while in the custody of the secretary of corrections:
- 8 (1) Filed a false or malicious action or claim with the court;
9 (2) brought an action or claim with the court solely or primarily for
10 delay or harassment;
11 (3) testified falsely or otherwise submitted false evidence or infor-
12 mation to the court;
13 (4) attempted to create or obtain a false affidavit, testimony or evi-
14 dence; or
15 (5) abused the discovery process in any judicial action or proceeding.
- 16 (e) (1) For purposes of determining release of an inmate who is serv-
17 ing only a sentence for a ~~non-drug~~ severity level 4 through 10 crime or a
18 drug severity level 3 or 4 crime, *prior to such level's repeal*, committed
19 on or after January 1, 2008, in addition to any good time credits earned
20 and retained, the following shall apply with regard to program credit
21 calculations:
- 22 (A) A system shall be developed whereby program credits may be
23 earned by inmates for the successful completion of a general education
24 diploma, a technical or vocational training program, a substance abuse
25 treatment program or any other program designated by the secretary
26 which has been shown to reduce offender's risk after release; and
27 (B) the amount of time which can be earned and retained by an
28 inmate for the successful completion of programs and subtracted from
29 any sentence is limited to not more than 60 days.
- 30 (2) Any time which is earned and subtracted from the prison part of
31 the sentence of any inmate pursuant to program credit calculation shall
32 be added to such inmate's postrelease supervision obligation, if
33 applicable.
- 34 (3) When separate sentences of imprisonment for different crimes
35 are imposed on a defendant on the same date, a defendant shall only be
36 eligible for program credits if such crimes are a ~~non-drug~~ severity level 4
37 through 10 or a drug severity level 3 or 4, *prior to such level's repeal*.
- 38 (4) Program credits shall not be earned by any offender successfully
39 completing a sex offender treatment program.
- 40 (5) The secretary of corrections is hereby authorized to adopt rules
41 and regulations to carry out the provisions of this subsection regarding
42 program credit calculations. Such rules and regulations shall provide cir-
43 cumstances upon which an inmate may earn program credits and for the

1 forfeiture of earned credits and such circumstances may include factors
2 substantially related to program participation and conduct.

3 (6) The secretary of corrections shall report to the Kansas sentencing
4 commission and the Kansas reentry policy council the data on the pro-
5 gram credit calculations.

6 Sec. 53. K.S.A. 2009 Supp. 21-4729 is hereby amended to read as
7 follows: 21-4729. (a) There is hereby established a nonprison sanction of
8 certified drug abuse treatment programs for certain offenders who are
9 sentenced on or after November 1, 2003. Placement of offenders in cer-
10 tified drug abuse treatment programs by the court shall be limited to
11 placement of adult offenders, convicted of a felony violation of K.S.A. 65-
12 4160 or 65-4162, prior to such ~~sections~~ *section's* repeal, or K.S.A. 2009
13 Supp. 21-36a06, and amendments thereto:

14 (1) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or
15 4-I of the sentencing guidelines grid for drug crimes, *prior to such grid's*
16 *repeal, or classified in grid blocks 7-E, 7-F, 7-G, 7-H or 7-I of the sen-*
17 *tencing guidelines grid* and such offender has no felony conviction of
18 K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to such ~~sec-~~
19 ~~tions~~ *section's* repeal, or K.S.A. 2009 Supp. 21-36a03, 21-36a05 or 21-
20 36a16, and amendments thereto, or any substantially similar offense from
21 another jurisdiction; or

22 (2) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of
23 the sentencing guidelines grid for drug crimes, *prior to such grid's repeal,*
24 *or classified in grid blocks 7-A, 7-B, 7-C or 7-D of the sentencing guide-*
25 *lines grid* and such offender has no felony conviction of K.S.A. 65-4142,
26 65-4159, 65-4161, 65-4163 or 65-4164, prior to such ~~sections~~ *section's*
27 repeal, or K.S.A. 2009 Supp. 21-36a03, 21-36a05 or 21-36a16, and
28 amendments thereto, or any substantially similar offense from another
29 jurisdiction, if such person felonies committed by the offender were se-
30 verity level 8, 9 or 10 or nongrid offenses of the sentencing guidelines
31 grid ~~for nondrug crimes~~ and the court finds and sets forth with particu-
32 larity the reasons for finding that the safety of the members of the public
33 will not be jeopardized by such placement in a drug abuse treatment
34 program.

35 (b) As a part of the presentence investigation pursuant to K.S.A. 21-
36 4714, and amendments thereto, offenders who meet the requirements of
37 subsection (a) shall be subject to:

38 (1) A drug abuse assessment which shall include a clinical interview
39 with a mental health professional and a recommendation concerning drug
40 abuse treatment for the offender; and

41 (2) a criminal risk-need assessment, unless otherwise specifically or-
42 dered by the court. The criminal risk-need assessment shall assign a high
43 or low risk status to the offender.

- 1 (c) The sentencing court shall commit the offender to treatment in a
2 drug abuse treatment program until determined suitable for discharge by
3 the court but the term of treatment shall not exceed 18 months.
- 4 (d) Offenders shall be supervised by community correctional services.
- 5 (e) Placement of offenders under subsection (a)(2) shall be subject
6 to the departure sentencing statutes of the Kansas sentencing guidelines
7 act.
- 8 (f) (1) Offenders in drug abuse treatment programs shall be dis-
9 charged from such program if the offender:
- 10 (A) Is convicted of a new felony; or
11 (B) has a pattern of intentional conduct that demonstrates the of-
12 fender's refusal to comply with or participate in the treatment program,
13 as established by judicial finding.
- 14 (2) Offenders who are discharged from such program shall be subject
15 to the revocation provisions of subsection (n) of K.S.A. 21-4603d, and
16 amendments thereto.
- 17 (g) As used in this section, "mental health professional" includes li-
18 censed social workers, licensed psychiatrists, licensed psychologists, li-
19 censed professional counselors or registered alcohol and other drug abuse
20 counselors licensed or certified as addiction counselors who have been
21 certified by the secretary of corrections to treat offenders pursuant to
22 K.S.A. 2009 Supp. 75-52,144, and amendments thereto.
- 23 (h) (1) The following offenders who meet the requirements of sub-
24 section (a) shall not be subject to the provisions of this section and shall
25 be sentenced as otherwise provided by law:
- 26 (A) Offenders who are residents of another state and are returning
27 to such state pursuant to the interstate corrections compact or the inter-
28 state compact for adult offender supervision; or
29 (B) offenders who are not lawfully present in the United States and
30 being detained for deportation.
- 31 (2) Such sentence shall not be considered a departure and shall not
32 be subject to appeal.
- 33 Sec. 54. K.S.A. 2009 Supp. 22-2802 is hereby amended to read as
34 follows: 22-2802. (1) Any person charged with a crime shall, at the per-
35 son's first appearance before a magistrate, be ordered released pending
36 preliminary examination or trial upon the execution of an appearance
37 bond in an amount specified by the magistrate and sufficient to assure
38 the appearance of such person before the magistrate when ordered and
39 to assure the public safety. If the person is being bound over for a felony,
40 the bond shall also be conditioned on the person's appearance in the
41 district court or by way of a two-way electronic audio-video communi-
42 cation as provided in subsection (14) at the time required by the court to
43 answer the charge against such person and at any time thereafter that the

- 1 court requires. Unless the magistrate makes a specific finding otherwise,
2 if the person is being bonded out for a person felony or a person mis-
3 demeanor, the bond shall be conditioned on the person being prohibited
4 from having any contact with the alleged victim of such offense for a
5 period of at least 72 hours. The magistrate may impose such of the fol-
6 lowing additional conditions of release as will reasonably assure the ap-
7 pearance of the person for preliminary examination or trial:
- 8 (a) Place the person in the custody of a designated person or organ-
9 ization agreeing to supervise such person;
 - 10 (b) place restrictions on the travel, association or place of abode of
11 the person during the period of release;
 - 12 (c) impose any other condition deemed reasonably necessary to as-
13 sure appearance as required, including a condition requiring that the
14 person return to custody during specified hours;
 - 15 (d) place the person under a house arrest program pursuant to K.S.A.
16 21-4603b, and amendments thereto; or
 - 17 (e) place the person under the supervision of a court services officer
18 responsible for monitoring the person's compliance with any conditions
19 of release ordered by the magistrate.
- 20 (2) In addition to any conditions of release provided in subsection (1),
21 for any person charged with a felony, the magistrate may order such
22 person to submit to a drug abuse examination and evaluation in a public
23 or private treatment facility or state institution and, if determined by the
24 head of such facility or institution that such person is a drug abuser or
25 incapacitated by drugs, to submit to treatment for such drug abuse, as a
26 condition of release.
- 27 (3) The appearance bond shall be executed with sufficient solvent
28 sureties who are residents of the state of Kansas, unless the magistrate
29 determines, in the exercise of such magistrate's discretion, that requiring
30 sureties is not necessary to assure the appearance of the person at the
31 time ordered.
- 32 (4) A deposit of cash in the amount of the bond may be made in lieu
33 of the execution of the bond pursuant to paragraph (3). Except as pro-
34 vided in paragraph (5), such deposit shall be in the full amount of the
35 bond and in no event shall a deposit of cash in less than the full amount
36 of bond be permitted. Any person charged with a crime who is released
37 on a cash bond shall be entitled to a refund of all moneys paid for the
38 cash bond, after deduction of any outstanding restitution, costs, fines and
39 fees, after the final disposition of the criminal case if the person complies
40 with all requirements to appear in court. The court may not exclude the
41 option of posting bond pursuant to paragraph (3).
- 42 (5) Except as provided further, the amount of the appearance bond
43 shall be the same whether executed as described in subsection (3) or

1 posted with a deposit of cash as described in subsection (4). When the
2 appearance bond has been set at \$2,500 or less and the most serious
3 charge against the person is a misdemeanor, a severity level 8, 9 or 10
4 nonperson felony, ~~a drug severity level 4 felony or~~, a violation of K.S.A.
5 8-1567, and amendments thereto, **or a felony violation of K.S.A. 2009**
6 **Supp. 21-36a06, and amendments thereto**, the magistrate may allow
7 the person to deposit cash with the clerk in the amount of 10% of the
8 bond, provided the person meets at least the following qualifications:
9 (A) Is a resident of the state of Kansas;
10 (B) has a criminal history score category of G, H or I;
11 (C) has no prior history of failure to appear for any court appearances;
12 (D) has no detainer or hold from any other jurisdiction;
13 (E) has not been extradited from, and is not awaiting extradition to,
14 another state; and
15 (F) has not been detained for an alleged violation of probation.
16 (6) In the discretion of the court, a person charged with a crime may
17 be released upon the person's own recognizance by guaranteeing pay-
18 ment of the amount of the bond for the person's failure to comply with
19 all requirements to appear in court. The release of a person charged with
20 a crime upon the person's own recognizance shall not require the deposit
21 of any cash by the person.
22 (7) The court shall not impose any administrative fee.
23 (8) In determining which conditions of release will reasonably assure
24 appearance and the public safety, the magistrate shall, on the basis of
25 available information, take into account the nature and circumstances of
26 the crime charged; the weight of the evidence against the defendant; the
27 defendant's family ties, employment, financial resources, character, men-
28 tal condition, length of residence in the community, record of convictions,
29 record of appearance or failure to appear at court proceedings or of flight
30 to avoid prosecution; the likelihood or propensity of the defendant to
31 commit crimes while on release, including whether the defendant will be
32 likely to threaten, harass or cause injury to the victim of the crime or any
33 witnesses thereto; and whether the defendant is on probation or parole
34 from a previous offense at the time of the alleged commission of the
35 subsequent offense.
36 (9) The appearance bond shall set forth all of the conditions of
37 release.
38 (10) A person for whom conditions of release are imposed and who
39 continues to be detained as a result of the person's inability to meet the
40 conditions of release shall be entitled, upon application, to have the con-
41 ditions reviewed without unnecessary delay by the magistrate who im-
42 posed them. If the magistrate who imposed conditions of release is not
43 available, any other magistrate in the county may review such conditions.

1 (11) A magistrate ordering the release of a person on any conditions
2 specified in this section may at any time amend the order to impose
3 additional or different conditions of release. If the imposition of additional
4 or different conditions results in the detention of the person, the provi-
5 sions of subsection (10) shall apply.

6 (12) Statements or information offered in determining the conditions
7 of release need not conform to the rules of evidence. No statement or
8 admission of the defendant made at such a proceeding shall be received
9 as evidence in any subsequent proceeding against the defendant.

10 (13) The appearance bond and any security required as a condition
11 of the defendant's release shall be deposited in the office of the magistrate
12 or the clerk of the court where the release is ordered. If the defendant
13 is bound to appear before a magistrate or court other than the one or-
14 dering the release, the order of release, together with the bond and se-
15 curity shall be transmitted to the magistrate or clerk of the court before
16 whom the defendant is bound to appear.

17 (14) Proceedings before a magistrate as provided in this section to
18 determine the release conditions of a person charged with a crime in-
19 cluding release upon execution of an appearance bond may be conducted
20 by two-way electronic audio-video communication between the defend-
21 ant and the judge in lieu of personal presence of the defendant or de-
22 fendant's counsel in the courtroom in the discretion of the court. The
23 defendant may be accompanied by the defendant's counsel. The defend-
24 ant shall be informed of the defendant's right to be personally present in
25 the courtroom during such proceeding if the defendant so requests. Ex-
26 ercising the right to be present shall in no way prejudice the defendant.

27 (15) The magistrate may order the person to pay for any costs asso-
28 ciated with the supervision of the conditions of release of the appearance
29 bond in an amount not to exceed \$15 per week of such supervision.

30 Sec. 55. K.S.A. 22-2908 is hereby amended to read as follows: 22-
31 2908. (a) In determining whether diversion of a defendant is in the in-
32 terests of justice and of benefit to the defendant and the community, the
33 county or district attorney shall consider at least the following factors
34 among all factors considered:

35 (1) The nature of the crime charged and the circumstances surround-
36 ing it;

37 (2) any special characteristics or circumstances of the defendant;

38 (3) whether the defendant is a first-time offender and if the defend-
39 ant has previously participated in diversion, according to the certification
40 of the Kansas bureau of investigation or the division of vehicles of the
41 department of revenue;

42 (4) whether there is a probability that the defendant will cooperate
43 with and benefit from diversion;

- 1 (5) whether the available diversion program is appropriate to the
2 needs of the defendant;
- 3 (6) the impact of the diversion of the defendant upon the community;
- 4 (7) recommendations, if any, of the involved law enforcement agency;
- 5 (8) recommendations, if any, of the victim;
- 6 (9) provisions for restitution; and
- 7 (10) any mitigating circumstances.
- 8 (b) A county or district attorney shall not enter into a diversion agree-
9 ment in lieu of further criminal proceedings on a complaint if:
- 10 (1) The complaint alleges a violation of K.S.A. 8-1567 and amend-
11 ments thereto and the defendant: (A) Has previously participated in di-
12 version upon a complaint alleging a violation of that statute or an ordi-
13 nance of a city in this state which prohibits the acts prohibited by that
14 statute; (B) has previously been convicted of or pleaded *nolo contendere*
15 to a violation of that statute or a violation of a law of another state or of
16 a political subdivision of this or any other state, which law prohibits the
17 acts prohibited by that statute; or (C) during the time of the alleged
18 violation was involved in a motor vehicle accident or collision resulting in
19 personal injury or death; or
- 20 (2) the complaint alleges that the defendant committed a class A or
21 B felony or for crimes committed on or after July 1, 1993, an off-grid
22 crime, a severity level 1, 2 or 3 felony ~~for nondrug crimes or drug severity~~
23 ~~level 1 or 2 felony for drug crimes.~~
- 24 (c) A county or district attorney may enter into a diversion agreement
25 in lieu of further criminal proceedings on a complaint for violations of
26 article 10 of chapter 32 of the Kansas Statutes Annotated, and amend-
27 ments thereto, if such diversion carries the same penalties as the convic-
28 tion for the corresponding violations. If the defendant has previously par-
29 ticipated in one or more diversions for violations of article 10 of chapter
30 32 of the Kansas Statutes Annotated, and amendments thereto, then each
31 subsequent diversion shall carry the same penalties as the conviction for
32 the corresponding violations.
- 33 Sec. 56. K.S.A. 22-3303 is hereby amended to read as follows: 22-
34 3303. (1) A defendant who is charged with a felony and is found to be
35 incompetent to stand trial shall be committed for evaluation and treat-
36 ment to the state security hospital or any appropriate county or private
37 institution. A defendant who is charged with a misdemeanor and is found
38 to be incompetent to stand trial shall be committed for evaluation and
39 treatment to any appropriate state, county or private institution. Any such
40 commitment shall be for a period of not to exceed 90 days. Within 90
41 days after the defendant's commitment to such institution, the chief med-
42 ical officer of such institution shall certify to the court whether the de-
43 fendant has a substantial probability of attaining competency to stand trial

1 in the foreseeable future. If such probability does exist, the court shall
2 order the defendant to remain in an appropriate state, county or private
3 institution until the defendant attains competency to stand trial or for a
4 period of six months from the date of the original commitment, whichever
5 occurs first. If such probability does not exist, the court shall order the
6 secretary of social and rehabilitation services to commence involuntary
7 commitment proceedings pursuant to article 29 of chapter 59 of the Kan-
8 sas Statutes Annotated, and any amendments thereto. When a defendant
9 is charged with any off-grid felony, any ~~nondrug~~ severity level 1 through
10 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or
11 21-3719, and amendments thereto, and commitment proceedings have
12 commenced, for such proceeding, “mentally ill person subject to invol-
13 untary commitment for care and treatment” means a mentally ill person,
14 as defined in subsection (e) of K.S.A. 59-2946, and amendments thereto,
15 who is likely to cause harm to self and others, as defined in subsection
16 (f)(3) of K.S.A. 59-2946, and amendments thereto. The other provisions
17 of subsection (f) of K.S.A. 59-2946, and amendments thereto, shall not
18 apply.

19 (2) If a defendant who was found to have had a substantial probability
20 of attaining competency to stand trial, as provided in subsection (1), has
21 not attained competency to stand trial within six months from the date
22 of the original commitment, the court shall order the secretary of social
23 and rehabilitation services to commence involuntary commitment pro-
24 ceedings pursuant to article 29 of chapter 59 of the Kansas Statutes An-
25 notated, and any amendments thereto. When a defendant is charged with
26 any off-grid felony, any ~~nondrug~~ severity level 1 through 3 felony, or a
27 violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, and
28 amendments thereto, and commitment proceedings have commenced,
29 for such proceeding, “mentally ill person subject to involuntary commit-
30 ment for care and treatment” means a mentally ill person, as defined in
31 subsection (e) of K.S.A. 59-2946, and amendments thereto, who is likely
32 to cause harm to self and others, as defined in subsection (f)(3) of K.S.A.
33 59-2946, and amendments thereto. The other provisions of subsection (f)
34 of K.S.A. 59-2946, and amendments thereto, shall not apply.

35 (3) When reasonable grounds exist to believe that a defendant who
36 has been adjudged incompetent to stand trial is competent, the court in
37 which the criminal case is pending shall conduct a hearing in accordance
38 with K.S.A. 22-3302 and amendments thereto to determine the person’s
39 present mental condition. Reasonable notice of such hearings shall be
40 given to the prosecuting attorney, the defendant and the defendant’s at-
41 torney of record, if any. If the court, following such hearing, finds the
42 defendant to be competent, the proceedings pending against the defend-
43 ant shall be resumed.

- 1 (4) A defendant committed to a public institution under the provi-
2 sions of this section who is thereafter sentenced for the crime charged at
3 the time of commitment may be credited with all or any part of the time
4 during which the defendant was committed and confined in such public
5 institution.
- 6 Sec. 57. K.S.A. 2009 Supp. 22-3412 is hereby amended to read as
7 follows: 22-3412. (a) (1) For crimes committed before July 1, 1993, per-
8 emptory challenges shall be allowed as follows:
- 9 (A) Each defendant charged with a class A felony shall be allowed 12
10 peremptory challenges.
- 11 (B) Each defendant charged with a class B felony shall be allowed
12 eight peremptory challenges.
- 13 (C) Each defendant charged with a felony other than class A or class
14 B felony shall be allowed six peremptory challenges.
- 15 (D) Each defendant charged with a misdemeanor shall be allowed
16 three peremptory challenges.
- 17 (E) Additional peremptory challenges shall not be allowed on account
18 of separate counts charged in the complaint, information or indictment.
- 19 (F) The prosecution shall be allowed the same number of peremptory
20 challenges as all the defendants.
- 21 (2) For crimes committed on or after July 1, 1993, peremptory chal-
22 lenges shall be allowed as follows:
- 23 (A) Each defendant charged with an off-grid felony ~~or a nondrug or~~
24 ~~drug felony ranked at~~ a severity level 1 *felony or a drug severity level 1*
25 *felony, prior to repeal*, shall be allowed 12 peremptory challenges.
- 26 (B) Each defendant charged with a ~~nondrug~~ felony ranked at severity
27 level 2, 3, 4, 5 or 6, or a drug felony ranked at severity level 2 or 3, *prior*
28 *to repeal*, shall be allowed 8 peremptory challenges.
- 29 (C) Each defendant charged with an unclassified felony, a ~~nondrug~~
30 severity level 7, 8, 9 or 10 *felony*, or a drug severity level 4 felony, *prior*
31 *to repeal*, shall be allowed six peremptory challenges.
- 32 (D) Each defendant charged with a misdemeanor shall be allowed
33 three peremptory challenges.
- 34 (E) The prosecution shall be allowed the same number of peremp-
35 tory challenges as all defendants.
- 36 (F) The most serious penalty offense charged against each defendant
37 furnishes the criterion for determining the allowed number of peremp-
38 tory challenges for that defendant.
- 39 (G) Additional peremptory challenges shall not be allowed when sep-
40 arate counts are charged in the complaint, information or indictment.
- 41 (H) Except as otherwise provided in this subsection, the provisions
42 of this section shall apply. In applying the provisions of this section, the
43 trial court may determine the number of peremptory challenges to allow

1 by reviewing the classification for the crime charged, or nearest compa-
2 rable felony, as it was classified under the criminal law in effect prior to
3 July 1, 1993. If the severity level of the most serious crime charged raises
4 the potential penalty above that of another crime which was classified
5 higher under the criminal law in effect prior to July 1, 1993, the defendant
6 shall be allowed the number of peremptory challenges as for that higher
7 classified crime under the prior system.

8 (I) The trial court shall resolve any conflicts with a liberal construc-
9 tion in favor of allowing the greater number of peremptory challenges.

10 (b) After the parties have interposed all of their challenges to jurors,
11 or have waived further challenges, the jury shall be sworn to try the case.

12 (c) A trial judge may empanel one or more alternate or additional
13 jurors whenever, in the judge's discretion, the judge believes it advisable
14 to have such jurors available to replace jurors who, prior to the time the
15 jury retires to consider its verdict, become or are found to be unable to
16 perform their duties. Such jurors shall be selected in the same manner,
17 have the same qualifications, and be subject to the same examination and
18 challenges and take the same oath and have the same functions, powers
19 and privileges as the regular jurors. Such jurors may be selected at the
20 same time as the regular jurors or after the jury has been empaneled and
21 sworn, in the judge's discretion. Each party shall be entitled to one per-
22 emptory challenge to such alternate jurors. Such alternate jurors shall be
23 seated near the other jurors, with equal power and facilities for seeing
24 and hearing the proceedings in the case, and they must attend at all times
25 upon the trial of the cause in company with the other jurors. They shall
26 obey the orders of and be bound by the admonition of the court upon
27 each adjournment, but if the regular jurors are ordered to be kept in
28 custody during the trial of the cause, such alternate jurors also shall be
29 kept in confinement with the other jurors. Upon final submission of the
30 case to the jury, the alternate jurors may be discharged or they may be
31 retained separately and not discharged until the final decision of the jury.
32 If the alternate jurors are not discharged on final submission of the case
33 and if any regular juror shall be discharged from jury service in any such
34 action prior to the jury reaching its verdict, the court shall draw the name
35 of an alternate juror who shall replace the juror so discharged and be
36 subject to the same rules and regulations as though such juror had been
37 selected as one of the original jurors.

38 Sec. 58. K.S.A. 2009 Supp. 22-3604 is hereby amended to read as
39 follows: 22-3604. (1) Except as provided in subsection (3), a defendant
40 shall not be held in jail nor subject to an appearance bond during the
41 pendency of an appeal by the prosecution.

42 (2) The time during which an appeal by the prosecution is pending
43 shall not be counted for the purpose of determining whether a defendant

1 is entitled to discharge under K.S.A. 22-3402, and amendments thereto.
2 For purposes of this section, “an appeal by the prosecution” includes, but
3 is not limited to, appeals authorized by subsection (b) of K.S.A. 22-3602,
4 and amendments thereto, appeals authorized by K.S.A. 22-3603, and
5 amendments thereto, and any appeal by the prosecution which seeks dis-
6 cretionary review in the supreme court of Kansas or the United States
7 supreme court. Such an appeal remains “pending” until final resolution
8 by the court of last resort.

9 (3) A defendant charged with a class A, B or C felony or, if the felony
10 was committed on or after July 1, 1993, an off-grid felony, a ~~non~~drug
11 severity level 1 through 5 felony or a drug severity level 1 through 3 felony
12 crime, *prior to such level’s repeal*, shall not be released from jail or the
13 conditions of such person’s appearance bond during the pendency of an
14 appeal by the prosecution. The time during which an appeal by the pros-
15 ecution is pending in a class A, B or C felony or, if the felony was com-
16 mitted on or after July 1, 1993, an off-grid felony, a ~~non~~drug severity level
17 1 through 5 felony or a drug severity level 1 through 3 felony case, *prior*
18 *to such level’s repeal*, shall not be counted for the purpose of determining
19 whether the defendant is entitled to discharge under K.S.A. 22-3402, and
20 amendments thereto.

21 Sec. 59. K.S.A. 2009 Supp. 22-3716 is hereby amended to read as
22 follows: 22-3716. (a) At any time during probation, assignment to a com-
23 munity correctional services program, suspension of sentence or pursuant
24 to subsection (d) for defendants who committed a crime prior to July 1,
25 1993, and at any time during which a defendant is serving a nonprison
26 sanction for a crime committed on or after July 1, 1993, or pursuant to
27 subsection (d), the court may issue a warrant for the arrest of a defendant
28 for violation of any of the conditions of release or assignment, a notice to
29 appear to answer to a charge of violation or a violation of the defendant’s
30 nonprison sanction. The notice shall be personally served upon the de-
31 fendant. The warrant shall authorize all officers named in the warrant to
32 return the defendant to the custody of the court or to any certified de-
33 tention facility designated by the court. Any court services officer or com-
34 munity correctional services officer may arrest the defendant without a
35 warrant or may deputize any other officer with power of arrest to do so
36 by giving the officer a written or verbal statement setting forth that the
37 defendant has, in the judgment of the court services officer or community
38 correctional services officer, violated the conditions of the defendant’s
39 release or a nonprison sanction. A written statement delivered to the
40 official in charge of a county jail or other place of detention shall be
41 sufficient warrant for the detention of the defendant. After making an
42 arrest, the court services officer or community correctional services of-
43 ficer shall present to the detaining authorities a similar statement of the

1 circumstances of violation. Provisions regarding release on bail of persons
2 charged with a crime shall be applicable to defendants arrested under
3 these provisions.

4 (b) Upon arrest and detention pursuant to subsection (a), the court
5 services officer or community correctional services officer shall immedi-
6 ately notify the court and shall submit in writing a report showing in what
7 manner the defendant has violated the conditions of release or assignment
8 or a nonprison sanction. Thereupon, or upon an arrest by warrant as
9 provided in this section, the court shall cause the defendant to be brought
10 before it without unnecessary delay for a hearing on the violation charged.
11 The hearing shall be in open court and the state shall have the burden of
12 establishing the violation. The defendant shall have the right to be rep-
13 resented by counsel and shall be informed by the judge that, if the de-
14 fendant is financially unable to obtain counsel, an attorney will be ap-
15 pointed to represent the defendant. The defendant shall have the right
16 to present the testimony of witnesses and other evidence on the defend-
17 ant's behalf. Relevant written statements made under oath may be ad-
18 mitted and considered by the court along with other evidence presented
19 at the hearing. Except as otherwise provided, if the violation is estab-
20 lished, the court may continue or revoke the probation, assignment to a
21 community correctional services program, suspension of sentence or non-
22 prison sanction and may require the defendant to serve the sentence
23 imposed, or any lesser sentence, and, if imposition of sentence was sus-
24 pended, may impose any sentence which might originally have been im-
25 posed. Except as otherwise provided, no offender for whom a violation
26 of conditions of release or assignment or a nonprison sanction has been
27 established as provided in this section shall be required to serve any time
28 for the sentence imposed or which might originally have been imposed
29 in a state facility in the custody of the secretary of corrections for such
30 violation, unless such person has already at least one prior assignment to
31 a community correctional services program related to the crime for which
32 the original sentence was imposed, except these provisions shall not apply
33 to offenders who violate a condition of release or assignment or a non-
34 prison sanction by committing a new misdemeanor or felony offense. The
35 provisions of this subsection shall not apply to adult felony offenders as
36 described in subsection (a)(3) of K.S.A. 75-5291, and amendments
37 thereto. The court may require an offender for whom a violation of con-
38 ditions of release or assignment or a nonprison sanction has been estab-
39 lished as provided in this section to serve any time for the sentence im-
40 posed or which might originally have been imposed in a state facility in
41 the custody of the secretary of corrections without a prior assignment to
42 a community correctional services program if the court finds and sets
43 forth with particularity the reasons for finding that the safety of the mem-

1 bers of the public will be jeopardized or that the welfare of the inmate
2 will not be served by such assignment to a community correctional serv-
3 ices program. When a new felony is committed while the offender is on
4 probation or assignment to a community correctional services program,
5 the new sentence shall be imposed pursuant to the consecutive sentenc-
6 ing requirements of K.S.A. 21-4608 and amendments thereto, and the
7 court may sentence the offender to imprisonment for the new conviction,
8 even when the new crime of conviction otherwise presumes a nonprison
9 sentence. In this event, imposition of a prison sentence for the new crime
10 does not constitute a departure.

11 (c) A defendant who is on probation, assigned to a community correc-
12 tional services program, under suspension of sentence or serving a
13 nonprison sanction and for whose return a warrant has been issued by
14 the court shall be considered a fugitive from justice if it is found that the
15 warrant cannot be served. If it appears that the defendant has violated
16 the provisions of the defendant's release or assignment or a nonprison
17 sanction, the court shall determine whether the time from the issuing of
18 the warrant to the date of the defendant's arrest, or any part of it, shall
19 be counted as time served on probation, assignment to a community cor-
20 rectional services program, suspended sentence or pursuant to a nonpri-
21 son sanction.

22 (d) The court shall have 30 days following the date probation, assign-
23 ment to a community correctional service program, suspension of sen-
24 tence or a nonprison sanction was to end to issue a warrant for the arrest
25 or notice to appear for the defendant to answer a charge of a violation of
26 the conditions of probation, assignment to a community correctional serv-
27 ice program, suspension of sentence or a nonprison sanction.

28 (e) Notwithstanding the provisions of any other law to the contrary,
29 an offender whose nonprison sanction is revoked and a term of impris-
30 onment imposed pursuant to either the sentencing guidelines grid ~~for~~
31 ~~non-drug~~ or drug crimes, *prior to such grid's repeal*, shall not serve a
32 period of postrelease supervision upon the completion of the prison por-
33 tion of that sentence. The provisions of this subsection shall not apply to
34 offenders sentenced to a nonprison sanction pursuant to a dispositional
35 departure, whose offense falls within a border box of either the sentencing
36 guidelines grid ~~for non-drug~~ or drug crimes, *prior to such grid's repeal*,
37 offenders sentenced for a "sexually violent crime" or a "sexually motivated
38 crime" as defined by K.S.A. 22-3717, and amendments thereto, offenders
39 sentenced pursuant to K.S.A. 21-4704, and amendments thereto, wherein
40 the sentence is presumptive imprisonment but a nonprison sanction may
41 be imposed without a departure or offenders whose nonprison sanction
42 was revoked as a result of a conviction for a new misdemeanor or felony
43 offense. The provisions of this subsection shall not apply to offenders who

1 are serving or are to begin serving a sentence for any other felony offense
2 that is not excluded from postrelease supervision by this subsection on
3 the effective date of this subsection. The provisions of this subsection
4 shall be applied retroactively. The department of corrections shall con-
5 duct a review of all persons who are in the custody of the department as
6 a result of only a revocation of a nonprison sanction. On or before Sep-
7 tember 1, 2000, the department shall have discharged from postrelease
8 supervision those offenders as required by this subsection.

9 (f) Offenders who have been sentenced pursuant to K.S.A. 21-4729,
10 and amendments thereto, and who subsequently violate a condition of
11 the drug and alcohol abuse treatment program shall be subject to an
12 additional nonprison sanction for any such subsequent violation. Such
13 nonprison sanctions shall include, but not be limited to, up to 60 days in
14 a county jail, fines, community service, intensified treatment, house arrest
15 and electronic monitoring.

16 Sec. 60. K.S.A. 2009 Supp. 22-3717 is hereby amended to read as
17 follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A.
18 1993 Supp. 21-4628 prior to its repeal; K.S.A. 21-4635 through 21-4638,
19 and amendments thereto; K.S.A. 8-1567, and amendments thereto;
20 K.S.A. 21-4642, and amendments thereto; and K.S.A. 21-4624, and
21 amendments thereto, an inmate, including an inmate sentenced pursuant
22 to K.S.A. 21-4618, and amendments thereto, shall be eligible for parole
23 after serving the entire minimum sentence imposed by the court, less
24 good 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, or an inmate sentenced for the crime of murder in the
28 first degree based upon a finding of premeditated murder, committed on
29 or after July 1, 1994, shall be eligible for parole after serving 25 years of
30 confinement, without deduction of any good time credits.

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

40 (3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its
41 repeal, an inmate sentenced for a class A felony committed before July
42 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, and
43 amendments thereto, shall be eligible for parole after serving 15 years of

1 confinement, without deduction of any good time credits.

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

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

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

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

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

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

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

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

34 (B) Except as provided in subparagraphs (D) and (E), persons sen-
35 tenced for ~~non-drug~~ severity levels 5 and 6 crimes and drug severity level
36 3 crimes, *prior to such level's repeal*, must serve 24 months, plus the
37 amount of good time and program credit earned and retained pursuant
38 to K.S.A. 21-4722, and amendments thereto, on postrelease supervision.

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

1 supervision.

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

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

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

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

17 (b) any evidence received during the proceeding;

18 (c) the presentence report, the victim's impact statement and any
19 psychological evaluation as ordered by the court pursuant to subsection
20 (e) of K.S.A. 21-4714, and amendments thereto; and

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

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

26 (v) In carrying out the provisions of subparagraph (d)(1)(D), the court
27 shall refer to K.S.A. 21-4718, and amendments thereto.

28 (vi) Upon petition, the parole board may provide for early discharge
29 from the postrelease supervision period upon completion of court or-
30 dered programs and completion of the presumptive postrelease super-
31 vision period, as determined by the crime of conviction, pursuant to sub-
32 paragraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from
33 postrelease supervision is at the discretion of the parole board.

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

37 (viii) Persons convicted of K.S.A. 21-3510 or 21-3511, and amend-
38 ments thereto, shall be required to participate in a treatment program
39 for sex offenders during the postrelease supervision period.

40 (E) The period of postrelease supervision provided in subparagraphs
41 (A) and (B) may be reduced by up to 12 months and the period of post-
42 release supervision provided in subparagraph (C) may be reduced by up
43 to six months based on the offender's compliance with conditions of su-

- 1 pervision and overall performance while on postrelease supervision. The
2 reduction in the supervision period shall be on an earned basis pursuant
3 to rules and regulations adopted by the secretary of corrections.
- 4 (F) In cases where sentences for crimes from more than one severity
5 level have been imposed, the offender shall serve the longest period of
6 postrelease supervision as provided by this section available for any crime
7 upon which sentence was imposed irrespective of the severity level of the
8 crime. Supervision periods will not aggregate.
- 9 (G) Except as provided in subsection (u), persons convicted of a sex-
10 ually violent crime committed on or after July 1, 2006, and who are re-
11 leased from prison, shall be released to a mandatory period of postrelease
12 supervision for the duration of the person's natural life.
- 13 (2) As used in this section, "sexually violent crime" means:
- 14 (A) Rape, K.S.A. 21-3502, and amendments thereto;
- 15 (B) indecent liberties with a child, K.S.A. 21-3503, and amendments
16 thereto;
- 17 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, and
18 amendments thereto;
- 19 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505,
20 and amendments thereto;
- 21 (E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments
22 thereto;
- 23 (F) indecent solicitation of a child, K.S.A. 21-3510, and amendments
24 thereto;
- 25 (G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and
26 amendments thereto;
- 27 (H) sexual exploitation of a child, K.S.A. 21-3516, and amendments
28 thereto;
- 29 (I) aggravated sexual battery, K.S.A. 21-3518, and amendments
30 thereto;
- 31 (J) aggravated incest, K.S.A. 21-3603, and amendments thereto; or
- 32 (K) an attempt, conspiracy or criminal solicitation, as defined in
33 K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of a sex-
34 ually violent crime as defined in this section.
- 35 "Sexually motivated" means that one of the purposes for which the
36 defendant committed the crime was for the purpose of the defendant's
37 sexual gratification.
- 38 (e) If an inmate is sentenced to imprisonment for a crime committed
39 while on parole or conditional release, the inmate shall be eligible for
40 parole as provided by subsection (c), except that the Kansas parole board
41 may postpone the inmate's parole eligibility date by assessing a penalty
42 not exceeding the period of time which could have been assessed if the
43 inmate's parole or conditional release had been violated for reasons other

1 than conviction of a crime.

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

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

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

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

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

1 completed under the agreement entered into under K.S.A. 75-5210a, and
2 amendments thereto. The board may not advance or delay an inmate's
3 release date. Every inmate while on postrelease supervision shall remain
4 in the legal custody of the secretary of corrections and is subject to the
5 orders of the secretary.

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

1 such case, the parole board may defer subsequent parole hearings for up
2 to 10 years but any such deferral shall require the board to state the basis
3 for its findings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~severity level 7 and 8 crimes on the sentencing guidelines grid for nondrug~~
2 ~~crimes on or before November 1, 2000, and for offenders convicted of~~
3 ~~severity level 5 and 6 crimes on the sentencing guidelines grid for nondrug~~
4 ~~crimes and severity level 3 crimes on the sentencing guidelines grid for~~
5 ~~drug crimes on or before January 1, 2001.~~

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

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

19 Sec. 61. K.S.A. 22-4906 is hereby amended to read as follows: 22-
20 4906. (a) Except as provided in subsection (d), any person required to
21 register as provided in this act shall be required to register: (1) Upon the
22 first conviction of a sexually violent crime as defined in subsection (c) of
23 K.S.A. 22-4902, and amendments thereto, any offense as defined in sub-
24 section (a) of K.S.A. 22-4902, and amendments thereto, or any offense as
25 defined in subsection (d) of K.S.A. 22-4902, and amendments thereto, if
26 not confined, for a period of 10 years after conviction, or, if confined, for
27 a period of 10 years after paroled, discharged or released, whichever date
28 is most recent. The ten-year period shall not apply to any person while
29 the person is incarcerated in any jail or correctional facility. The ten-year
30 registration requirement does not include any time period when any per-
31 son who is required to register under this act knowingly or willfully fails
32 to comply with the registration requirement; or (2) upon a second or
33 subsequent conviction for such person's lifetime.

34 (b) Upon the first conviction, liability for registration terminates, if
35 not confined, at the expiration of 10 years from the date of conviction,
36 or, if confined, at the expiration of 10 years from the date of parole,
37 discharge or release, whichever date is most recent. The ten-year period
38 shall not apply to any person while the person is incarcerated in any jail
39 or correctional facility. The ten-year registration requirement does not
40 include any time period when any person who is required to register
41 under this act knowingly or willfully fails to comply with the registration
42 requirement. Liability for registration does not terminate if the convicted
43 offender again becomes liable to register as provided by this act during

1 that period.

2 (c) Any person who has been convicted of an aggravated offense shall
3 be required to register for such person's lifetime.

4 (d) Any person who has been convicted of any of the following of-
5 fenses shall be required to register for such person's lifetime:

6 (1) Aggravated trafficking, as defined in K.S.A. 21-3447, and amend-
7 ments thereto, if the victim is less than 14 years of age;

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

10 (3) aggravated indecent liberties with a child, as defined in subsection
11 (a)(3) of K.S.A. 21-3504, and amendments thereto;

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

14 (5) promoting prostitution, as defined in K.S.A. 21-3513, and amend-
15 ments thereto, if the prostitute is less than 14 years of age; or

16 (6) sexual exploitation of a child, as defined in subsection (a)(5) or
17 (a)(6) of K.S.A. 21-3516, and amendments thereto.

18 (e) Any person who has been declared a sexually violent predator
19 pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall reg-
20 ister for such person's lifetime.

21 (f) Any nonresident worker shall register for the duration of such
22 person's employment. The provisions of this subsection are in addition to
23 subsections (a) and (b).

24 (g) Any nonresident student shall register for the duration of such
25 person's attendance at a school or educational institution as provided in
26 this act. The provisions of this subsection are in addition to subsections
27 (a) and (b).

28 (h) (1) Notwithstanding any other provisions of this section, a person
29 who is adjudicated as a juvenile offender for an act which if committed
30 by an adult would constitute the commission of a sexually violent crime
31 set forth in subsection (c) of K.S.A. 22-4902, and amendments thereto,
32 and such crime is an off-grid felony or a felony ranked in severity level 1
33 ~~of the nondrug grid~~ as provided in K.S.A. 21-4704, and amendments
34 thereto, shall be required to register until such person reaches 18 years
35 of age, at the expiration of five years from the date of adjudication or, if
36 confined, from release from confinement, whichever date occurs later.
37 The five-year period shall not apply to any person while that person is
38 incarcerated in any jail, juvenile facility or correctional facility. The five-
39 year registration requirement does not include any time period when any
40 person who is required to register under this act knowingly or willfully
41 fails to comply with the registration requirement.

42 (2) (A) A person who is adjudicated as a juvenile offender for an act
43 which if committed by an adult would constitute the commission of a

1 sexually violent crime set forth in subsection (c) of K.S.A. 22-4902, and
2 amendments thereto, and such crime is not an off-grid felony or a felony
3 ranked in severity level 1 ~~of the nondrug grid~~ as provided in K.S.A. 21-
4 4704, and amendments thereto, may, by the court:

5 (i) Be required to register pursuant to the provisions of paragraph
6 (1);

7 (ii) not be required to register if the judge, on the record, finds sub-
8 stantial and compelling reasons therefor; or

9 (iii) be required to register with the sheriff pursuant to K.S.A. 22-
10 4904, and amendments thereto, but such registration information shall
11 not be open to inspection by the public or posted on any internet website,
12 as provided in K.S.A. 22-4909, and amendments thereto. If the court
13 requires the juvenile to register but such registration is not open to the
14 public, the juvenile shall provide a copy of such court order to the sheriff
15 at the time of registration. The sheriff shall forward a copy of such court
16 order to the Kansas bureau of investigation.

17 (B) If such juvenile offender violates a condition of release during
18 the term of the conditional release, the judge may require the juvenile
19 offender to register pursuant to paragraph (1).

20 (3) Liability for registration does not terminate if the adjudicated of-
21 fender again becomes liable to register as provided by this act during the
22 required period.

23 (4) The provisions of paragraph (2)(A)(ii) shall apply to adjudications
24 on and after the effective date of this act and retroactively to adjudications
25 prior to July 1, 2007.

26 (i) Any person moving to the state of Kansas who has been convicted
27 in another state, and who was required to register under that state's laws,
28 shall register for the same length of time required by that state or Kansas,
29 whichever length of time is longer. The provisions of this subsection shall
30 apply to convictions prior to June 1, 2006 and to persons who moved to
31 Kansas prior to June 1, 2006.

32 Sec. 62. K.S.A. 2009 Supp. 38-2346 is hereby amended to read as
33 follows: 38-2346. (a) Except as provided in subsection (b), each county
34 or district attorney may adopt a policy and establish guidelines for an
35 immediate intervention program by which a juvenile may avoid prose-
36 cution. In addition to the county or district attorney adopting policies and
37 guidelines for the immediate intervention programs, the court, the county
38 or district attorney and the director of the intake and assessment center,
39 pursuant to a written agreement, may develop local programs to:

40 (1) Provide for the direct referral of cases by the county or district
41 attorney or the intake and assessment worker, or both, to youth courts,
42 restorative justice centers, hearing officers or other local programs as
43 sanctioned by the court.

- 1 (2) Allow intake and assessment workers to issue a summons, as de-
2 fined in subsection (e) or if the county or district attorney has adopted
3 appropriate policies and guidelines, allow law enforcement officers to
4 issue such a summons.
- 5 (3) Allow the intake and assessment centers to directly purchase serv-
6 ices for the juvenile and the juvenile's family.
- 7 (4) Allow intake and assessment workers to direct the release of a
8 juvenile prior to a detention hearing after the completion of the intake
9 and assessment process if the juvenile intake and assessment worker has
10 reason to believe that if released the juvenile will appear for further pro-
11 ceedings and is not dangerous to self or others.
- 12 (b) An immediate intervention program shall provide that an alleged
13 juvenile offender is ineligible for such program if the juvenile faces pend-
14 ing charges as a juvenile offender, for committing acts which, if commit-
15 ted by an adult, would constitute:
- 16 (1) A violation of K.S.A. 8-1567, and amendments thereto, and the
17 juvenile: (A) Has previously participated in an immediate intervention
18 program instead of prosecution of a complaint alleging a violation of that
19 statute or an ordinance of a city in this state which prohibits the acts
20 prohibited by that statute; (B) has previously been adjudicated of a vio-
21 lation of that statute or a violation of a law of another state or of a political
22 subdivision of this or any other state, which law prohibits the acts pro-
23 hibited by that statute; or (C) during the time of the alleged violation was
24 involved in a motor vehicle accident or collision resulting in personal
25 injury or death; or
- 26 (2) a violation of an off-grid crime, a severity level 1, 2 or 3 felony
27 ~~for non-drug crimes or drug severity level 1 or 2 felony for drug crimes.~~
- 28 (c) An immediate intervention program may include a stipulation,
29 agreed to by the juvenile, the juvenile's attorney and the attorney general
30 or county or district attorney, of the facts upon which the charge is based
31 and a provision that if the juvenile fails to fulfill the terms of the specific
32 immediate intervention agreement and the immediate intervention pro-
33 ceedings are resumed, the proceedings, including any proceedings on
34 appeal, shall be conducted on the record of the stipulation of facts.
- 35 (d) The county or district attorney may require the parent of a ju-
36 venile to be a part of the immediate intervention program.
- 37 (e) "Summons" means a written order issued by an intake and as-
38 sessment worker or a law enforcement officer directing that a juvenile
39 appear before a designated court at a stated time and place to answer a
40 pending charge.
- 41 (f) The provisions of this section shall not be applicable in judicial
42 districts that adopt district court rules pursuant to K.S.A. 20-342, and
43 amendments thereto, for the administration of immediate intervention

1 programs by the district court.

2 Sec. 63. K.S.A. 2009 Supp. 38-2347 is hereby amended to read as
3 follows: 38-2347. (a) (1) Except as otherwise provided in this section, at
4 any time after commencement of proceedings under this code against a
5 juvenile and prior to the beginning of an evidentiary hearing at which the
6 court may enter a sentence as provided in K.S.A. 2009 Supp. 38-2356,
7 and amendments thereto, the county or district attorney or the county or
8 district attorney's designee may file a motion requesting that the court
9 authorize prosecution of the juvenile as an adult under the applicable
10 criminal statute. The juvenile shall be presumed to be a juvenile unless
11 good cause is shown to prosecute the juvenile as an adult.

12 (2) The alleged juvenile offender shall be presumed to be an adult if
13 the alleged juvenile offender was: (A) 14, 15, 16 or 17 years of age at the
14 time of the offense or offenses alleged in the complaint, if any such of-
15 fense: (i) If committed by an adult, would constitute an off-grid crime, a
16 person felony; ~~or a nondrug severity level 1 through 6 felony or any drug~~
17 ~~severity level 1, 2 or 3 felony;~~ or (ii) was committed while in possession
18 of a firearm; or (B) charged with a felony or with more than one offense,
19 one or more of which constitutes a felony, after having been adjudicated
20 or convicted in a separate juvenile proceeding as having committed an
21 offense which would constitute a felony if committed by an adult and the
22 adjudications or convictions occurred prior to the date of the commission
23 of the new act charged and prior to the beginning of an evidentiary hear-
24 ing at which the court may enter a sentence as provided in K.S.A. 2009
25 Supp. 38-2356, and amendments thereto. If the juvenile is presumed to
26 be an adult, the burden is on the juvenile to rebut the presumption by a
27 preponderance of the evidence.

28 (3) At any time after commencement of proceedings under this code
29 against a juvenile offender and prior to the beginning of an evidentiary
30 hearing at which the court may enter a sentence as provided in K.S.A.
31 2009 Supp. 38-2356, and amendments thereto, the county or district at-
32 torney or the county or district attorney's designee may file a motion
33 requesting that the court designate the proceedings as an extended juris-
34 diction juvenile prosecution.

35 (4) If the county or district attorney or the county or district attorney's
36 designee files a motion to designate the proceedings as an extended ju-
37 risdiction juvenile prosecution and the juvenile was 14, 15, 16 or 17 years
38 of age at the time of the offense or offenses alleged in the complaint and:
39 (A) charged with an offense: (i) If committed by an adult, would constitute
40 an off-grid crime, a person felony; ~~or a nondrug severity level 1 through~~
41 ~~6 felony or any drug severity level 1, 2 or 3 felony;~~ or (ii) was committed
42 while in possession of a firearm; or (B) charged with a felony or with more
43 than, one offense, one or more of which constitutes a felony, after having

1 been adjudicated or convicted in a separate juvenile proceeding as having
2 committed an act which would constitute a felony if committed by an
3 adult and the adjudications or convictions occurred prior to the date of
4 the commission of the new offense charged, the burden is on the juvenile
5 to rebut the designation of an extended jurisdiction juvenile prosecution
6 by a preponderance of the evidence. In all other motions requesting that
7 the court designate the proceedings as an extended jurisdiction juvenile
8 prosecution, the juvenile is presumed to be a juvenile. The burden of
9 proof is on the prosecutor to prove the juvenile should be designated as
10 an extended jurisdiction juvenile.

11 (b) The motion also may contain a statement that the prosecuting
12 attorney will introduce evidence of the offenses alleged in the complaint
13 and request that, on hearing the motion and authorizing prosecution as
14 an adult or designating the proceedings as an extended jurisdiction ju-
15 venile prosecution under this code, the court may make the findings re-
16 quired in a preliminary examination provided for in K.S.A. 22-2902, and
17 amendments thereto, and the finding that there is no necessity for further
18 preliminary examination.

19 (c) (1) Upon receiving the motion, the court shall set a time and place
20 for hearing. The court shall give notice of the hearing to the juvenile,
21 each parent, if service is possible, and the attorney representing the ju-
22 venile. The motion shall be heard and determined prior to any further
23 proceedings on the complaint.

24 (2) At the hearing, the court shall inform the juvenile of the following:

25 (A) The nature of the charges in the complaint;

26 (B) the right of the juvenile to be presumed innocent of each charge;

27 (C) the right to trial without unnecessary delay and to confront and
28 cross-examine witnesses appearing in support of the allegations of the
29 complaint;

30 (D) the right to subpoena witnesses;

31 (E) the right of the juvenile to testify or to decline to testify; and

32 (F) the sentencing alternatives the court may select as the result of
33 the juvenile being prosecuted under an extended jurisdiction juvenile
34 prosecution.

35 (d) If the juvenile fails to appear for hearing on the motion after
36 having been served with notice of the hearing, the court may hear and
37 determine the motion in the absence of the juvenile. If the court is unable
38 to obtain service of process and give notice of the hearing, the court may
39 hear and determine the motion in the absence of the alleged juvenile
40 offender after having given notice of the hearing at least once a week for
41 two consecutive weeks in the official county newspaper of the county
42 where the hearing will be held.

43 (e) In determining whether or not prosecution as an adult should be

1 authorized or designating the proceeding as an extended jurisdiction ju-
2 venile prosecution, the court shall consider each of the following factors:

3 (1) The seriousness of the alleged offense and whether the protection
4 of the community requires prosecution as an adult or designating the
5 proceeding as an extended jurisdiction juvenile prosecution;

6 (2) whether the alleged offense was committed in an aggressive, vi-
7 olent, premeditated or willful manner;

8 (3) whether the offense was against a person or against property.
9 Greater weight shall be given to offenses against persons, especially if
10 personal injury resulted;

11 (4) the number of alleged offenses unadjudicated and pending against
12 the juvenile;

13 (5) the previous history of the juvenile, including whether the juvenile
14 had been adjudicated a juvenile offender under this code or the Kansas
15 juvenile justice code and, if so, whether the offenses were against persons
16 or property, and any other previous history of antisocial behavior or pat-
17 terns of physical violence;

18 (6) the sophistication or maturity of the juvenile as determined by
19 consideration of the juvenile's home, environment, emotional attitude,
20 pattern of living or desire to be treated as an adult;

21 (7) whether there are facilities or programs available to the court
22 which are likely to rehabilitate the juvenile prior to the expiration of the
23 court's jurisdiction under this code; and

24 (8) whether the interests of the juvenile or of the community would
25 be better served by criminal prosecution or extended jurisdiction juvenile
26 prosecution.

27 The insufficiency of evidence pertaining to any one or more of the
28 factors listed in this subsection, in and of itself, shall not be determinative
29 of the issue. Subject to the provisions of K.S.A. 2009 Supp. 38-2354, and
30 amendments thereto, written reports and other materials relating to the
31 juvenile's mental, physical, educational and social history may be consid-
32 ered by the court.

33 (f) (1) The court may authorize prosecution as an adult upon com-
34 pletion of the hearing if the court finds from a preponderance of the
35 evidence that the alleged juvenile offender should be prosecuted as an
36 adult for the offense charged. In that case, the court shall direct the
37 alleged juvenile offender be prosecuted under the applicable criminal
38 statute and that the proceedings filed under this code be dismissed.

39 (2) The court may designate the proceeding as an extended jurisdic-
40 tion juvenile prosecution upon completion of the hearing if the juvenile
41 has failed to rebut the presumption or the court finds from a preponder-
42 ance of the evidence that the juvenile should be prosecuted under an
43 extended jurisdiction juvenile prosecution.

1 (3) After a proceeding in which prosecution as an adult is requested
2 pursuant to subsection (a)(2), and prosecution as an adult is not author-
3 ized, the court may designate the proceedings to be an extended juris-
4 diction juvenile prosecution.

5 (4) A juvenile who is the subject of an extended jurisdiction juvenile
6 prosecution shall have the right to a trial by jury, to the effective assistance
7 of counsel and to all other rights of a defendant pursuant to the Kansas
8 code of criminal procedure. Each court shall adopt local rules to establish
9 the basic procedures for extended jurisdiction juvenile prosecution in
10 such court's jurisdiction.

11 (g) If the juvenile is present in court and the court also finds from
12 the evidence that it appears a felony has been committed and that there
13 is probable cause to believe the felony has been committed by the juve-
14 nile, the court may direct that there is no necessity for further preliminary
15 examination on the charges as provided for in K.S.A. 22-2902, and amend-
16 ments thereto. In that case, the court shall order the juvenile bound over
17 to the district judge having jurisdiction to try the case.

18 (h) If the juvenile is convicted, the authorization for prosecution as
19 an adult shall attach and apply to any future prosecutions of the juvenile
20 which are or would be cognizable under this code. If the juvenile is not
21 convicted, the authorization for prosecution as an adult shall not attach
22 and shall not apply to future prosecutions of the juvenile which are or
23 would be cognizable under this code.

24 (i) If the juvenile is prosecuted as an adult under subsection (a)(2)
25 and is not convicted in adult court of an offense listed in subsection (a)(2)
26 but is convicted or adjudicated of a lesser included offense, the juvenile
27 shall be a juvenile offender and receive a sentence pursuant to K.S.A.
28 2009 Supp. 38-2361, and amendments thereto.

29 Sec. 64. K.S.A. 2009 Supp. 38-2369 is hereby amended to read as
30 follows: 38-2369. (a) For the purpose of committing juvenile offenders to
31 a juvenile correctional facility, the following placements shall be applied
32 by the judge in felony or misdemeanor cases. If used, the court shall
33 establish a specific term of commitment as specified in this subsection,
34 unless the judge conducts a departure hearing and finds substantial and
35 compelling reasons to impose a departure sentence as provided in K.S.A.
36 2009 Supp. 38-2371, and amendments thereto.

37 (1) *Violent Offenders.* (A) The violent offender I is defined as an
38 offender adjudicated as a juvenile offender for an offense which, if com-
39 mitted by an adult, would constitute an off-grid felony. Offenders in this
40 category may be committed to a juvenile correctional facility for a mini-
41 mum term of 60 months and up to a maximum term of the offender
42 reaching the age of 22 years, six months. The aftercare term for this
43 offender is set at a minimum term of six months and up to a maximum

1 term of the offender reaching the age of 23 years.

2 (B) The violent offender II is defined as an offender adjudicated as
3 a juvenile offender for an offense which, if committed by an adult, would
4 constitute a ~~non~~drug severity level 1, 2 or 3 felony. Offenders in this
5 category may be committed to a juvenile correctional facility for a mini-
6 mum term of 24 months and up to a maximum term of the offender
7 reaching the age 22 years, six months. The aftercare term for this offender
8 is set at a minimum term of six months and up to a maximum term of
9 the offender reaching the age of 23 years.

10 (2) *Serious Offenders.* (A) The serious offender I is defined as an
11 offender adjudicated as a juvenile offender for an offense which, if com-
12 mitted by an adult, would constitute a ~~non~~drug severity level 4, 5 or 6
13 person felony ~~or a severity level 1 or 2 drug felony~~. Offenders in this
14 category may be committed to a juvenile correctional facility for a mini-
15 mum term of 18 months and up to a maximum term of 36 months. The
16 aftercare term for this offender is set at a minimum term of six months
17 and up to a maximum term of 24 months.

18 (B) The serious offender II is defined as an offender adjudicated as
19 a juvenile offender for an offense which, if committed by an adult, would
20 constitute a ~~non~~drug severity level 7, 8, 9 or 10 person felony with one
21 prior felony adjudication. Offenders in this category may be committed
22 to a juvenile correctional facility for a minimum term of nine months and
23 up to a maximum term of 18 months. The aftercare term for this offender
24 is set at a minimum term of six months and up to a maximum term of 24
25 months.

26 (3) *Chronic Offenders.* (A) The chronic offender I, chronic felon is
27 defined as an offender adjudicated as a juvenile offender for an offense
28 which, if committed by an adult, would constitute:
29 ~~(i) One present nonperson felony adjudication and two prior felony~~
30 ~~adjudications; or~~
31 ~~(ii) one present severity level 3 drug felony adjudication and two prior~~
32 ~~felony adjudications.~~

33 Offenders in this category may be committed to a juvenile correctional
34 facility for a minimum term of six months and up to a maximum term of
35 18 months. The aftercare term for this offender is set at a minimum term
36 of six months and up to a maximum term of 12 months.

37 (B) The chronic offender II, escalating felon is defined as an offender
38 adjudicated as a juvenile offender for an offense which, if committed by
39 an adult, would constitute:

40 (i) One present felony adjudication and either two prior misde-
41 meanor adjudications or one prior person or nonperson felony adjudica-
42 tion; or

43 (ii) one present felony adjudication and two prior severity level 4 drug

1 adjudications; *prior to such level's repeal.*

2 ~~(iii) one present severity level 3 drug felony adjudication and either~~
3 ~~two prior misdemeanor adjudications or one prior person or nonperson~~
4 ~~felony adjudication; or~~

5 ~~—(iv) one present severity level 3 drug felony adjudication and two~~
6 ~~prior severity level 4 drug adjudications.~~

7 Offenders in this category may be committed to a juvenile correctional
8 facility for a minimum term of six months and up to a maximum term of
9 18 months. The aftercare term for this offender is set at a minimum term
10 of six months and up to a maximum term of 12 months.

11 (C) The chronic offender III, escalating misdemeanor is defined as
12 an offender adjudicated as a juvenile offender for an offense which, if
13 committed by an adult, would constitute:

14 (i) One present misdemeanor adjudication and either two prior mis-
15 demeanor adjudications or one prior person or nonperson felony adju-
16 dication and two placement failures; *or*

17 (ii) one present misdemeanor adjudication and two prior severity
18 level 4 drug felony adjudications, *prior to such level's repeal*, and two
19 placement failures;

20 ~~—(iii) one present severity level 4 drug felony adjudication and either~~
21 ~~two prior misdemeanor adjudications or one prior person or nonperson~~
22 ~~felony adjudication and two placement failures; or~~

23 ~~—(iv) one present severity level 4 drug felony adjudication and two~~
24 ~~prior severity level 4 drug felony adjudications and two placement~~
25 ~~failures.~~

26 Offenders in this category may be committed to a juvenile correctional
27 facility for a minimum term of three months and up to a maximum term
28 of six months. The aftercare term for this offender is set at a minimum
29 term of three months and up to a maximum term of six months.

30 (4) *Conditional Release Violators.* Upon finding the juvenile violated
31 a requirement or requirements of conditional release, the court may:

32 (A) Subject to the limitations in subsection (a) of K.S.A. 2009 Supp.
33 38-2366, and amendments thereto, commit the offender directly to a
34 juvenile correctional facility for a minimum term of three months and up
35 to a maximum term of six months. The aftercare term for this offender
36 shall be a minimum of two months and a maximum of six months, or the
37 length of the aftercare originally ordered, which ever is longer.

38 (B) Enter one or more of the following orders:

39 (i) Recommend additional conditions be added to those of the exist-
40 ing conditional release.

41 (ii) Order the offender to serve a period of sanctions pursuant to
42 subsection (f) of K.S.A. 2009 Supp. 38-2361, and amendments thereto.

43 (iii) Revoke or restrict the juvenile's driving privileges as described in

1 subsection (c) of K.S.A. 2009 Supp. 38-2361, and amendments thereto.

2 (C) Discharge the offender from the custody of the commissioner,
3 release the commissioner from further responsibilities in the case and
4 enter any other appropriate orders.

5 (b) As used in this section: (1) “Placement failure” means a juvenile
6 offender in the custody of the juvenile justice authority has significantly
7 failed the terms of conditional release or has been placed out-of-home in
8 a community placement accredited by the commissioner and has signif-
9 icantly violated the terms of that placement or violated the terms of
10 probation.

11 (2) “Adjudication” includes out-of-state juvenile adjudications. An
12 out-of-state offense, which if committed by an adult would constitute the
13 commission of a felony or misdemeanor, shall be classified as either a
14 felony or a misdemeanor according to the adjudicating jurisdiction. If an
15 offense which if committed by an adult would constitute the commission
16 of a felony is a felony in another state, it will be deemed a felony in Kansas.
17 The state of Kansas shall classify the offense, which if committed by an
18 adult would constitute the commission of a felony or misdemeanor, as
19 person or nonperson. In designating such offense as person or nonperson,
20 reference to comparable offenses shall be made. If the state of Kansas
21 does not have a comparable offense, the out-of-state adjudication shall
22 be classified as a nonperson offense.

23 (c) All appropriate community placement options shall have been ex-
24 hausted before a chronic offender III, escalating misdemeanant shall be
25 placed in a juvenile correctional facility. A court finding shall be made
26 acknowledging that appropriate community placement options have been
27 pursued and no such option is appropriate.

28 (d) The commissioner shall work with the community to provide on-
29 going support and incentives for the development of additional commu-
30 nity placements to ensure that the chronic offender III, escalating mis-
31 demeanant sentencing category is not frequently utilized.

32 Sec. 65. K.S.A. 2009 Supp. 38-2374 is hereby amended to read as
33 follows: 38-2374. (a) When a juvenile offender has satisfactorily com-
34 pleted the term of incarceration at the juvenile correctional facility to
35 which the juvenile offender was committed or placed, the person in
36 charge of the juvenile correctional facility shall have authority to release
37 the juvenile offender under appropriate conditions and for a specified
38 period of time. Prior to release from a juvenile correctional facility, the
39 commissioner shall consider any recommendations made by the juvenile
40 offender’s community case management officer.

41 (b) At least 20 days prior to releasing a juvenile offender as provided
42 in subsection (a), the person in charge of the juvenile correctional facility
43 shall notify the committing court of the date and conditions upon which

1 it is proposed the juvenile offender is to be released. The person in charge
2 of the juvenile correctional facility shall notify the school district in which
3 the juvenile offender will be residing if the juvenile is still required to
4 attend a school. Such notification to the school shall include the name of
5 the juvenile offender, address upon release, contact person with whom
6 the juvenile offender will be residing upon release, anticipated date of
7 release, anticipated date of enrollment in school, name and phone num-
8 ber of case worker, crime or crimes of adjudication if not confidential
9 based upon other statutes, conditions of release and any other information
10 the commissioner deems appropriate. To ensure the educational success
11 of the student, the community case manager or a representative from the
12 residential facility where the juvenile offender will reside shall contact
13 the principal of the receiving school in a timely manner to review the
14 juvenile offender's case. If such juvenile offender's offense would have
15 constituted an off-grid crime, ~~non-drug~~ felony crime ranked at severity
16 level 1, 2, 3, 4 or 5, or a drug felony crime ranked at severity level 1, 2
17 or 3, *prior to such level's repeal*, on or after July 1, 1993, if committed by
18 an adult, the person in charge of the juvenile correctional facility shall
19 notify the county or district attorney of the county where the offender
20 was adjudicated a juvenile offender of the date and conditions upon which
21 it is proposed the juvenile offender is to be released. The county or district
22 attorney shall give written notice at least five days prior to the release of
23 the juvenile offender to: (1) Any victim of the juvenile offender's crime
24 who is alive and whose address is known to the court or, if the victim is
25 deceased, to the victim's family if the family's address is known to the
26 court; and (2) the local law enforcement agency. Failure to notify pursuant
27 to this section shall not be a reason to postpone a release. Nothing in this
28 section shall create a cause of action against the state or county or an
29 employee of the state or county acting within the scope of the employee's
30 employment as a result of the failure to notify pursuant to this section.

31 (c) Upon receipt of the notice required by subsection (b), the court
32 shall review the terms of the proposed conditional release and may rec-
33 ommend modifications or additions to the terms.

34 (d) If, during the conditional release, the juvenile offender is not re-
35 turning to the county from which committed, the person in charge of the
36 juvenile correctional facility shall also give notice to the court of the
37 county in which the juvenile offender is to be residing.

38 (e) To assure compliance with conditional release from a juvenile
39 correctional facility, the commissioner shall have the authority to pre-
40 scribe the manner in which compliance with the conditions shall be su-
41 pervised. When requested by the commissioner, the appropriate court
42 may assist in supervising compliance with the conditions of release during
43 the term of the conditional release. The commissioner may require the

1 parent of the juvenile offender to cooperate and participate with the con-
2 ditional release.

3 (f) For acts committed before July 1, 1999, the juvenile justice au-
4 thority shall notify at least 45 days prior to the discharge of the juvenile
5 offender the county or district attorney of the county where the offender
6 was adjudicated a juvenile offender of the release of such juvenile of-
7 fender, if such juvenile offender's offense would have constituted a class
8 A, B or C felony before July 1, 1993, or an off-grid crime, a ~~nondrug~~
9 crime ranked at severity level 1, 2, 3, 4 or 5 or a drug crime ranked at
10 severity level 1, 2 or 3, *prior to such level's repeal*, on or after July 1,
11 1993, if committed by an adult. The county or district attorney shall give
12 written notice at least 30 days prior to the release of the juvenile offender
13 to: (1) Any victim of the juvenile offender's crime who is alive and whose
14 address is known to the court or, if the victim is deceased, to the victim's
15 family if the family's address is known to the court; and (2) the local law
16 enforcement agency. Failure to notify pursuant to this section shall not
17 be a reason to postpone a release. Nothing in this section shall create a
18 cause of action against the state or county or an employee of the state or
19 county acting within the scope of the employee's employment as a result
20 of the failure to notify pursuant to this section.

21 (g) Conditional release programs shall include, but not be limited to,
22 the treatment options of aftercare services.

23 Sec. 66. K.S.A. 2009 Supp. 38-2376 is hereby amended to read as
24 follows: 38-2376. (a) When a juvenile offender has reached the age of 23
25 years, has been convicted as an adult while serving a term of incarceration
26 at a juvenile correctional facility, or has completed the prescribed terms
27 of incarceration at a juvenile correctional facility, together with any con-
28 ditional release following the program, the juvenile shall be discharged
29 by the commissioner from any further obligation under the commitment
30 unless the juvenile was sentenced pursuant to an extended jurisdiction
31 juvenile prosecution upon court order and the commissioner transfers
32 the juvenile to the custody of the secretary of corrections. The discharge
33 shall operate as a full and complete release from any obligations imposed
34 on the juvenile offender arising from the offense for which the juvenile
35 offender was committed.

36 (b) At least 45 days prior to the discharge of the juvenile offender,
37 the juvenile justice authority shall notify the court and the county or
38 district attorney of the county where the offender was adjudicated a ju-
39 venile offender of the pending discharge of such juvenile offender, the
40 offense would have constituted a class A, B or C felony before July 1,
41 1993, or an off-grid crime, a ~~nondrug~~ crime ranked at severity level 1, 2,
42 3, 4 or 5 or a drug crime ranked at severity level 1, 2 or 3, *prior to such*
43 *level's repeal*, on or after July 1, 1993, if committed by an adult. The

1 county or district attorney shall give written notice at least 30 days prior
2 to the discharge of the juvenile offender pursuant to K.S.A. 2009 Supp.
3 38-2379, and amendments thereto.

4 Sec. 67. K.S.A. 2009 Supp. 38-2377 is hereby amended to read as
5 follows: 38-2377. (a) The commissioner shall notify the county or district
6 attorney, the court, the local law enforcement agency and the school
7 district in which the juvenile offender will be residing of such pending
8 release at least 45 days before release if the juvenile is still required to
9 attend school, if the juvenile offender has committed an act prior to July
10 1, 1999, which, if committed by a person 18 years of age or over, would
11 have constituted: (1) A class A or B felony, before July 1, 1993, or (2) an
12 off-grid crime, a ~~non-drug~~ crime ranked at severity level 1, 2, 3, 4 or 5 or
13 a drug crime ranked at severity level 1, 2 or 3, *prior to such level's repeal*,
14 if the offense was committed on or after July 1, 1993, and, if such juvenile
15 is to be released. The county or district attorney shall give written notice
16 at least 30 days prior to discharge of the juvenile offender pursuant to
17 K.S.A. 2009 Supp. 38-2379, and amendments thereto. The county attor-
18 ney, district attorney or the court on its own motion may file a motion
19 with the court for a hearing to determine if the juvenile offender should
20 be retained in the custody of the commissioner, pursuant to K.S.A. 2009
21 Supp. 38-2376, and amendments thereto. The court shall fix a time and
22 place for hearing and shall notify each party of the time and place.

23 (b) Following the hearing if the court orders the commissioner to
24 retain custody, the juvenile offender shall not be held in a juvenile cor-
25 rectional facility for longer than the maximum term of imprisonment
26 which could be imposed upon an adult convicted of the offense or of-
27 fenses which the juvenile offender has been adjudicated to have
28 committed.

29 (c) As used in this section, “maximum term of imprisonment” means
30 the greatest maximum sentence authorized by K.S.A. 21-4501, and
31 amendments thereto, applying any enhanced penalty which would be
32 applicable under K.S.A. 21-4504, and amendments thereto, and comput-
33 ing terms as consecutive when required by K.S.A. 21-4608, and amend-
34 ments thereto.

35 Sec. 68. K.S.A. 2009 Supp. 39-717 is hereby amended to read as
36 follows: 39-717. (a) Assistance granted under the provisions of this act
37 shall not:

38 (1) Be sold or otherwise disposed of to others by the client or by
39 anyone else except under the rules and regulations of the secretary of
40 social and rehabilitation services; or

41 (2) knowingly be purchased, acquired or possessed by anyone unless
42 the purchase, acquisition or possession is authorized by the rules and
43 regulations of the secretary of social and rehabilitation services or the

1 laws under which the assistance was granted.

2 (b) ~~(1)~~ Any person convicted of violating the provisions of this section
3 shall be guilty of a class A nonperson misdemeanor, if the value of the
4 assistance sold or otherwise disposed of, purchased, acquired or possessed
5 was less than \$1,000.

6 ~~(2)~~ Any person convicted of violating the provisions of this section
7 shall be guilty of a severity level 9, nonperson felony if the value of the
8 assistance sold or otherwise disposed of, purchased, acquired or possessed
9 was at least \$1,000 but less than \$25,000.

10 ~~(3)~~ Any person convicted of violating the provisions of this section
11 shall be guilty of a severity level 7, nonperson felony if the value of the
12 assistance sold or otherwise disposed of, purchased, acquired or possessed
13 was \$25,000 or more.:

14 (1) \$100,000 or more is a severity level 5, nonperson felony;

15 (2) at least \$75,000 but less than \$100,000 is a severity level 6, non-
16 person felony;

17 (3) at least \$50,000 but less than \$75,000 is a severity level 7, non-
18 person felony;

19 (4) at least \$25,000 but less than \$50,000 is a severity level 8, non-
20 person felony;

21 (5) at least \$2,000 but less than \$25,000 is a severity level 9, nonper-
22 son felony;

23 (6) at least \$1,000 but less than \$2,000 is a severity level 10, nonper-
24 son felony;

25 (7) at least \$500 but less than \$1,000 is a class A nonperson misde-
26 meanor; and

27 (8) less than \$500 is a class B nonperson misdemeanor.

28 (c) None of the money paid, payable, or to be paid, or any tangible
29 assistance received under this act shall be subject to execution, levy, at-
30 tachment, garnishment, or other legal process, or to the operation of any
31 bankruptcy or insolvency law.

32 Sec. 69. K.S.A. 39-720 is hereby amended to read as follows: 39-720.

33 (a) Any person who obtains or attempts to obtain, or aids or abets any
34 other person to obtain, by means of a willfully false statement or repre-
35 sentation, or by impersonation, collusion, or other fraudulent device, as-
36 sistance to which the applicant or client is not entitled, shall be guilty of
37 the crime of theft, as defined by K.S.A. 21-3701, and he in an amount of:

38 (1) \$100,000 or more is a severity level 5, nonperson felony;

39 (2) at least \$75,000 but less than \$100,000 is a severity level 6, non-
40 person felony;

41 (3) at least \$50,000 but less than \$75,000 is a severity level 7, non-
42 person felony;

43 (4) at least \$25,000 but less than \$50,000 is a severity level 8, non-

1 *person felony;*

2 (5) *at least \$2,000 but less than \$25,000 is a severity level 9, nonper-*
3 *son felony;*

4 (6) *at least \$1,000 but less than \$2,000 is a severity level 10, nonper-*
5 *son felony;*

6 (7) *at least \$500 but less than \$1,000 is a class A nonperson misde-*
7 *meanor; and*

8 (8) *less than \$500 is a class B nonperson misdemeanor.*

9 (b) *In addition to the provisions of this section, the person shall be*
10 *required to remit to the secretary the amount of any assistance given him*
11 *to such person under such fraudulent act.*

12 (c) *In any civil action for the recovery of assistance on the grounds*
13 *the assistance was fraudulently obtained, proof that the recipient of the*
14 *assistance possesses or did possess resources which does or would have*
15 *rendered him such recipient ineligible to receive such assistance shall be*
16 *deemed prima facie evidence that such assistance was fraudulently*
17 *obtained.*

18 Sec. 70. K.S.A. 2009 Supp. 40-247 is hereby amended to read as
19 follows: 40-247. (a) An insurance agent or broker who acts in negotiating
20 or renewing or continuing a contract of insurance including any type of
21 annuity by an insurance company lawfully doing business in this state,
22 and who receives any money or substitute for money as a premium for
23 such a contract from the insured, whether such agent or broker shall be
24 entitled to an interest in same or otherwise, shall be deemed to hold such
25 premium in trust for the company making the contract. If such agent or
26 broker fails to pay the same over to the company after written demand
27 made upon such agent or broker, less such agent's or broker's commission
28 and any deductions, to which by the written consent of the company such
29 agent or broker may be entitled, such failure shall be prima facie evidence
30 that such agent or broker has used or applied the premium for a purpose
31 other than paying the same over to the company.

32 (b) (1) An agent or broker who violates the provisions of this section
33 ~~shall be guilty of a~~

34 ~~—(A) Severity level 7, nonperson felony if the value of the insurance~~
35 ~~premium is \$25,000 or more;~~

36 ~~—(B) severity level 9, nonperson felony if the value of the insurance~~
37 ~~premium is at least \$1,000 but less than \$25,000; or~~

38 ~~—(C) class A nonperson misdemeanor if the value of the insurance~~
39 ~~premium is less than \$1,000., if the value of the insurance premium is:~~

40 (A) *\$100,000 or more is a severity level 5, nonperson felony;*

41 (B) *at least \$75,000 but less than \$100,000 is a severity level 6, non-*
42 *person felony;*

43 (C) *at least \$50,000 but less than \$75,000 is a severity level 7, non-*

1 *person felony;*

2 (D) *at least \$25,000 but less than \$50,000 is a severity level 8, non-*
3 *person felony;*

4 (E) *at least \$2,000 but less than \$25,000 is a severity level 9, nonper-*
5 *son felony;*

6 (F) *at least \$1,000 but less than \$2,000 is a severity level 10, nonper-*
7 *son felony;*

8 (G) *at least \$500 but less than \$1,000 is a class A nonperson misde-*
9 *meanor; and*

10 (H) *less than \$500 is a class B nonperson misdemeanor.*

11 (2) If the value of the insurance premium is less than \$1,000 and such
12 agent or broker has, within five years immediately preceding commission
13 of the crime, been convicted of violating this section two or more times
14 shall be guilty of a severity level 9, nonperson felony.

15 Sec. 71. K.S.A. 2009 Supp. 40-2,118 is hereby amended to read as
16 follows: 40-2,118. (a) For purposes of this act a “fraudulent insurance act”
17 means an act committed by any person who, knowingly and with intent
18 to defraud, presents, causes to be presented or prepares with knowledge
19 or belief that it will be presented to or by an insurer, purported insurer,
20 broker or any agent thereof, any written statement as part of, or in support
21 of, an application for the issuance of, or the rating of an insurance policy
22 for personal or commercial insurance, or a claim for payment or other
23 benefit pursuant to an insurance policy for commercial or personal in-
24 surance which such person knows to contain materially false information
25 concerning any fact material thereto; or conceals, for the purpose of mis-
26 leading, information concerning any fact material thereto.

27 (b) An insurer that has knowledge or a good faith belief that a fraud-
28 ulent insurance act is being or has been committed shall provide to the
29 commissioner, on a form prescribed by the commissioner, any and all
30 information and such additional information relating to such fraudulent
31 insurance act as the commissioner may require.

32 (c) Any other person that has knowledge or a good faith belief that a
33 fraudulent insurance act is being or has been committed may provide to
34 the commissioner, on a form prescribed by the commissioner, any and
35 all information and such additional information relating to such fraudu-
36 lent insurance act as the commissioner may request.

37 (d) (1) Each insurer shall have antifraud initiatives reasonably cal-
38 culated to detect fraudulent insurance acts. Antifraud initiatives may in-
39 clude: fraud investigators, who may be insurer employees or independent
40 contractors; or an antifraud plan submitted to the commissioner no later
41 than July 1, 2007. Each insurer that submits an antifraud plan shall notify
42 the commissioner of any material change in the information contained in
43 the antifraud plan within 30 days after such change occurs. Such insurer

- 1 shall submit to the commissioner in writing the amended antifraud plan.
2 The requirement for submitting any antifraud plan, or any amendment
3 thereof, to the commissioner shall expire on the date specified in para-
4 graph (2) of this subsection unless the legislature reviews and reenacts
5 the provisions of paragraph (2) pursuant to K.S.A. 45-229 and amend-
6 ments thereto.
- 7 (2) Any antifraud plan, or any amendment thereof, submitted to the
8 commissioner for informational purposes only shall be confidential and
9 not be a public record and shall not be subject to discovery or subpoena
10 in a civil action unless following an in camera review, the court determines
11 that the antifraud plan is relevant and otherwise admissible under the
12 rules of evidence set forth in article 4, chapter 60 of the Kansas Statutes
13 Annotated, and amendments thereto. The provisions of this paragraph
14 shall expire on July 1, 2011, unless the legislature reviews and reenacts
15 this provision pursuant to K.S.A. 45-229, and amendments thereto, prior
16 to July 1, 2011.
- 17 (e) (1) Except as otherwise specifically provided in K.S.A. 21-3718
18 ~~and amendments thereto~~ and K.S.A. 44-5,125, and amendments thereto,
19 a fraudulent insurance act shall constitute a severity level 6, nonperson
20 felony, if the amount involved is ~~\$25,000 or more, a severity level 7,~~
21 ~~nonperson felony if the amount is at least \$5,000 but less than \$25,000,~~
22 ~~a severity level 8, nonperson felony if the amount is at least \$1,000 but~~
23 ~~less than \$5,000, and a class C nonperson misdemeanor if the amount is~~
24 ~~less than \$1,000.:~~
- 25 (A) *\$100,000 or more is a severity level 5, nonperson felony;*
26 (B) *at least \$75,000 but less than \$100,000 is a severity level 6, non-*
27 *person felony;*
28 (C) *at least \$50,000 but less than \$75,000 is a severity level 7, non-*
29 *person felony;*
30 (D) *at least \$25,000 but less than \$50,000 is a severity level 8, non-*
31 *person felony;*
32 (E) *at least \$2,000 but less than \$25,000 is a severity level 9, nonper-*
33 *son felony;*
34 (F) *at least \$1,000 but less than \$2,000 is a severity level 10, nonper-*
35 *son felony;*
36 (G) *at least \$500 but less than \$1,000 is a class A nonperson misde-*
37 *meanor; and*
38 (H) *less than \$500 is a class B nonperson misdemeanor.*
- 39 (2) Any combination of fraudulent acts as defined in subsection (a)
40 which occur in a period of six consecutive months which involves \$25,000
41 or more shall have a presumptive sentence of imprisonment regardless
42 of its location on the sentencing grid block.
- 43 (f) In addition to any other penalty, a person who violates this statute

1 shall be ordered to make restitution to the insurer or any other person
2 or entity for any financial loss sustained as a result of such violation. An
3 insurer shall not be required to provide coverage or pay any claim in-
4 volving a fraudulent insurance act.

5 (g) This act shall apply to all insurance applications, ratings, claims
6 and other benefits made pursuant to any insurance policy.

7 Sec. 72. K.S.A. 2009 Supp. 40-5013 is hereby amended to read as
8 follows: 40-5013. (a) If the commissioner determines after notice and
9 opportunity for a hearing that any person has engaged or is engaging in
10 any act or practice constituting a violation of any provision of this act, the
11 Kansas insurance statutes or any rule and regulation or order thereunder,
12 the commissioner may in the exercise of discretion, order any one or more
13 of the following:

14 (1) Payment of a monetary penalty of not more than \$1,000 for each
15 and every act or violation, unless the person knew or reasonably should
16 have known such person was in violation of this act, the Kansas insurance
17 statutes or any rule and regulation or order thereunder, in which case the
18 penalty shall be not more than \$2,000 for each and every act or violation;

19 (2) suspension or revocation of the person's license or certificate if
20 such person knew or reasonably should have known that such person was
21 in violation of this act, the Kansas insurance statutes or any rule and
22 regulation or order thereunder; or

23 (3) that such person cease and desist from the unlawful act or practice
24 and take such affirmative action as in the judgment of the commissioner
25 will carry out the purposes of the violated or potentially violated provision.

26 (b) If any person fails to file any report or other information with the
27 commissioner as required by statute or fails to respond to any proper
28 inquiry of the commissioner, the commissioner, after notice and oppor-
29 tunity for hearing, may impose a penalty of up to \$500 for each violation
30 or act, along with an additional penalty of up to \$100 for each week
31 thereafter that such report or other information is not provided to the
32 commissioner.

33 (c) If the commissioner makes written findings of fact that there is a
34 situation involving an immediate danger to the public health, safety or
35 welfare or the public interest will be irreparably harmed by delay in is-
36 suing an order under paragraph (3) of subsection (a), the commissioner
37 may issue an emergency temporary cease and desist order. Such order,
38 even when not an order within the meaning of K.S.A. 77-502, and amend-
39 ments thereto, shall be subject to the same procedures as an emergency
40 order issued under K.S.A. 77-536, and amendments thereto. Upon the
41 entry of such an order, the commissioner shall promptly notify the person
42 subject to the order that: (1) It has been entered; (2) the reasons therefor;
43 and (3) that upon written request within 15 days after service of the order

1 the matter will be set for a hearing which shall be conducted in accord-
2 ance with the provisions of the Kansas administrative procedure act. If
3 no hearing is requested and none is ordered by the commissioner, the
4 order will remain in effect until it is modified or vacated by the commis-
5 sioner. If a hearing is requested or ordered, the commissioner, after no-
6 tice of and opportunity for hearing to the person subject to the order, by
7 written findings of fact and conclusions of law, shall vacate, modify or
8 make permanent the order.

9 (d) (1) Any person who violates the provisions of this act ~~shall be~~
10 ~~guilty of a:~~

11 ~~—(A)— Severity level 7, nonperson felony if the value of the viatical set-~~
12 ~~tlement contract is \$25,000 or more;~~

13 ~~—(B)— severity level 9, nonperson felony if the value of the viatical set-~~
14 ~~tlement contract is at least \$1,000 but less than \$25,000, or~~

15 ~~—(C)— class A nonperson misdemeanor if the value of the viatical settle-~~
16 ~~ment contract is less than \$1,000, if the value of the viatical settlement~~
17 ~~contract is:~~

18 (A) \$100,000 or more is a severity level 5, nonperson felony;

19 (B) at least \$75,000 but less than \$100,000 is a severity level 6, non-
20 person felony;

21 (C) at least \$50,000 but less than \$75,000 is a severity level 7, non-
22 person felony;

23 (D) at least \$25,000 but less than \$50,000 is a severity level 8, non-
24 person felony;

25 (E) at least \$2,000 but less than \$25,000 is a severity level 9, nonper-
26 son felony;

27 (F) at least \$1,000 but less than \$2,000 is a severity level 10, nonper-
28 son felony;

29 (G) at least \$500 but less than \$1,000 is a class A nonperson misde-
30 meanor; and

31 (H) less than \$500 is a class B nonperson misdemeanor.

32 (2) If the value of the insurance premium is less than \$1,000 and such
33 agent or broker has, within five years immediately preceding commission
34 of the crime, been convicted of violating this section two or more times
35 shall be guilty of a severity level 9, nonperson felony.

36 (e) Restitution may be ordered in addition to, but not in lieu of, any
37 other penalty imposed under this act.

38 Sec. 73. K.S.A. 2009 Supp. 44-5,125 is hereby amended to read as
39 follows: 44-5,125. (a) (1) *It shall be unlawful for* any person who obtains
40 or attempts to obtain workers compensation benefits for such person or
41 another, or who denies or attempts to deny the obligation to make any
42 payment of workers compensation benefits by knowingly or intentionally:
43 (A) Making a false or misleading statement, (B) misrepresenting or con-

- 1 cealing a material fact, (C) fabricating, altering, concealing or destroying
 2 a document; (D) receiving temporary total disability benefits or perma-
 3 nent total disability benefits to which they are not entitled, while em-
 4 ployed, or (E) conspiring with another person to commit any act de-
 5 scribed by *this* paragraph ~~(1)~~ of this subsection (a), shall be guilty of:
- 6 ~~—(i) A class A nonperson misdemeanor, if the amount received as a~~
 7 ~~benefit or other payment under the workers compensation act as a result~~
 8 ~~of such act or the amount that the person otherwise benefitted monetarily~~
 9 ~~as a result of a violation of this subsection (a) is \$1,000 or less;~~
 10 ~~—(ii) a severity level 9, nonperson felony, if such amount is more than~~
 11 ~~\$1,000 but less than \$25,000;~~
 12 ~~—(iii) a severity level 7, nonperson felony, if the amount is more than~~
 13 ~~\$25,000, but less than \$50,000;~~
 14 ~~—(iv) a severity level 6, nonperson felony if the amount is more than~~
 15 ~~\$50,000, but less than \$100,000; or~~
 16 ~~—(v) a severity level 5, nonperson felony if the amount is more than~~
 17 ~~\$100,000.~~
- 18 (2) *Violation of this subsection, if the amount received as a benefit or*
 19 *other payment under the workers compensation act as a result of such act*
 20 *or the amount that the person otherwise benefitted monetarily as a result*
 21 *of a violation of this subsection is:*
- 22 (A) *\$100,000 or more is a severity level 5, nonperson felony;*
 23 (B) *at least \$75,000 but less than \$100,000 is a severity level 6, non-*
 24 *person felony;*
 25 (C) *at least \$50,000 but less than \$75,000 is a severity level 7, non-*
 26 *person felony;*
 27 (D) *at least \$25,000 but less than \$50,000 is a severity level 8, non-*
 28 *person felony;*
 29 (E) *at least \$2,000 but less than \$25,000 is a severity level 9, nonper-*
 30 *son felony;*
 31 (F) *at least \$1,000 but less than \$2,000 is a severity level 10, nonper-*
 32 *son felony;*
 33 (G) *at least \$500 but less than \$1,000 is a class A nonperson misde-*
 34 *meanor; and*
 35 (H) *less than \$500 is a class B nonperson misdemeanor.*
- 36 (b) Any person who knowingly and intentionally presents a false cer-
 37 tificate of insurance that purports that the presenter is insured under the
 38 workers compensation act, ~~shall be~~ is guilty of a level 8, nonperson felony.
 39 (c) A health care provider under the workers compensation act who
 40 knowingly and intentionally submits a charge for health care that was not
 41 furnished, ~~shall be~~ is guilty of a level 9, nonperson felony.
 42 (d) Any person who obtains or attempts to obtain a more favorable
 43 workers compensation insurance premium rate than that to which the

1 person is entitled, who prevents, reduces, avoids or attempts to prevent,
2 reduce or avoid the payment of any compensation under the workers
3 compensation act, or who fails to communicate a settlement offer or sim-
4 ilar information to a claimant under the workers compensation act, by, in
5 any such case knowingly or intentionally: (1) Making a false or misleading
6 statement; (2) misrepresenting or concealing a material fact; (3) fabricat-
7 ing, concealing or destroying a document; or (4) conspiring with another
8 person or persons to commit the acts described in clause (1), (2) or (3)
9 of this subsection ~~shall be~~ *is* guilty of a level 9, nonperson felony.

10 (e) Any person who has received any amount of money as a benefit
11 or other payment under the workers compensation act as a result of a
12 violation of subsection (a) or (c) and any person who has otherwise ben-
13 efitied monetarily as a result of a violation of subsection (a) or (c) shall be
14 liable to repay an amount equal to the amount so received by such person
15 or the amount by which such person has benefited monetarily, with in-
16 terest thereon. Any such amount, plus any accrued interest thereon, shall
17 bear interest at the current rate of interest prescribed by law for judg-
18 ments under subsection (e)(1) of K.S.A. 16-204 and amendments thereto
19 per month or fraction of a month until repayment of such amount, plus
20 any accrued interest thereon. The interest shall accrue from the date of
21 overpayment or erroneous payment of any such amount or the date such
22 person benefited monetarily.

23 (f) Any person aggrieved by a violation of subsection (a), (b), (c) or
24 (d) shall have a cause of action against any other person to recover any
25 amounts of money erroneously paid as benefits or any other amounts of
26 money paid under the workers compensation act, and to seek relief for
27 other monetary damages, for which liability has accrued under this section
28 against such other person. Relief under this subsection is to be predicated
29 upon exhaustion of administrative remedies available in K.S.A. 44-5,120
30 and amendments thereto.

31 (g) Nothing in this section shall prohibit an employer from exercising
32 a right to reimbursement under K.S.A. 44-534a, 44-556 or 44-569a and
33 amendments thereto.

34 (h) Prosecution for any crime under this section shall be commenced
35 within five years subject to the time period set forth in subsection (8) of
36 K.S.A. 21-3106 and amendments thereto.

37 Sec. 74. K.S.A. 2009 Supp. 44-719 is hereby amended to read as
38 follows: 44-719. (a) Any person who makes a false statement or represen-
39 tation knowing it to be false or knowingly fails to disclose a material fact,
40 to obtain or increase any benefit or other payment under this act, either
41 for such person or for any other person, ~~shall be guilty of theft and shall~~
42 ~~be punished in accordance with the provisions of K.S.A. 21-3701 and~~
43 ~~amendments thereto.~~ *in an amount of:*

- 1 (1) \$100,000 or more is a severity level 5, nonperson felony;
2 (2) at least \$75,000 but less than \$100,000 is a severity level 6, non-
3 person felony;
4 (3) at least \$50,000 but less than \$75,000 is a severity level 7, non-
5 person felony;
6 (4) at least \$25,000 but less than \$50,000 is a severity level 8, non-
7 person felony;
8 (5) at least \$2,000 but less than \$25,000 is a severity level 9, nonper-
9 son felony;
10 (6) at least \$1,000 but less than \$2,000 is a severity level 10, nonper-
11 son felony;
12 (7) at least \$500 but less than \$1,000 is a class A nonperson misde-
13 meanor; and
14 (8) less than \$500 is a class B nonperson misdemeanor.
15 (b) Any employing unit or any officer or agent for any employing unit
16 or any other person who makes a false statement or representation know-
17 ing it to be false, or who knowingly fails to disclose a material fact, to
18 prevent or reduce the payment of benefits to any individual entitled
19 thereto, or to avoid becoming or remaining subject hereto or to avoid or
20 reduce any contribution or other payment required from an employing
21 unit under this act, or who willfully fails or refuses to make any such
22 contributions or other payment or to furnish any reports required here-
23 under or to produce or permit the inspection or copying of records as
24 required hereunder, ~~shall be punished by a fine of not less than \$20 nor~~
25 ~~more than \$200, or by imprisonment for not longer than 60 days, or both~~
26 ~~such fine and imprisonment is guilty of a class C, nonperson misde-~~
27 ~~meanor.~~ Each such false statement or representation or failure to disclose
28 a material fact and each day of such failure or refusal shall constitute a
29 separate offense.
30 (c) Any person who willfully violates any provision of this act or any
31 rule and regulation adopted by the secretary hereunder, the violation of
32 which is made unlawful or the observance of which is required under the
33 terms of this act, and for which a penalty is neither prescribed herein or
34 provided by any other applicable statute, ~~shall be punished by a fine of~~
35 ~~not less than \$20 nor more than \$200, or by imprisonment for not longer~~
36 ~~than 60 days, or by both such fine and imprisonment, and is guilty of a~~
37 ~~class C, nonperson misdemeanor.~~ Each day such violation continues shall
38 be deemed to be a separate offense.
39 (d) (1) Any person who has received any amount of money as ben-
40 efits under this act while any conditions for the receipt of benefits im-
41 posed by this act were not fulfilled in such person's case, or while such
42 person was disqualified from receiving benefits, shall in the discretion of
43 the secretary, either be liable to have such amount of money deducted

1 from any future benefits payable to such person under this act or shall
2 be liable to repay to the secretary for the employment security fund an
3 amount of money equal to the amount so received by such person. After
4 a period of five years, the secretary may waive the collection of any such
5 amount of money when the secretary has determined that the payment
6 of such amount of money was not due to fraud, misrepresentation, or
7 willful nondisclosure on the part of the person receiving such amount of
8 money, and the collection thereof would be against equity or would cause
9 extreme hardship with regard to such person. The collection of benefit
10 overpayments which were made in the absence of fraud, misrepresenta-
11 tion or willful nondisclosure of required information on the part of the
12 person who received such overpayments, may be waived by the secretary
13 at any time if such person met all eligibility requirements of the employ-
14 ment security law during the weeks in which the overpayments were
15 made.

16 (2) Any benefit erroneously paid which is not repaid shall bear inter-
17 est at the rate of 1.5% per month or fraction of a month. If the benefit
18 was received as a result of fraud, misrepresentation or willful nondisclo-
19 sure of required information, interest shall accrue from the date of the
20 final determination of overpayment until repayment plus interest is re-
21 ceived by the secretary. If the overpayment was without fraud, misrep-
22 resentation or willful nondisclosure of required information, interest shall
23 accrue upon any balance which remains unpaid two years after the final
24 determination of overpayment is made and shall continue until payment
25 plus accrued interest is received by the secretary. Interest collected pur-
26 suant to this section shall be paid into the special employment security
27 fund, except that interest collected on federal administrative programs
28 shall be returned to the federal government. Upon written request and
29 for good cause shown, the secretary may abate any interest or portion
30 thereof provided for by this subsection (d)(2). Interest accrued may not
31 be paid by money deducted from any future benefits payable to such
32 persons liable for any overpayment.

33 (3) Unless collection is waived by the secretary, any such amount shall
34 be collectible in the manner provided in subsection (b) of K.S.A. 44-717
35 and amendments thereto for the collection of past due contributions. The
36 courts of this state shall in like manner entertain actions to collect
37 amounts of money erroneously paid as benefits, or unlawfully obtained,
38 for which liability has accrued under the employment security law of any
39 other state or of the federal government.

40 (e) Any employer or person who willfully fails or refuses to pay con-
41 tributions, payments in lieu of contributions or benefit cost payments or
42 attempts in any manner to evade or defeat any such contributions, pay-
43 ments in lieu of contributions or benefit cost payments or the payment

1 thereof, shall be liable for the payment of such contributions, payments
2 in lieu of contributions or benefit cost payments and, in addition to any
3 other penalties provided by law, shall be liable to pay a penalty equal to
4 the total amount of the contributions, payments in lieu of contributions
5 or benefit cost payments evaded or not paid.

6 (f) (1) It shall be unlawful for an employing unit to knowingly obtain
7 or attempt to obtain a reduced liability for contributions under subsection
8 (b)(1) of K.S.A. 44-710a and amendments thereto through manipulation
9 of the employer's workforce, or for an employing unit that is not an em-
10 ploying unit at the time it acquires the trade or business, to knowingly
11 obtain or attempt to obtain a reduced liability for contributions under
12 subsection (b)(5) of K.S.A. 44-710a and amendments thereto, or any other
13 provision of K.S.A. 44-710a and amendments thereto related to deter-
14 mining the assignment of a contribution rate, when the sole or primary
15 purpose of the business acquisition was for the purpose of obtaining a
16 lower rate of contributions, or for a person to knowingly advise an em-
17 ploying unit in such a way that results in such a violation, such employing
18 unit or person shall be subject to the following penalties:

19 (A) If the person is an employer, then such employer shall be as-
20 signed the highest rate assignable under K.S.A. 44-710a, and amendments
21 thereto, for the rate year during which such violation or attempted vio-
22 lation occurred and the three rate years immediately following this rate
23 year. However, if the employer's business is already at such highest rate
24 for any year, or if the amount of increase in the employer's rate would
25 be less than 2% for such year, then a penalty rate of contributions of 2%
26 of taxable wages shall be imposed for such year. Any moneys resulting
27 from the difference of the computed rate and the penalty rate shall be
28 remitted to the state treasurer in accordance with the provisions of K.S.A.
29 75-4215 and amendments thereto. Upon receipt of each such remittance,
30 the state treasurer shall deposit the entire amount in the state treasury
31 to the credit of the special employment security fund.

32 (B) If the person is not an employer, such person shall be subject to
33 a civil money penalty of not more than \$5,000. All fines assessed and
34 collected under this section shall be remitted to the state treasurer in
35 accordance with the provisions of K.S.A. 75-4215 and amendments
36 thereto. Upon receipt of each such remittance, the state treasurer shall
37 deposit the entire amount in the state treasury to the credit of the special
38 employment security fund.

39 (2) For purposes of this subsection, the term "knowingly" means hav-
40 ing actual knowledge of or acting with deliberate ignorance or reckless
41 disregard for the prohibition involved.

42 (3) For purposes of this subsection, the term "violates or attempts to
43 violate" includes, but is not limited to, any intent to evade, misrepresen-

1 tation or willful nondisclosure.

2 (4) (A) In addition to, or in lieu of, any civil penalty imposed by
3 paragraph (1) if, the director of employment security or a special assistant
4 attorney general assigned to the department of labor, has probable cause
5 to believe that a violation of this subsection (f) should be prosecuted as
6 a crime, a copy of any order, all investigative reports and any evidence in
7 the possession of the division of employment security which relates to
8 such violation, may be forwarded to the prosecuting attorney in the
9 county in which the act or any of the acts were performed which consti-
10 tute a violation of this subsection (f). Any case which a county or district
11 attorney fails to prosecute within 90 days shall be returned promptly to
12 the director of employment security. The special assistant attorney gen-
13 eral assigned to the Kansas department of labor shall then prosecute the
14 case, if, in the opinion of the special assistant attorney general, the acts
15 or practices involved still warrant prosecution.

16 (B) Violation of this subsection (f) ~~shall be~~ is a level 9, nonperson
17 felony.

18 (5) The secretary shall establish procedures to identify the transfer
19 or acquisition of a business for purposes of this section.

20 (6) For purposes of subsection (f):

21 (A) “Person” has the meaning given such term by section 7701(a)(1)
22 of the internal revenue code of 1986;

23 (B) “trade or business” shall include the employer’s workforce; and

24 (C) the provisions of K.S.A. 21-3206 and K.S.A. 21-3207, and amend-
25 ments thereto, shall apply.

26 (7) This subsection (f) shall be interpreted and applied in such a man-
27 ner as to meet the minimum requirements contained in any guidance or
28 regulation issued by the United States department of labor.

29 Sec. 75. K.S.A. 2009 Supp. 47-1827 is hereby amended to read as
30 follows: 47-1827. (a) No person shall, without the effective consent of the
31 owner and with the intent to damage the enterprise conducted at the
32 animal facility, damage or destroy an animal facility or any animal or
33 property in or on an animal facility.

34 (b) No person shall, without the effective consent of the owner, ac-
35 quire or otherwise exercise control over an animal facility, an animal from
36 an animal facility or other property from an animal facility, with the intent
37 to deprive the owner of such facility, animal or property and to damage
38 the enterprise conducted at the animal facility.

39 (c) No person shall, without the effective consent of the owner and
40 with the intent to damage the enterprise conducted at the animal facility:

41 (1) Enter an animal facility, not then open to the public, with intent
42 to commit an act prohibited by this section;

43 (2) remain concealed, with intent to commit an act prohibited by this

- 1 section, in an animal facility;
- 2 (3) enter an animal facility and commit or attempt to commit an act
- 3 prohibited by this section; or
- 4 (4) enter an animal facility to take pictures by photograph, video cam-
- 5 era or by any other means.
- 6 (d) (1) No person shall, without the effective consent of the owner
- 7 and with the intent to damage the enterprise conducted at the animal
- 8 facility, enter or remain on an animal facility if the person:
- 9 (A) Had notice that the entry was forbidden; or
- 10 (B) received notice to depart but failed to do so.
- 11 (2) For purposes of this subsection (d), “notice” means:
- 12 (A) Oral or written communication by the owner or someone with
- 13 apparent authority to act for the owner;
- 14 (B) fencing or other enclosure obviously designed to exclude intrud-
- 15 ers or to contain animals; or
- 16 (C) a sign or signs posted on the property or at the entrance to the
- 17 building, reasonably likely to come to the attention of intruders, indicating
- 18 that entry is forbidden.
- 19 (e) No person shall, without the effective consent of the owner and
- 20 with the intent to damage or destroy the field crop product, damage or
- 21 destroy any field crop product that is grown in the context of a product
- 22 development program in conjunction or coordination with a private re-
- 23 search facility or a university or any federal, state or local governmental
- 24 agency.
- 25 (f) No person shall, without the effective consent of the owner and
- 26 with the intent to damage or destroy the field crop product, enter any
- 27 property, with the intent to damage or destroy any field crop product that
- 28 is grown in the context of a product development program in conjunction
- 29 or coordination with a private research facility or a university or any fed-
- 30 eral, state or local governmental agency.
- 31 (g) (1) Violation of subsection (a) or (e) ~~is a severity level 7, nonper-~~
- 32 ~~son felony, if the facility, animals, field crop product or property is dam-~~
- 33 ~~aged or destroyed to the extent of \$25,000 or more. Violation of subsec-~~
- 34 ~~tion (a) or (e) is a severity level 9, nonperson felony if the facility, animals,~~
- 35 ~~field crop product or property is damaged or destroyed to the extent of~~
- 36 ~~at least \$1,000 but less than \$25,000. Violation of subsection (a) or (e) is~~
- 37 ~~a class A nonperson misdemeanor if the facility, animals, field crop prod-~~
- 38 ~~uct or property damaged or destroyed is of the value of less than \$1,000~~
- 39 ~~or is of the value of \$1,000 or more and is damaged to the extent of less~~
- 40 ~~than \$1,000.:~~
- 41 (A) *\$100,000 or more is a severity level 5, nonperson felony;*
- 42 (B) *at least \$75,000 but less than \$100,000 is a severity level 6, non-*
- 43 *person felony;*

- 1 (C) at least \$50,000 but less than \$75,000 is a severity level 7, non-
2 person felony;
- 3 (D) at least \$25,000 but less than \$50,000 is a severity level 8, non-
4 person felony;
- 5 (E) at least \$2,000 but less than \$25,000 is a severity level 9, nonper-
6 son felony;
- 7 (F) at least \$1,000 but less than \$2,000 is a severity level 10, nonper-
8 son felony;
- 9 (G) at least \$500 but less than \$1,000 is a class A nonperson misde-
10 meanor; and
- 11 (H) less than \$500 is a class B nonperson misdemeanor.
- 12 (2) Violation of subsection (b) is a severity level 10, nonperson felony.
- 13 (3) Violation of subsection (c) is a class A, nonperson misdemeanor.
- 14 (4) Violation of subsection (d) or (f) is a class B nonperson
15 misdemeanor.
- 16 (h) The provisions of this section shall not apply to lawful activities
17 of any governmental agency or employees or agents thereof carrying out
18 their duties under law.
- 19 Sec. 76. K.S.A. 65-2859 is hereby amended to read as follows: 65-
20 2859. Any person who shall file or attempt to file with the board any false
21 or forged diploma, certificate, affidavit or identification or qualification,
22 or any other written or printed instrument, shall be guilty of forgery as
23 provided by K.S.A. 21-3710 ~~and a severity level 8, nonperson felony,~~ and
24 ~~amendments thereto.~~
- 25 Sec. 77. K.S.A. 2009 Supp. 65-4167 is hereby amended to read as
26 follows: 65-4167. (a) Trafficking in counterfeit drugs is intentionally man-
27 ufacturing, distributing, ~~dispensing, selling or delivering or possessing~~
28 ~~with the intent to distribute~~ for consumption purposes, ~~or holding or~~
29 ~~offering for sale,~~ any counterfeit drug.
- 30 (b) Trafficking in counterfeit drugs which have a retail value of less
31 ~~than \$500 is a class A nonperson misdemeanor, trafficking in counterfeit~~
32 ~~drugs which have a retail value of at least \$500 but less than \$25,000 is a~~
33 ~~severity level 9, nonperson felony and trafficking in counterfeit drugs~~
34 ~~which have a retail value of \$25,000 or more is a severity level 7, non-~~
35 ~~person felony.:~~
- 36 (1) \$100,000 or more is a severity level 5, nonperson felony;
- 37 (2) at least \$75,000 but less than \$100,000 is a severity level 6, non-
38 person felony;
- 39 (3) at least \$50,000 but less than \$75,000 is a severity level 7, non-
40 person felony;
- 41 (4) at least \$25,000 but less than \$50,000 is a severity level 8, non-
42 person felony;
- 43 (5) at least \$2,000 but less than \$25,000 is a severity level 9, nonper-

1 *son felony;*

2 (6) *at least \$1,000 but less than \$2,000 is a severity level 10, nonper-*
3 *son felony;*

4 (7) *at least \$500 but less than \$1,000 is a class A nonperson misde-*
5 *meanor; and*

6 (8) *less than \$500 is a class B nonperson misdemeanor.*

7 (c) A pharmacy which is inadvertently in possession of counterfeit
8 drugs may return those drugs to the supplier who provided the drugs to
9 the pharmacy.

10 Sec. 78. K.S.A. 2009 Supp. 74-9101 is hereby amended to read as
11 follows: 74-9101. (a) There is hereby established the Kansas sentencing
12 commission.

13 (b) The commission shall:

14 (1) Develop a sentencing guideline model or grid based on fairness
15 and equity and shall provide a mechanism for linking justice and correc-
16 tions policies. The sentencing guideline model or grid shall establish ra-
17 tional and consistent sentencing standards which reduce sentence dis-
18 parity, to include, but not be limited to, racial and regional biases which
19 may exist under current sentencing practices. The guidelines shall specify
20 the circumstances under which imprisonment of an offender is appro-
21 priate and a presumed sentence for offenders for whom imprisonment is
22 appropriate, based on each appropriate combination of reasonable of-
23 fense and offender characteristics. In developing its recommended sen-
24 tencing guidelines, the commission shall take into substantial considera-
25 tion current sentencing and release practices and correctional resources,
26 including but not limited to the capacities of local and state correctional
27 facilities. In its report, the commission shall make recommendations re-
28 garding whether there is a continued need for and what is the projected
29 role of, if any, the Kansas parole board and whether the policy of allo-
30 cating good time credits for the purpose of determining an inmate's eli-
31 gibility for parole or conditional release should be continued;

32 (2) consult with and advise the legislature with reference to the im-
33 plementation, management, monitoring, maintenance and operations of
34 the sentencing guidelines system;

35 (3) direct implementation of the sentencing guidelines system;

36 (4) assist in the process of training judges, county and district attor-
37 neys, court services officers, state parole officers, correctional officers,
38 law enforcement officials and other criminal justice groups. For these
39 purposes, the sentencing commission shall develop an implementation
40 policy and shall construct an implementation manual for use in its training
41 activities;

42 (5) receive presentence reports and journal entries for all persons
43 who are sentenced for crimes committed on or after July 1, 1993, to

- 1 develop post-implementation monitoring procedures and reporting
2 methods to evaluate guideline sentences. In developing the evaluative
3 criteria, the commission shall take into consideration rational and consis-
4 tent sentencing standards which reduce sentence disparity to include, but
5 not be limited to, racial and regional biases;
- 6 (6) advise and consult with the secretary of corrections and members
7 of the legislature in developing a mechanism to link guidelines sentence
8 practices with correctional resources and policies, including but not lim-
9 ited to the capacities of local and state correctional facilities. Such linkage
10 shall include a review and determination of the impact of the sentencing
11 guidelines on the state's prison population, review of corrections pro-
12 grams and a study of ways to more effectively utilize correction dollars
13 and to reduce prison population;
- 14 (7) make recommendations relating to modification to the sentencing
15 guidelines as provided in K.S.A. 21-4725, and amendments thereto;
- 16 (8) prepare and submit fiscal impact and correctional resource state-
17 ment as provided in K.S.A. 74-9106, and amendments thereto;
- 18 (9) make recommendations to those responsible for developing a
19 working philosophy of sentencing guideline consistency and rationality;
- 20 (10) develop prosecuting standards and guidelines to govern the con-
21 duct of prosecutors when charging persons with crimes and when engag-
22 ing in plea bargaining;
- 23 (11) analyze problems in criminal justice, identify alternative solu-
24 tions and make recommendations for improvements in criminal law, pros-
25 ecution, community and correctional placement, programs, release pro-
26 cedures and related matters including study and recommendations
27 concerning the statutory definition of crimes and criminal penalties and
28 review of proposed criminal law changes;
- 29 (12) perform such other criminal justice studies or tasks as may be
30 assigned by the governor or specifically requested by the legislature, de-
31 partment of corrections, the chief justice or the attorney general;
- 32 (13) develop a program plan which includes involvement of business
33 and industry in the public or other social or fraternal organizations for
34 admitting back into the mainstream those offenders who demonstrate
35 both the desire and ability to reconstruct their lives during their incar-
36 ceration or during conditional release;
- 37 (14) appoint a task force to make recommendations concerning the
38 consolidation of probation, parole and community corrections services;
- 39 (15) produce official inmate population projections annually on or
40 before six weeks following the date of receipt of the data from the de-
41 partment of corrections. When the commission's projections indicate that
42 the inmate population will exceed available prison capacity within two
43 years of the date of the projection, the commission shall identify and

1 analyze the impact of specific options for (A) reducing the number of
2 prison admissions; or (B) adjusting sentence lengths for specific groups
3 of offenders. Options for reducing the number of prison admissions shall
4 include, but not be limited to, possible modification of ~~both the~~ *sentenc-*
5 *ing grids grid* to include presumptive intermediate dispositions for certain
6 categories of offenders. Intermediate sanction dispositions shall include,
7 but not be limited to: intensive supervision; short-term jail sentences;
8 halfway houses; community-based work release; electronic monitoring
9 and house arrest; substance abuse treatment; and pre-revocation incar-
10 ceration. Intermediate sanction options shall include, but not be limited
11 to, mechanisms to explicitly target offenders that would otherwise be
12 placed in prison. Analysis of each option shall include an assessment of
13 such options impact on the overall size of the prison population, the effect
14 on public safety and costs. In preparing the assessment, the commission
15 shall review the experience of other states and shall review available re-
16 search regarding the effectiveness of such option. The commission's find-
17 ings relative to each sentencing policy option shall be presented to the
18 governor and the joint committee on corrections and juvenile justice over-
19 sight no later than November 1;

20 (16) at the request of the governor or the joint committee on correc-
21 tions and juvenile justice oversight, initiate and complete an analysis of
22 other sentencing policy adjustments not otherwise evaluated by the
23 commission;

24 (17) develop information relating to the number of offenders on post-
25 release supervision and subject to electronic monitoring for the duration
26 of the person's natural life;

27 (18) determine the effect the mandatory sentencing established in
28 K.S.A. 21-4642 and 21-4643, and amendments thereto, would have on
29 the number of offenders civilly committed to a treatment facility as a
30 sexually violent predator as provided pursuant to K.S.A. 59-29a01 et seq.,
31 and amendments thereto;

32 (19) assume the designation and functions of the state statistical anal-
33 ysis center. All criminal justice agencies, as defined in subsection (c) of
34 K.S.A. 22-4701, and amendments thereto, and the juvenile justice au-
35 thority shall provide any data or information, including juvenile offender
36 information, requested by the commission to facilitate the function of the
37 state statistical analysis center; and

38 (20) subject to the provisions of appropriation acts and the availability
39 of funds therefor, produce official juvenile correctional facility population
40 projections annually on or before November 1, not more than six weeks
41 following the receipt of the data from the juvenile justice authority and
42 develop bed impacts regarding legislation that may affect juvenile cor-
43 rectional facility population.

1 Sec. 79. K.S.A. 2009 Supp. 75-5291 is hereby amended to read as
2 follows: 75-5291. (a) (1) The secretary of corrections may make grants to
3 counties for the development, implementation, operation and improve-
4 ment of community correctional services that address the criminogenic
5 needs of felony offenders including, but not limited to, adult intensive
6 supervision, substance abuse and mental health services, employment and
7 residential services, and facilities for the detention or confinement, care
8 or treatment of offenders as provided in this section except that no com-
9 munity corrections funds shall be expended by the secretary for the pur-
10 pose of establishing or operating a conservation camp as provided by
11 K.S.A. 75-52,127 and amendments thereto.

12 (2) Except as otherwise provided, placement of offenders in com-
13 munity correctional services programs by the court shall be limited to
14 placement of adult offenders, convicted of a felony offense:

15 (A) Whose offense is classified in grid blocks 5-H, 5-I or 6-G of the
16 sentencing guidelines grid ~~for nondrug crimes~~ or in grid blocks 3-E, 3-F,
17 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, *prior*
18 *to such grid's repeal*. In addition, the court may place in a community
19 correctional services program adult offenders, convicted of a felony of-
20 fense, whose offense is classified in grid blocks 6-H, 6-I, 7-C, 7-D, 7-E,
21 7-F, 7-G, 7-H or 7-I of the sentencing guidelines grid ~~for nondrug crimes~~;

22 (B) whose severity level and criminal history score designate a pre-
23 sumptive prison sentence on ~~either~~ *the* sentencing guidelines grid but
24 receive a nonprison sentence as a result of departure;

25 (C) all offenders convicted of an offense which satisfies the definition
26 of offender pursuant to K.S.A. 22-4902, and amendments thereto, and
27 which is classified as a severity level 7 or higher offense and who receive
28 a nonprison sentence, regardless of the manner in which the sentence is
29 imposed;

30 (D) any offender for whom a violation of conditions of release or
31 assignment or a nonprison sanction has been established as provided in
32 K.S.A. 22-3716, and amendments thereto, prior to revocation resulting
33 in the offender being required to serve any time for the sentence imposed
34 or which might originally have been imposed in a state facility in the
35 custody of the secretary of corrections;

36 (E) on and after January 1, 2011, for offenders who are expected to
37 be subject to supervision in Kansas, who are determined to be “high risk
38 or needs, or both” by the use of a statewide, mandatory, standardized risk
39 assessment tool or instrument which shall be specified by the Kansas
40 sentencing commission;

41 (F) placed in community correctional services programs as a condi-
42 tion of supervision following the successful completion of a conservation
43 camp program; or

1 (G) who has been sentenced to community corrections supervision
2 pursuant to K.S.A. 21-4729, and amendments thereto.

3 (3) Notwithstanding any law to the contrary and subject to the avail-
4 ability of funding therefor, adult offenders sentenced to community su-
5 pervision in Johnson county for felony crimes that occurred on or after
6 July 1, 2002, but before January 1, 2011, shall be placed under court
7 services or community corrections supervision based upon court rules
8 issued by the chief judge of the 10th judicial district. The provisions con-
9 tained in this subsection shall not apply to offenders transferred by the
10 assigned agency to an agency located outside of Johnson county. The
11 provisions of this paragraph shall expire on January 1, 2011.

12 (4) Nothing in this act shall prohibit a community correctional serv-
13 ices program from providing services to juvenile offenders upon approval
14 by the local community corrections advisory board. Grants from com-
15 munity corrections funds administered by the secretary of corrections
16 shall not be expended for such services.

17 (5) The court may require an offender for whom a violation of con-
18 ditions of release or assignment or a nonprison sanction has been estab-
19 lished, as provided in K.S.A. 22-3716, and amendments thereto, to serve
20 any time for the sentence imposed or which might originally have been
21 imposed in a state facility in the custody of the secretary of corrections
22 without a prior assignment to a community correctional services program
23 if the court finds and sets forth with particularity the reasons for finding
24 that the safety of the members of the public will be jeopardized or that
25 the welfare of the inmate will not be served by such assignment to a
26 community correctional services program.

27 (b) (1) In order to establish a mechanism for community correctional
28 services to participate in the department of corrections annual budget
29 planning process, the secretary of corrections shall establish a community
30 corrections advisory committee to identify new or enhanced correctional
31 or treatment interventions designed to divert offenders from prison.

32 (2) The secretary shall appoint one member from the southeast com-
33 munity corrections region, one member from the northeast community
34 corrections region, one member from the central community corrections
35 region and one member from the western community corrections region.
36 The deputy secretary of community and field services shall designate two
37 members from the state at large. The secretary shall have final appoint-
38 ment approval of the members designated by the deputy secretary. The
39 committee shall reflect the diversity of community correctional services
40 with respect to geographical location and average daily population of of-
41 fenders under supervision.

42 (3) Each member shall be appointed for a term of three years and
43 such terms shall be staggered as determined by the secretary. Members

1 shall be eligible for reappointment.

2 (4) The committee, in collaboration with the deputy secretary of com-
3 munity and field services or the deputy secretary's designee, shall rou-
4 tinely examine and report to the secretary on the following issues:

5 (A) Efficiencies in the delivery of field supervision services;

6 (B) effectiveness and enhancement of existing interventions;

7 (C) identification of new interventions; and

8 (D) statewide performance indicators.

9 (5) The committee's report concerning enhanced or new interven-
10 tions shall address:

11 (A) Goals and measurable objectives;

12 (B) projected costs;

13 (C) the impact on public safety; and

14 (D) the evaluation process.

15 (6) The committee shall submit its report to the secretary annually
16 on or before July 15 in order for the enhanced or new interventions to
17 be considered for inclusion within the department of corrections budget
18 request for community correctional services or in the department's en-
19 hanced services budget request for the subsequent fiscal year.

20 Sec. 80. K.S.A. 9-2012, 16-305, 17-12a508, 17-1311a, 19-3519, 21-
21 2511, 21-3301, 21-3302, 21-3303, 21-3437, 21-3701, 21-3704, 21-3707,
22 21-3720, 21-3729, 21-3734, 21-3761, 21-3763, 21-3846, 21-3902, 21-
23 3904, 21-3905, 21-3910, 21-4018, 21-4111, 21-4503a, 21-4638, 21-4643,
24 21-4703, 21-4706, 21-4707, 21-4709, 21-4710, 21-4711, 21-4720, 21-
25 4722, 21-4724, 22-2908, 22-3303, 22-4906, 39-720 and 65-2859 and
26 K.S.A. 2009 Supp. 21-36a01, 21-36a03, 21-36a05, 21-36a06, 21-36a07,
27 21-36a08, 21-36a09, 21-36a10, 21-36a13, 21-36a14, 21-36a16, 21-4603d,
28 21-4611, 21-4619, 21-4704, 21-4705, 21-4708, 21-4717, 21-4729, 22-
29 2802, 22-3412, 22-3604, 22-3716, 22-3717, 38-2346, 38-2347, 38-2369,
30 38-2374, 38-2376, 38-2377, 39-717, 40-247, 40-2,118, 40-5013, 44-5,125,
31 44-719, 47-1827, 65-4167, 74-9101 and 75-5291 are hereby repealed.

32 Sec. 81. This act shall take effect and be in force from and after its
33 publication in the statute book.