

SENATE BILL No. 375

By Committee on Judiciary

1-14

10 AN ACT concerning abolition of the death penalty; amending K.S.A. 21-
11 3452, 21-4622, 21-4634, 21-4635, 21-4641, 21-4706, 22-3405, 22-3705,
12 **22-3728** and 22-4210 and K.S.A. 2009 Supp. 21-4619, **21-4642**, 22-
13 3717, 22-4902, 38-2255, 38-2271, 38-2312, 38-2365, 39-970, 65-5117,
14 72-1397 and 75-52,148 and repealing the existing sections; also re-
15 pealing K.S.A. 21-3439, 21-4623, 21-4624, 21-4625, 21-4626, 21-4627,
16 21-4629, 21-4630 and 21-4631.

17

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

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

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

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

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

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

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

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

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

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

- 1 ployee of a state correctional institution, community correctional insti-
2 tution or jail;
- 3 (4) intentional and premeditated killing of the victim of one of the
4 following crimes in the commission of, or subsequent to, such crime:
5 Rape, as defined in K.S.A. 21-3502, and amendments thereto, criminal
6 sodomy, as defined in subsections (a)(2) or (a)(3) of K.S.A. 21-3505, and
7 amendments thereto, or aggravated criminal sodomy, as defined in K.S.A.
8 21-3506, and amendments thereto, or any attempt thereof, as defined in
9 K.S.A. 21-3301, and amendments thereto;
- 10 (5) intentional and premeditated killing of a law enforcement officer,
11 as defined in K.S.A. 21-3110, and amendments thereto;
- 12 (6) intentional and premeditated killing of more than one person as
13 a part of the same act or transaction or in two or more acts or transactions
14 connected together or constituting parts of a common scheme or course
15 of conduct. Each such intentional and premeditated killing as a part of
16 the same act or transaction or in two or more acts or transactions shall
17 be considered separate and independent. Each such killing shall be
18 charged as a single count and shall not merge into one count of aggravated
19 murder; or
- 20 (7) intentional and premeditated killing of a child under the age of
21 14 in the commission of kidnapping, as defined in K.S.A. 21-3420, and
22 amendments thereto, or aggravated kidnapping, as defined in K.S.A. 21-
23 3421, and amendments thereto, when the kidnapping or aggravated kid-
24 napping was committed with intent to commit a sex offense upon or with
25 the child or with intent that the child commit or submit to a sex offense.
- 26 (b) For purposes of this section, “sex offense” means rape, as defined
27 in K.S.A. 21-3502, and amendments thereto, aggravated indecent liberties
28 with a child, as defined in K.S.A. 21-3504, and amendments thereto,
29 aggravated criminal sodomy, as defined in K.S.A. 21-3506, and amend-
30 ments thereto, prostitution, as defined in K.S.A. 21-3512, and amend-
31 ments thereto, promoting prostitution, as defined in K.S.A. 21-3513, and
32 amendments thereto, or sexual exploitation of a child, as defined in K.S.A.
33 21-3516, and amendments thereto.
- 34 (c) Notwithstanding subsections (2)(a) or (b) of K.S.A. 21-3107, and
35 amendments thereto, when the same conduct of a defendant may estab-
36 lish the commission of aggravated murder and the commission of another
37 crime under the laws of this state, the defendant may be prosecuted and
38 sentenced for each of such crimes.
- 39 (d) Aggravated murder is an off-grid person felony.
- 40 (e) This section shall be part of and supplemental to the Kansas crim-
41 inal code.
- 42 New Sec. 3. (a) When it is provided by law that a person shall be
43 sentenced pursuant to this section, such person shall be sentenced to

1 imprisonment for life without the possibility of parole. A defendant who
2 is sentenced to imprisonment for life without the possibility of parole
3 shall spend the remainder of the defendant's natural life incarcerated and
4 in the custody of the secretary of corrections. A defendant who is sen-
5 tenced to imprisonment for life without the possibility of parole shall not
6 be eligible for **commutation of sentence**, parole, probation, assignment
7 to a community correctional services program, conditional release, post-
8 release supervision, **functional incapacitation release pursuant to**
9 **K.S.A. 22-3728, and amendments thereto**, or suspension, modification
10 or reduction of sentence. Upon sentencing a defendant to imprisonment
11 for life without the possibility of parole, the court shall commit the de-
12 fendant to the custody of the secretary of corrections and the court shall
13 state in the sentencing order of the judgment form or journal entry,
14 whichever is delivered with the defendant to the correctional institution,
15 that the defendant has been sentenced to imprisonment for life without
16 the possibility of parole.

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

19 Sec. 4. K.S.A. 21-3452 is hereby amended to read as follows: 21-
20 3452. (a) This section shall be known and may be cited as Alexa's law.

21 (b) As used in this section:

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

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

26 (c) This section shall not apply to:

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

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

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

33 (d) As used in K.S.A. 21-3439, *prior to its repeal, section 2*, 21-3401,
34 21-3402, 21-3403, 21-3404, 21-3405, 21-3412, 21-3414, ~~21-3439~~ and 21-
35 3442, and amendments thereto, "person" and "human being" also mean
36 an unborn child.

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

39 Sec. 5. K.S.A. 2009 Supp. 21-4619 is hereby amended to read as
40 follows: 21-4619. (a) (1) Except as provided in subsections (b) and (c),
41 any person convicted in this state of a traffic infraction, cigarette or to-
42 bacco infraction, misdemeanor or a class D or E felony, or for crimes
43 committed on or after July 1, 1993, nondrug crimes ranked in severity

1 levels 6 through 10 or any felony ranked in severity level 4 of the drug
2 grid, may petition the convicting court for the expungement of such con-
3 viction or related arrest records if three or more years have elapsed since
4 the person: (A) Satisfied the sentence imposed; or (B) was discharged
5 from probation, a community correctional services program, parole, post-
6 release supervision, conditional release or a suspended sentence.

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

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

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

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

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

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

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

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

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

1 (8) a violation of K.S.A. 21-3405b, prior to its repeal.
2 (c) There shall be no expungement of convictions for the following
3 offenses or of convictions for an attempt to commit any of the following
4 offenses: (1) Rape as defined in K.S.A. 21-3502, and amendments thereto;
5 (2) indecent liberties with a child as defined in K.S.A. 21-3503, and
6 amendments thereto; (3) aggravated indecent liberties with a child as
7 defined in K.S.A. 21-3504, and amendments thereto; (4) criminal sodomy
8 as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, and amend-
9 ments thereto; (5) aggravated criminal sodomy as defined in K.S.A. 21-
10 3506, and amendments thereto; (6) indecent solicitation of a child as
11 defined in K.S.A. 21-3510, and amendments thereto; (7) aggravated in-
12 decent solicitation of a child as defined in K.S.A. 21-3511, and amend-
13 ments thereto; (8) sexual exploitation of a child as defined in K.S.A. 21-
14 3516, and amendments thereto; (9) aggravated incest as defined in K.S.A.
15 21-3603, and amendments thereto; (10) endangering a child as defined
16 in K.S.A. 21-3608, and amendments thereto; (11) aggravated endangering
17 a child as defined in K.S.A. 21-3608a, and amendments thereto; (12)
18 abuse of a child as defined in K.S.A. 21-3609, and amendments thereto;
19 (13) capital murder as defined in K.S.A. 21-3439, ~~and amendments~~
20 ~~thereto prior to its repeal;~~ (14) *aggravated murder as defined in section*
21 *2, and amendments thereto,* ~~(14)~~ (15) murder in the first degree as defined
22 in K.S.A. 21-3401, and amendments thereto; ~~(15)~~ (16) murder in the
23 second degree as defined in K.S.A. 21-3402, and amendments thereto;
24 ~~(16)~~ (17) voluntary manslaughter as defined in K.S.A. 21-3403, and
25 amendments thereto; ~~(17)~~ (18) involuntary manslaughter as defined in
26 K.S.A. 21-3404, and amendments thereto; ~~(18)~~ (19) involuntary man-
27 slaughter while driving under the influence of alcohol or drugs as defined
28 in K.S.A. 21-3442, and amendments thereto; ~~(19)~~ (20) sexual battery as
29 defined in K.S.A. 21-3517, and amendments thereto, when the victim was
30 less than 18 years of age at the time the crime was committed; ~~(20)~~ (21)
31 aggravated sexual battery as defined in K.S.A. 21-3518, and amendments
32 thereto; ~~(21)~~ (22) a violation of K.S.A. 8-1567, and amendments thereto,
33 including any diversion for such violation; ~~(22)~~ (23) a violation of K.S.A.
34 8-2,144, and amendments thereto, including any diversion for such vio-
35 lation; or ~~(23)~~ (24) any conviction for any offense in effect at any time
36 prior to the effective date of this act, that is comparable to any offense
37 as provided in this subsection.
38 (d) When a petition for expungement is filed, the court shall set a
39 date for a hearing of such petition and shall cause notice of such hearing
40 to be given to the prosecuting attorney and the arresting law enforcement
41 agency. The petition shall state: (1) The defendant's full name;
42 (2) the full name of the defendant at the time of arrest, conviction or
43 diversion, if different than the defendant's current name;

- 1 (3) the defendant's sex, race and date of birth;
- 2 (4) the crime for which the defendant was arrested, convicted or
3 diverted;
- 4 (5) the date of the defendant's arrest, conviction or diversion; and
- 5 (6) the identity of the convicting court, arresting law enforcement
6 authority or diverting authority. Except as provided further, there shall
7 be no docket fee for filing a petition pursuant to this section. On and
8 after July 1, 2009 through June 30, 2010, the supreme court may impose
9 a charge, not to exceed \$10 per case, to fund the costs of non-judicial
10 personnel. The charge established in this section shall be the only fee
11 collected or moneys in the nature of a fee collected for the case. Such
12 charge shall only be established by an act of the legislature and no other
13 authority is established by law or otherwise to collect a fee. All petitions
14 for expungement shall be docketed in the original criminal action. Any
15 person who may have relevant information about the petitioner may tes-
16 tify at the hearing. The court may inquire into the background of the
17 petitioner and shall have access to any reports or records relating to the
18 petitioner that are on file with the secretary of corrections or the Kansas
19 parole board.
- 20 (e) At the hearing on the petition, the court shall order the peti-
21 tioner's arrest record, conviction or diversion expunged if the court finds
22 that:
- 23 (1) The petitioner has not been convicted of a felony in the past two
24 years and no proceeding involving any such crime is presently pending
25 or being instituted against the petitioner;
- 26 (2) the circumstances and behavior of the petitioner warrant the
27 expungement; and
- 28 (3) the expungement is consistent with the public welfare.
- 29 (f) When the court has ordered an arrest record, conviction or diver-
30 sion expunged, the order of expungement shall state the information re-
31 quired to be contained in the petition. The clerk of the court shall send
32 a certified copy of the order of expungement to the Kansas bureau of
33 investigation which shall notify the federal bureau of investigation, the
34 secretary of corrections and any other criminal justice agency which may
35 have a record of the arrest, conviction or diversion. After the order of
36 expungement is entered, the petitioner shall be treated as not having been
37 arrested, convicted or diverted of the crime, except that:
- 38 (1) Upon conviction for any subsequent crime, the conviction that
39 was expunged may be considered as a prior conviction in determining the
40 sentence to be imposed;
- 41 (2) the petitioner shall disclose that the arrest, conviction or diversion
42 occurred if asked about previous arrests, convictions or diversions:
- 43 (A) In any application for licensure as a private detective, private

- 1 detective agency, certification as a firearms trainer pursuant to K.S.A.
2 2009 Supp. 75-7b21, and amendments thereto, or employment as a de-
3 tective with a private detective agency, as defined by K.S.A. 75-7b01, and
4 amendments thereto; as security personnel with a private patrol operator,
5 as defined by K.S.A. 75-7b01, and amendments thereto; or with an insti-
6 tution, as defined in K.S.A. 76-12a01, and amendments thereto, of the
7 department of social and rehabilitation services;
- 8 (B) in any application for admission, or for an order of reinstatement,
9 to the practice of law in this state;
- 10 (C) to aid in determining the petitioner's qualifications for employ-
11 ment with the Kansas lottery or for work in sensitive areas within the
12 Kansas lottery as deemed appropriate by the executive director of the
13 Kansas lottery;
- 14 (D) to aid in determining the petitioner's qualifications for executive
15 director of the Kansas racing and gaming commission, for employment
16 with the commission or for work in sensitive areas in parimutuel racing
17 as deemed appropriate by the executive director of the commission, or
18 to aid in determining qualifications for licensure or renewal of licensure
19 by the commission;
- 20 (E) to aid in determining the petitioner's qualifications for the fol-
21 lowing under the Kansas expanded lottery act: (i) Lottery gaming facility
22 manager or prospective manager, racetrack gaming facility manager or
23 prospective manager, licensee or certificate holder; or (ii) an officer, di-
24 rector, employee, owner, agent or contractor thereof;
- 25 (F) upon application for a commercial driver's license under K.S.A.
26 8-2,125 through 8-2,142, and amendments thereto;
- 27 (G) to aid in determining the petitioner's qualifications to be an em-
28 ployee of the state gaming agency;
- 29 (H) to aid in determining the petitioner's qualifications to be an em-
30 ployee of a tribal gaming commission or to hold a license issued pursuant
31 to a tribal-state gaming compact;
- 32 (I) in any application for registration as a broker-dealer, agent, in-
33 vestment adviser or investment adviser representative all as defined in
34 K.S.A. 17-12a102, and amendments thereto;
- 35 (J) in any application for employment as a law enforcement officer as
36 defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; or
- 37 (K) for applications received on and after July 1, 2006, to aid in de-
38 termining the petitioner's qualifications for a license to carry a concealed
39 weapon pursuant to the personal and family protection act, K.S.A. 2009
40 Supp. 75-7c01 et seq., and amendments thereto;
- 41 (3) the court, in the order of expungement, may specify other cir-
42 cumstances under which the conviction is to be disclosed;
- 43 (4) the conviction may be disclosed in a subsequent prosecution for

1 an offense which requires as an element of such offense a prior conviction
2 of the type expunged; and

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

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

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

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

28 (1) The person whose record was expunged;

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

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

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

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

42 (6) a prosecuting attorney, and such request is accompanied by a
43 statement that the request is being made in conjunction with a prosecu-

1 tion of an offense that requires a prior conviction as one of the elements
2 of such offense;

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

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

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

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

28 (11) the Kansas sentencing commission;

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

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

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

1 (15) a law enforcement agency and the request is accompanied by a
2 statement that the request is being made to aid in determining eligibility
3 for employment as a law enforcement officer as defined by K.S.A. 22-
4 2202, and amendments thereto; or

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

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

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

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

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

43 (c) If, at the conclusion of a hearing pursuant to this section, the court

1 determines that the defendant is not mentally retarded, the defendant
 2 shall be sentenced in accordance with K.S.A. 21-4635 through 21-4638,
 3 *and amendments thereto.*

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

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

12 ~~(f)~~ As used in this section, “mentally retarded” means having signif-
 13 icantly subaverage general intellectual functioning, as defined by K.S.A.
 14 76-12b01 and amendments thereto, to an extent which substantially im-
 15 pairs one’s capacity to appreciate the criminality of one’s conduct or to
 16 conform one’s conduct to the requirements of law.

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

26 (b) If a defendant is convicted of murder in the first degree based
 27 upon the finding of premeditated murder, the court shall determine
 28 whether the defendant shall be required to serve a mandatory term of
 29 imprisonment of 40 years or for crimes committed on and after July 1,
 30 1999, a mandatory term of imprisonment of 50 years or sentenced as
 31 otherwise provided by law.

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

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

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

18 Sec. 9. K.S.A. 21-4641 is hereby amended to read as follows: 21-
 19 4641. ~~(1)~~ (a) K.S.A. 21-4633 through 21-4640, and amendments thereto,
 20 shall be supplemental to and a part of the Kansas criminal code.

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

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

28 **Sec. 10. K.S.A. 2009 Supp. 21-4642 is hereby amended to read**
 29 **as follows: 21-4642. (a) An aggravated habitual sex offender shall**
 30 **be sentenced to imprisonment for life without the possibility of pa-**
 31 **role. Such offender shall spend the remainder of the offender's nat-**
 32 **ural life incarcerated and in the custody of the secretary of correc-**
 33 **tions. An offender who is sentenced to imprisonment for life without**
 34 **the possibility of parole shall not be eligible for commutation of sen-**
 35 **tence, parole, probation, assignment to a community correctional**
 36 **services program, conditional release, postrelease supervision, func-**
 37 **tional incapacitation release pursuant to K.S.A. 22-3728, and amendments**
 38 **thereto, or suspension, modification or reduction of sentence.**

39 (b) *Upon sentencing a defendant to imprisonment for life with-*
 40 *out the possibility of parole, the court shall commit the defendant*
 41 *to the custody of the secretary of corrections and the court shall*
 42 *state in the sentencing order of the judgment form or journal entry,*
 43 *whichever is delivered with the defendant to the correctional insti-*

1 *tution, that the defendant has been sentenced to imprisonment for*
2 *life without the possibility of parole.*

3 *(c) As used in this section:*

4 *(1) “Aggravated habitual sex offender” means a person who, on*
5 *and after July 1, 2006: (A) Has been convicted in this state of a*
6 *sexually violent crime, as described in paragraphs (3)(A) through*
7 *3(J) or (3)(L); and (B) prior to the conviction of the felony under*
8 *subparagraph (A), has been convicted on at least two prior conviction*
9 *events of any sexually violent crime.*

10 *(2) “Prior conviction event” means one or more felony convictions*
11 *of a sexually violent crime occurring on the same day and*
12 *within a single court. These convictions may result from multiple*
13 *counts within an information or from more than one information.*
14 *If a person crosses a county line and commits a felony as part of*
15 *the same criminal act or acts, such felony, if such person is convicted,*
16 *shall be considered part of the prior conviction event.*

17 *(3) “Sexually violent crime” means:*

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

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

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

23 *(D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-*
24 *3505, and amendments thereto;*

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

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

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

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

33 *(I) aggravated sexual battery, K.S.A. 21-3518, and amendments*
34 *thereto;*

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

36 *(K) any federal or other state conviction for a felony offense that*
37 *under the laws of this state would be a sexually violent crime as*
38 *defined in this section;*

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

42 *(M) any act which at the time of sentencing for the offense has*
43 *been determined beyond a reasonable doubt to have been sexually*

1 ***motivated. As used in this subparagraph, “sexually motivated”***
2 ***means that one of the purposes for which the defendant committed***
3 ***the crime was for the purpose of the defendant’s sexual gratification.***

4 ~~Sec. 10.~~ **11.** K.S.A. 21-4706 is hereby amended to read as follows:
5 21-4706. (a) For crimes committed on or after July 1, 1993, the sentences
6 of imprisonment shall represent the time a person shall actually serve,
7 subject to a reduction of up to 15% of the primary sentence for good
8 time as authorized by law. For crimes committed on or after January 1,
9 2008, the sentences of imprisonment shall represent the time a person
10 shall actually serve, subject to a reduction of up to 20% of the primary
11 sentence for good time for drug severity level 3 or 4 or nondrug severity
12 level 7 through 10 crimes and a reduction for program credit as author-
13 ized by K.S.A. 21-4722, and amendments thereto.

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

15 (c) Violations of K.S.A. 21-3401, ~~21-3439~~, 21-3449, 21-3450 and 21-
16 3801, and amendments thereto, *and K.S.A. 21-3439, prior to its repeal*,
17 are off-grid crimes for the purpose of sentencing. Except as otherwise
18 provided by K.S.A. 21-4622 through 21-4627, and 21-4629 through 21-
19 4631, and amendments thereto, the sentence shall be imprisonment for
20 life and shall not be subject to statutory provisions for suspended sen-
21 tence, community service or probation.

22 (d) As identified in K.S.A. 21-3447, 21-3502, 21-3504, 21-3506, 21-
23 3513 and 21-3516, and amendments thereto, if the offender is 18 years
24 of age or older and the victim is under 14 years of age, such violations
25 are off-grid crimes for the purposes of sentencing. Except as provided in
26 K.S.A. 21-4642, and amendments thereto, the sentence shall be impris-
27 onment for life pursuant to K.S.A. 21-4643, and amendments thereto.

28 (e) *Violation of section 2, and amendments thereto, is an off-grid*
29 *crime for the purposes of sentencing. Except as provided in K.S.A. 21-*
30 *4622 and 21-4634, and amendments thereto, the sentence shall be im-*
31 *prisonment for life without the possibility of parole pursuant to section 3,*
32 *and amendments thereto.*

33 ~~Sec. 11.~~ **12.** K.S.A. 22-3405 is hereby amended to read as follows:
34 22-3405. (1) The defendant in a felony case shall be present at the ar-
35 raignment, at every stage of the trial including the impaneling of the jury
36 and the return of the verdict, and at the imposition of sentence, except
37 as otherwise provided by law. In prosecutions for crimes not punishable
38 by death *or life without the possibility of parole*, the defendant’s voluntary
39 absence after the trial has been commenced in such person’s presence
40 shall not prevent continuing the trial to and including the return of the
41 verdict. A corporation may appear by counsel for all purposes.

42 (2) The defendant must be present, either personally or by counsel,
43 at every stage of the trial of traffic infraction, cigarette or tobacco infrac-

1 tion and misdemeanor cases.

2 ~~Sec. 12.~~ **13.** K.S.A. 22-3705 is hereby amended to read as follows:
 3 22-3705. (a) The governor may, when ~~he~~ *the governor* deems it proper
 4 or advisable, commute a sentence in any criminal case by reducing the
 5 penalty as follows:

6 ~~(a) (1)~~ If the sentence is death, to imprisonment for life ~~or for any~~
 7 ~~term not less than ten years without the possibility of parole~~ **or and not**
 8 **to any lesser sentence, but not to any term less than ten years;**
 9 ~~(b) if the sentence is life without the possibility of parole, to impris-~~
 10 ~~onment for life or any term not less than ten years;~~

11 ~~(b) (c) (2)~~ *except as provided in subsection (b),* if the sentence is to
 12 imprisonment, by reducing the duration of such imprisonment;

13 ~~(c) (d) (3)~~ if the sentence is a fine, by reducing the amount thereof;

14 ~~(d) (e) (4)~~ if the sentence is both imprisonment and fine, by reducing
 15 either or both.

16 **(b) The governor shall not commute a sentence of life without**
 17 **the possibility of parole.**

18 ~~Sec. 13.~~ **14.** K.S.A. 2009 Supp. 22-3717 is hereby amended to read
 19 as follows: 22-3717. (a) Except as otherwise provided by this section;
 20 K.S.A. 1993 Supp. 21-4628 prior to its repeal; K.S.A. 21-4635 through
 21 21-4638, and amendments thereto; *section 3, and amendments thereto;*
 22 K.S.A. 8-1567, and amendments thereto; K.S.A. 21-4642, and amend-
 23 ments thereto; and K.S.A. 21-4624, and amendments thereto, an inmate,
 24 including an inmate sentenced pursuant to K.S.A. 21-4618, and amend-
 25 ments thereto, shall be eligible for parole after serving the entire mini-
 26 mum sentence imposed by the court, less good time credits.

27 (b) (1) Except as provided by K.S.A. 21-4635 through 21-4638, and
 28 amendments thereto, an inmate sentenced to imprisonment for the crime
 29 of capital murder, *K.S.A. 21-3439, prior to its repeal,* or an inmate sen-
 30 tenced for the crime of murder in the first degree based upon a finding
 31 of premeditated murder, *K.S.A. 21-3401, and amendments thereto,* com-
 32 mitted on or after July 1, 1994, shall be eligible for parole after serving
 33 25 years of confinement, without deduction of any good time credits.

34 (2) Except as provided by subsection (b)(1) ~~or, (b)(4), K.S.A. 1993~~
 35 ~~Supp. 21-4628 prior to its repeal~~ *and (b)(6)* and K.S.A. 21-4635 through
 36 21-4638, and amendments thereto, *and K.S.A. 1993 Supp. 21-4628, prior*
 37 *to its repeal,* an inmate sentenced to imprisonment for an off-grid offense
 38 committed on or after July 1, 1993, but prior to July 1, 1999, shall be
 39 eligible for parole after serving 15 years of confinement, without deduc-
 40 tion of any good time credits and an inmate sentenced to imprisonment
 41 for an off-grid offense committed on or after July 1, 1999, shall be eligible
 42 for parole after serving 20 years of confinement without deduction of any
 43 good time credits.

- 1 (3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its
2 repeal, an inmate sentenced for a class A felony committed before July
3 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, and
4 amendments thereto, shall be eligible for parole after serving 15 years of
5 confinement, without deduction of any good time credits.
- 6 (4) An inmate sentenced to imprisonment for a violation of subsec-
7 tion (a) of K.S.A. 21-3402, and amendments thereto, committed on or
8 after July 1, 1996, but prior to July 1, 1999, shall be eligible for parole
9 after serving 10 years of confinement without deduction of any good time
10 credits.
- 11 (5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
12 4643, and amendments thereto, committed on or after July 1, 2006, shall
13 be eligible for parole after serving the mandatory term of imprisonment
14 without deduction of any good time credits.
- 15 (6) *An inmate sentenced to imprisonment for life without the possi-*
16 *bility of parole pursuant to section 3, and amendments thereto, shall not*
17 *be eligible for parole.*
- 18 (c) (1) Except as provided in subsection (e), if an inmate is sentenced
19 to imprisonment for more than one crime and the sentences run consec-
20 utively, the inmate shall be eligible for parole after serving the total of:
- 21 (A) The aggregate minimum sentences, as determined pursuant to
22 K.S.A. 21-4608 and amendments thereto, less good time credits for those
23 crimes which are not class A felonies; and
- 24 (B) an additional 15 years, without deduction of good time credits,
25 for each crime which is a class A felony.
- 26 (2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-
27 4643, and amendments thereto, for crimes committed on or after July 1,
28 2006, the inmate shall be eligible for parole after serving the mandatory
29 term of imprisonment.
- 30 (d) (1) Persons sentenced for crimes, other than off-grid crimes,
31 committed on or after July 1, 1993, or persons subject to subparagraph
32 (G), will not be eligible for parole, but will be released to a mandatory
33 period of postrelease supervision upon completion of the prison portion
34 of their sentence as follows:
- 35 (A) Except as provided in subparagraphs (D) and (E), persons sen-
36 tenced for nondrug severity level 1 through 4 crimes and drug severity
37 levels 1 and 2 crimes must serve 36 months, plus the amount of good
38 time and program credit earned and retained pursuant to K.S.A. 21-4722,
39 and amendments thereto, on postrelease supervision.
- 40 (B) Except as provided in subparagraphs (D) and (E), persons sen-
41 tenced for nondrug severity levels 5 and 6 crimes and drug severity level
42 3 crimes must serve 24 months, plus the amount of good time and pro-
43 gram credit earned and retained pursuant to K.S.A. 21-4722, and amend-

1 ments thereto, on postrelease supervision.

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

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

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

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

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

22 (b) any evidence received during the proceeding;

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

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

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

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

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

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

42 (viii) Persons convicted of K.S.A. 21-3510 or 21-3511, and amend-
43 ments thereto, shall be required to participate in a treatment program

1 for sex offenders during the postrelease supervision period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (e) If an inmate is sentenced to imprisonment for a crime committed

1 while on parole or conditional release, the inmate shall be eligible for
2 parole as provided by subsection (c), except that the Kansas parole board
3 may postpone the inmate's parole eligibility date by assessing a penalty
4 not exceeding the period of time which could have been assessed if the
5 inmate's parole or conditional release had been violated for reasons other
6 than conviction of a crime.

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

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

43 (h) The Kansas parole board shall hold a parole hearing at least the

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

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

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

1 for an inmate sentenced for a class A or class B felony or an off-grid
2 felony, the board shall hold another parole hearing for the inmate not
3 later than three years after the denial unless the parole board finds that
4 it is not reasonable to expect that parole would be granted at a hearing if
5 held in the next 10 years or during the interim period of a deferral. In
6 such case, the parole board may defer subsequent parole hearings for up
7 to 10 years but any such deferral shall require the board to state the basis
8 for its findings.

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

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

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

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

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

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

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

1 (5) unless it finds compelling circumstances which would render a
2 plan of payment unworkable, shall order that the parolee or person on
3 postrelease supervision reimburse the state for all or part of the expend-
4 itures by the state board of indigents' defense services to provide counsel
5 and other defense services to the person. In determining the amount and
6 method of payment of such sum, the parole board shall take account of
7 the financial resources of the person and the nature of the burden that
8 the payment of such sum will impose. Such amount shall not exceed the
9 amount claimed by appointed counsel on the payment voucher for indi-
10 gents' defense services or the amount prescribed by the board of indi-
11 gents' defense services reimbursement tables as provided in K.S.A. 22-
12 4522, and amendments thereto, whichever is less, minus any previous
13 payments for such services.

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

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

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

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

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

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

42 (t) For offenders sentenced prior to the effective date of this act who
43 are eligible for modification of their postrelease supervision obligation,

1 the department of corrections shall modify the period of postrelease su-
2 pervision as provided for by this section for offenders convicted of severity
3 level 9 and 10 crimes on the sentencing guidelines grid for nondrug
4 crimes and severity level 4 crimes on the sentencing guidelines grid for
5 drug crimes on or before September 1, 2000; for offenders convicted of
6 severity level 7 and 8 crimes on the sentencing guidelines grid for nondrug
7 crimes on or before November 1, 2000; and for offenders convicted of
8 severity level 5 and 6 crimes on the sentencing guidelines grid for nondrug
9 crimes and severity level 3 crimes on the sentencing guidelines grid for
10 drug crimes on or before January 1, 2001.

11 (u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
12 4643, and amendments thereto, for crimes committed on or after July 1,
13 2006, shall be placed on parole for life and shall not be discharged from
14 supervision by the Kansas parole board. When the board orders the parole
15 of an inmate pursuant to this subsection, the board shall order as a con-
16 dition of parole that the inmate be electronically monitored for the du-
17 ration of the inmate's natural life.

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

24 **Sec. 15. K.S.A. 22-3728 is hereby amended to read as follows:**
25 **22-3728. (a) (1) Upon application of the secretary of corrections,**
26 **the Kansas parole board may grant release to any person deemed**
27 **to be functionally incapacitated, upon such terms and conditions as**
28 **prescribed in the order granting such release.**

29 **(2) The Kansas parole board shall adopt rules and regulations**
30 **governing the procedure for initiating, processing, reviewing and**
31 **establishing criteria for review of applications filed on behalf of**
32 **persons deemed to be functionally incapacitated. Such rules and**
33 **regulations shall include criteria and guidelines for determining**
34 **whether the functional incapacitation precludes the person from**
35 **posing a threat to the public.**

36 **(3) Subject to the provisions of subsections (a)(4) and (a)(5), a**
37 **functional incapacitation release shall not be granted until at least**
38 **30 days after written notice of the application has been given to:**
39 **(A) The prosecuting attorney and the judge of the court in which**
40 **the person was convicted; and (B) any victim of the person's crime**
41 **or the victim's family. Notice of such application shall be given by**
42 **the secretary of corrections to the victim who is alive and whose**
43 **address is known to the secretary, or if the victim is deceased, to**

1 *the victim's family if the family's address is known to the secretary.*
2 *Subject to the provisions of subsection (a)(4), if there is no known*
3 *address for the victim, if alive, or the victim's family, if deceased,*
4 *the board shall not grant or deny such application until at least 30*
5 *days after notification is given by publication in the county of con-*
6 *viction. Publication costs shall be paid by the department of*
7 *corrections.*

8 (4) *All applications for functional incapacitation release shall*
9 *be referred to the board. The board shall examine each case and*
10 *may approve such application and grant a release. An application*
11 *for release shall not be approved unless the board determines that*
12 *the person is functionally incapacitated and does not represent a*
13 *future risk to public safety. The board shall determine whether a*
14 *hearing is necessary on the application. The board may request*
15 *additional information or evidence it deems necessary from a med-*
16 *ical or mental health practitioner.*

17 (5) *The board shall establish any conditions related to the re-*
18 *lease of the person. The release shall be conditional, and be subject*
19 *to revocation pursuant to K.S.A. 75-5217, and amendments thereto,*
20 *if the person's functional incapacity significantly diminishes, if the*
21 *person fails to comply with any condition of release, or if the board*
22 *otherwise concludes that the person presents a threat or risk to pub-*
23 *lic safety. The person shall remain on release supervision until the*
24 *release is revoked, expiration of the maximum sentence, or dis-*
25 *charged by the board. Subject to the provisions of subsection (f) of*
26 *K.S.A. 75-5217, and amendments thereto, the person shall receive*
27 *credit for the time during which the person is on functional inca-*
28 *pacitation release supervision towards service of the prison and*
29 *postrelease supervision obligations of determinate sentences or in-*
30 *determinate and off-grid sentences.*

31 (6) *The secretary of corrections shall cause the person to be*
32 *supervised upon release, and shall have the authority to initiate*
33 *revocation of the person at any time for the reasons indicated in*
34 *subsection (a)(5).*

35 (7) *The decision of the board on the application or any revo-*
36 *cation shall be final and not subject to review by any administrative*
37 *agency or court.*

38 (8) *In determining whether a person is functionally incapaci-*
39 *tated, the board shall consider the following: (A) The person's cur-*
40 *rent condition as confirmed by medical or mental health care pro-*
41 *viders, including whether the condition is terminal;*

42 (B) *the person's age and personal history;*

43 (C) *the person's criminal history;*

1 **(D) the person’s length of sentence and time the person has**
 2 **served;**

3 **(E) the nature and circumstances of the current offense;**

4 **(F) the risk or threat to the community if released;**

5 **(G) whether an appropriate release plan has been established;**
 6 **and**

7 **(H) any other factors deemed relevant by the board.**

8 **(b) Nothing in this section shall be construed to limit or pre-**
 9 **clude submission of an application for pardon or commutation of**
 10 **sentence pursuant to K.S.A. 22-3701, and amendments thereto.**

11 **(c) This section does not apply to any person under sentence of death**
 12 **or life without the possibility of parole.**

13 Sec. ~~14~~ **16.** K.S.A. 22-4210 is hereby amended to read as follows:
 14 22-4210. If a person confined in a penal institution in any other state may
 15 be a material witness in a criminal action pending in a court of record or
 16 in a grand jury investigation in this state, a judge of the court may certify
 17 (1) that there is a criminal proceeding or investigation by a grand jury or
 18 a criminal action pending in the court, (2) that a person who is confined
 19 in a penal institution in the other state may be a material witness in the
 20 proceeding, investigation, or action, and (3) that his presence will be re-
 21 quired during a specified time. The certificate shall be presented to a
 22 judge of a court of record in the other state having jurisdiction over the
 23 prisoner confined, and a notice shall be given to the attorney general of
 24 the state in which the prisoner is confined.

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

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

31 (a) “Offender” means: (1) A sex offender as defined in subsection (b);

32 (2) a violent offender as defined in subsection (d);

33 (3) a sexually violent predator as defined in subsection (f);

34 (4) any person who, on and after ~~the effective date of this act~~ *May*
 35 *29, 1997*, is convicted of any of the following crimes when the victim is
 36 less than 18 years of age:

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

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

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

43 (5) any person convicted of any of the following criminal sexual con-

- 1 duct if one of the parties involved is less than 18 years of age:
- 2 (A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;
- 3 (B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-
4 3505, and amendments thereto;
- 5 (C) promoting prostitution as defined by K.S.A. 21-3513, and amend-
6 ments thereto;
- 7 (D) patronizing a prostitute as defined by K.S.A. 21-3515, and
8 amendments thereto;
- 9 (E) lewd and lascivious behavior as defined by K.S.A. 21-3508, and
10 amendments thereto; or
- 11 (F) unlawful sexual relations as defined by K.S.A. 21-3520, and
12 amendments thereto;
- 13 (6) any person who has been required to register under any federal,
14 military or other state's law or is otherwise required to be registered;
- 15 (7) any person who, on or after July 1, 2006, is convicted of any person
16 felony and the court makes a finding on the record that a deadly weapon
17 was used in the commission of such person felony;
- 18 (8) any person who has been convicted of an offense in effect at any
19 time prior to ~~the effective date of this act~~ *May 29, 1997*, that is compa-
20 rable to any crime defined in subsection (4), (5), (7) or (11), or any federal,
21 military or other state conviction for an offense that under the laws of
22 this state would be an offense defined in subsection (4), (5), (7) or (11);
- 23 (9) any person who has been convicted of an attempt, conspiracy or
24 criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303,
25 and amendments thereto, of an offense defined in subsection (4), (5), (7)
26 or (10);
- 27 (10) any person who has been convicted of aggravated trafficking as
28 defined in K.S.A. 21-3447, and amendments thereto; or
- 29 (11) any person who has been convicted of: (A) Unlawful manufac-
30 ture or attempting such of any controlled substance or controlled sub-
31 stance analog as defined by K.S.A. 65-4159, prior to its repeal, or K.S.A.
32 2009 Supp. 21-36a03, and amendments thereto, unless the court makes
33 a finding on the record that the manufacturing or attempting to manu-
34 facture such controlled substance was for such person's personal use;
- 35 (B) possession of ephedrine, pseudoephedrine, red phosphorus, lith-
36 ium metal, sodium metal, iodine, anhydrous ammonia, pressurized am-
37 monia or phenylpropanolamine, or their salts, isomers or salts of isomers
38 with intent to use the product to manufacture a controlled substance as
39 defined by K.S.A. 65-7006, prior to its repeal, or K.S.A. 2009 Supp. 21-
40 36a09 or 21-36a10, and amendments thereto, unless the court makes a
41 finding on the record that the possession of such product was intended
42 to be used to manufacture a controlled substance for such person's per-
43 sonal use; or

1 (C) K.S.A. 65-4161, prior to its repeal, or K.S.A. 2009 Supp. 21-
2 36a05, and amendments thereto.

3 Convictions which result from or are connected with the same act, or
4 result from crimes committed at the same time, shall be counted for the
5 purpose of this section as one conviction. Any conviction set aside pur-
6 suant to law is not a conviction for purposes of this section. A conviction
7 from another state shall constitute a conviction for purposes of this
8 section.

9 (b) “Sex offender” includes any person who, ~~after the effective date~~
10 ~~of this act~~ *on or after April 14, 1994*, is convicted of any sexually violent
11 crime set forth in subsection (c) or is adjudicated as a juvenile offender
12 for an act which if committed by an adult would constitute the commis-
13 sion of a sexually violent crime set forth in subsection (c).

14 (c) “Sexually violent crime” means:

15 (1) Rape as defined in K.S.A. 21-3502, and amendments thereto;

16 (2) indecent liberties with a child as defined in K.S.A. 21-3503, and
17 amendments thereto;

18 (3) aggravated indecent liberties with a child as defined in K.S.A. 21-
19 3504, and amendments thereto;

20 (4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of
21 K.S.A. 21-3505, and amendments thereto;

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

24 (6) indecent solicitation of a child as defined by K.S.A. 21-3510, and
25 amendments thereto;

26 (7) aggravated indecent solicitation of a child as defined by K.S.A.
27 21-3511, and amendments thereto;

28 (8) sexual exploitation of a child as defined by K.S.A. 21-3516, and
29 amendments thereto;

30 (9) sexual battery as defined by K.S.A. 21-3517, and amendments
31 thereto;

32 (10) aggravated sexual battery as defined by K.S.A. 21-3518, and
33 amendments thereto;

34 (11) aggravated incest as defined by K.S.A. 21-3603, and amend-
35 ments thereto; or

36 (12) electronic solicitation as defined by K.S.A. 21-3523, and amend-
37 ments thereto, committed on and after ~~the effective date of this act~~ *April*
38 *17, 2008*;

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

- 1 (14) an attempt, conspiracy or criminal solicitation, as defined in
 2 K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of a sex-
 3 ually violent crime, as defined in this section; or
- 4 (15) any act which at the time of sentencing for the offense has been
 5 determined beyond a reasonable doubt to have been sexually motivated.
 6 As used in this subparagraph, “sexually motivated” means that one of the
 7 purposes for which the defendant committed the crime was for the pur-
 8 pose of the defendant’s sexual gratification.
- 9 (d) “Violent offender” includes any person who, after ~~the effective~~
 10 ~~date of this act May 29, 1997~~, is convicted of any of the following crimes:
- 11 (1) Capital murder as defined by K.S.A. 21-3439 ~~and amendments~~
 12 ~~thereto, prior to its repeal~~;
- 13 (2) *aggravated murder as defined by section 2, and amendments*
 14 *thereto*;
- 15 ~~(2)~~ (3) murder in the first degree as defined by K.S.A. 21-3401, and
 16 amendments thereto;
- 17 ~~(3)~~ (4) murder in the second degree as defined by K.S.A. 21-3402,
 18 and amendments thereto;
- 19 ~~(4)~~ (5) voluntary manslaughter as defined by K.S.A. 21-3403, and
 20 amendments thereto;
- 21 ~~(5)~~ (6) involuntary manslaughter as defined by K.S.A. 21-3404, and
 22 amendments thereto; or
- 23 ~~(6)~~ (7) any conviction for an offense in effect at any time prior to ~~the~~
 24 ~~effective date of this act May 29, 1997~~, that is comparable to any crime
 25 defined in this subsection, or any federal, military or other state conviction
 26 for an offense that under the laws of this state would be an offense defined
 27 in this subsection; or
- 28 ~~(7)~~ (8) an attempt, conspiracy or criminal solicitation, as defined in
 29 K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of an of-
 30 fense defined in this subsection.
- 31 (e) “Law enforcement agency having jurisdiction” means the sheriff
 32 of the county in which the offender expects to reside upon the offender’s
 33 discharge, parole or release.
- 34 (f) “Sexually violent predator” means any person who, on or after July
 35 1, 2001, is found to be a sexually violent predator pursuant to K.S.A. 59-
 36 29a01 et seq., and amendments thereto.
- 37 (g) “Nonresident student or worker” includes any offender who
 38 crosses into the state or county for more than 14 days, or for an aggregate
 39 period exceeding 30 days in a calendar year, for the purposes of employ-
 40 ment, with or without compensation, or to attend school as a student.
- 41 (h) “Aggravated offenses” means engaging in sexual acts involving
 42 penetration with victims of any age through the use of force or the threat
 43 of serious violence, or engaging in sexual acts involving penetration with

1 victims less than 14 years of age, and includes the following offenses:

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

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

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

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

11 ~~Sec. 16-18.~~ K.S.A. 2009 Supp. 38-2255 is hereby amended to read
12 as follows: 38-2255. (a) *Considerations*. Prior to entering an order of dis-
13 position, the court shall give consideration to:

14 (1) The child’s physical, mental and emotional condition;

15 (2) the child’s need for assistance;

16 (3) the manner in which the parent participated in the abuse, neglect
17 or abandonment of the child;

18 (4) any relevant information from the intake and assessment process;
19 and

20 (5) the evidence received at the dispositional hearing.

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

25 (1) Supervision of the child and the parent by a court services officer;

26 (2) participation by the child and the parent in available programs
27 operated by an appropriate individual or agency; and

28 (3) any special treatment or care which the child needs for the child’s
29 physical, mental or emotional health and safety.

30 (c) *Removal of a child from custody of a parent*. The court shall not
31 enter an order removing a child from the custody of a parent pursuant
32 to this section unless the court first finds probable cause that: (1)(A) The

33 child is likely to sustain harm if not immediately removed from the home;
34 (B) allowing the child to remain in home is contrary to the welfare
35 of the child; or

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

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

41 (d) *Custody of a child removed from the custody of a parent*. If the
42 court has made the findings required by subsection (c), the court shall
43 enter an order awarding custody to a relative of the child or to a person

1 with whom the child has close emotional ties, to any other suitable person,
2 to a shelter facility, to a youth residential facility or, if the child is 15 years
3 of age or younger, or 16 or 17 years of age if the child has no identifiable
4 parental or family resources or shows signs of physical, mental, emotional
5 or sexual abuse, to the secretary. Custody awarded under this subsection
6 shall continue until further order of the court.

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

11 (A) After providing the parties or interested parties notice and op-
12 portunity to be heard, the court may determine whether the secretary's
13 placement or proposed placement is contrary to the welfare or in the best
14 interests of the child. In making that determination the court shall con-
15 sider the health and safety needs of the child and the resources available
16 to meet the needs of children in the custody of the secretary. If the court
17 determines that the placement or proposed placement is contrary to the
18 welfare or not in the best interests of the child, the court shall notify the
19 secretary, who shall then make an alternative placement.

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

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

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

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

1 alleged perpetrator to whom the order is directed.

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

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

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

24 (2) whether a parent has subjected the child or another child to ag-
25 gravated circumstances;

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

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

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

32 (6) whether the secretary has provided the family with services nec-
33 essary for the safe return of the child to the home; and

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

36 (f) *Proceedings if reintegration is not a viable alternative.* If the court
37 determines that reintegration is not a viable alternative, proceedings to
38 terminate parental rights and permit placement of the child for adoption
39 or appointment of a permanent custodian shall be initiated unless the
40 court finds that compelling reasons have been documented in the case
41 plan why adoption or appointment of a permanent custodian would not
42 be in the best interests of the child. If compelling reasons have not been
43 documented, the county or district attorney shall file a motion within 30

1 days to terminate parental rights or a motion to appoint a permanent
2 custodian within 30 days and the court shall hold a hearing on the motion
3 within 90 days of its filing. No hearing is required when the parents
4 voluntarily relinquish parental rights or consent to the appointment of a
5 permanent custodian.

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

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

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

29 (3) If child support has been requested and the parent or parents
30 have a duty to support the child, the court may order one or both parents
31 to pay child support and, when custody is awarded to the secretary, the
32 court shall order one or both parents to pay child support. The court shall
33 determine, for each parent separately, whether the parent is already sub-
34 ject to an order to pay support for the child. If the parent is not presently
35 ordered to pay support for any child who is subject to the jurisdiction of
36 the court and the court has personal jurisdiction over the parent, the court
37 shall order the parent to pay child support in an amount determined
38 under K.S.A. 2009 Supp. 38-2277, and amendments thereto. Except for
39 good cause shown, the court shall issue an immediate income withholding
40 order pursuant to K.S.A. 23-4,105 et seq., and amendments thereto, for
41 each parent ordered to pay support under this subsection, regardless of
42 whether a payor has been identified for the parent. A parent ordered to
43 pay child support under this subsection shall be notified, at the hearing

1 or otherwise, that the child support order may be registered pursuant to
2 K.S.A. 2009 Supp. 38-2279, and amendments thereto. The parent shall
3 also be informed that, after registration, the income withholding order
4 may be served on the parent's employer without further notice to the
5 parent and the child support order may be enforced by any method al-
6 lowed by law. Failure to provide this notice shall not affect the validity of
7 the child support order.

8 ~~Sec. 17.~~ **19.** K.S.A. 2009 Supp. 38-2271 is hereby amended to read
9 as follows: 38-2271. (a) It is presumed in the manner provided in K.S.A.
10 60-414, and amendments thereto, that a parent is unfit by reason of con-
11 duct or condition which renders the parent unable to fully care for a child,
12 if the state establishes, by clear and convincing evidence, that:

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

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

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

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

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

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

40 (7) a parent has been convicted of capital murder, K.S.A. 21-3439,
41 *prior to its repeal, aggravated murder, section 2*, and amendments
42 thereto, murder in the first degree, K.S.A. 21-3401, and amendments
43 thereto, murder in the second degree, K.S.A. 21-3402, and amendments

1 thereto, or voluntary manslaughter, K.S.A. 21-3403, and amendments
2 thereto, or comparable proceedings under the laws of another jurisdiction
3 or, has been adjudicated a juvenile offender because of an act which if
4 committed by an adult would be an offense as provided in this subsection,
5 and the victim of such murder was the other parent of the child;

6 (8) a parent abandoned or neglected the child after having knowledge
7 of the child's birth or either parent has been granted immunity from
8 prosecution for abandonment of the child under subsection (b) of K.S.A.
9 21-3604, and amendments thereto; or

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

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

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

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

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

24 (b) The burden of proof is on the parent to rebut the presumption
25 of unfitness by a preponderance of the evidence. In the absence of proof
26 that the parent is presently fit and able to care for the child or that the
27 parent will be fit and able to care for the child in the foreseeable future,
28 the court shall terminate parental rights in proceedings pursuant to K.S.A.
29 2009 Supp. 38-2266 et seq., and amendments thereto.

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

37 (b) There shall be no expungement of records or files concerning acts
38 committed by a juvenile which, if committed by an adult, would constitute
39 a violation of *K.S.A. 21-3439, prior to its repeal, capital murder, section*
40 *2, and amendments thereto, aggravated murder*, K.S.A. 21-3401, and
41 amendments thereto, murder in the first degree, K.S.A. 21-3402, and
42 amendments thereto, murder in the second degree, K.S.A. 21-3403, and
43 amendments thereto, voluntary manslaughter, K.S.A. 21-3404, and

1 amendments thereto, involuntary manslaughter, ~~K.S.A. 21-3430, and~~
2 ~~amendments thereto, capital murder, K.S.A. 21-3442, and amendments~~
3 thereto, involuntary manslaughter while driving under the influence of
4 alcohol or drugs, K.S.A. 21-3502, and amendments thereto, rape, K.S.A.
5 21-3503, and amendments thereto, indecent liberties with a child, K.S.A.
6 21-3504, and amendments thereto, aggravated indecent liberties with a
7 child, K.S.A. 21-3506, and amendments thereto, aggravated criminal sod-
8 omy, K.S.A. 21-3510, and amendments thereto, indecent solicitation of a
9 child, K.S.A. 21-3511, and amendments thereto, aggravated indecent so-
10 licitation of a child, K.S.A. 21-3516, and amendments thereto, sexual ex-
11 ploitation, K.S.A. 21-3603, and amendments thereto, aggravated incest,
12 K.S.A. 21-3608, and amendments thereto, endangering a child, K.S.A.
13 21-3609, and amendments thereto, abuse of a child, or which would con-
14 stitute an attempt to commit a violation of any of the offenses specified
15 in this subsection.

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

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

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

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

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

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

40 (e) Upon entry of an order expunging records or files, the offense
41 which the records or files concern shall be treated as if it never occurred,
42 except that upon conviction of a crime or adjudication in a subsequent
43 action under this code the offense may be considered in determining the

1 sentence to be imposed. The petitioner, the court and all law enforcement
2 officers and other public offices and agencies shall properly reply on in-
3 quiry that no record or file exists with respect to the juvenile. Inspection
4 of the expunged files or records thereafter may be permitted by order of
5 the court upon petition by the person who is the subject thereof. The
6 inspection shall be limited to inspection by the person who is the subject
7 of the files or records and the person's designees.

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

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

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

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

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

27 (1) The person whose record was expunged;

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

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

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

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

41 (6) the Kansas lottery, and the request is accompanied by a statement
42 that the request is being made to aid in determining qualifications for
43 employment with the Kansas lottery or for work in sensitive areas within

1 the Kansas lottery as deemed appropriate by the executive director of the
2 Kansas lottery;

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

10 (8) the Kansas sentencing commission.

11 Sec. ~~19~~ **21**. K.S.A. 2009 Supp. 38-2365 is hereby amended to read
12 as follows: 38-2365. (a) When a juvenile offender has been placed in the
13 custody of the commissioner, the commissioner shall have a reasonable
14 time to make a placement. If the juvenile offender has not been placed,
15 any party who believes that the amount of time elapsed without place-
16 ment has exceeded a reasonable time may file a motion for review with
17 the court. In determining what is a reasonable amount of time, matters
18 considered by the court shall include, but not be limited to, the nature
19 of the underlying offense, efforts made for placement of the juvenile
20 offender and the availability of a suitable placement. The commissioner
21 shall notify the court and the juvenile offender's parent, in writing, of the
22 initial placement and any subsequent change of placement as soon as the
23 placement has been accomplished. The notice to the juvenile offender's
24 parent shall be sent to such parent's last known address or addresses. The
25 court shall have no power to direct a specific placement by the commis-
26 sioner, but may make recommendations to the commissioner. The com-
27 missioner may place the juvenile offender in an institution operated by
28 the commissioner, a youth residential facility or any other appropriate
29 placement. If the court has recommended an out-of-home placement,
30 the commissioner may not return the juvenile offender to the home from
31 which removed without first notifying the court of the plan.

32 (b) If a juvenile is in the custody of the commissioner, the commis-
33 sioner shall prepare and present a permanency plan at sentencing or
34 within 30 days thereafter. If a permanency plan is already in place under
35 a child in need of care proceeding, the court may adopt the plan under
36 the present proceeding. The written permanency plan shall provide for
37 reintegration of the juvenile into such juvenile's family or, if reintegration
38 is not a viable alternative, for other permanent placement of the juvenile.
39 Reintegration may not be a viable alternative when: (1) The parent has
40 been found by a court to have committed *capital murder*, K.S.A. 21-3439,
41 *prior to its repeal, aggravated murder, section 2, and amendments thereto*,
42 *murder in the first degree*, K.S.A. 21-3401, and amendments thereto,
43 *murder in the second degree*, K.S.A. 21-3402, and amendments thereto,

1 ~~capital murder, K.S.A. 21-3430, and amendments thereto, voluntary man-~~
2 ~~slaughter, K.S.A. 21-3403, and amendments thereto, of a child or violated~~
3 ~~a law of another state which prohibits such murder or manslaughter of a~~
4 ~~child;~~
5 (2) the parent aided or abetted, attempted, conspired or solicited to
6 commit such murder or voluntary manslaughter of a child;
7 (3) the parent committed a felony battery that resulted in bodily in-
8 jury to the juvenile who is the subject of this proceeding or another child;
9 (4) the parent has subjected the juvenile who is the subject of this
10 proceeding or another child to aggravated circumstances as defined in
11 K.S.A. 38-1502, and amendments thereto;
12 (5) the parental rights of the parent to another child have been ter-
13 minated involuntarily; or
14 (6) the juvenile has been in extended out-of-home placement as de-
15 fined in K.S.A. 2009 Supp. 38-2202, and amendments thereto.
16 (c) If the juvenile is placed in the custody of the commissioner, the
17 plan shall be prepared and submitted by the commissioner. If the juvenile
18 is placed in the custody of a facility or person other than the commis-
19 sioner, the plan shall be prepared and submitted by a court services of-
20 ficer. If the permanency goal is reintegration into the family, the per-
21 manency plan shall include measurable objectives and time schedules for
22 reintegration.
23 (d) During the time a juvenile remains in the custody of the com-
24 missioner, the commissioner shall submit to the court, at least every six
25 months, a written report of the progress being made toward the goals of
26 the permanency plan submitted pursuant to subsections (b) and (c) and
27 the specific actions taken to achieve the goals of the permanency plan. If
28 the juvenile is placed in foster care, the court may request the foster
29 parent to submit to the court, at least every six months, a report in regard
30 to the juvenile's adjustment, progress and condition. Such report shall be
31 made a part of the juvenile's court social file. The court shall review the
32 plan submitted by the commissioner and the report, if any, submitted by
33 the foster parent and determine whether reasonable efforts and progress
34 have been made to achieve the goals of the permanency plan. If the court
35 determines that progress is inadequate or that the permanency plan is no
36 longer viable, the court shall hold a hearing pursuant to subsection (e).
37 (e) When the commissioner has custody of the juvenile, a perma-
38 nency hearing shall be held no more than 12 months after the juvenile is
39 first placed outside such juvenile's home and at least every 12 months
40 thereafter. Juvenile offenders who have been in extended out-of-home
41 placement shall be provided a permanency hearing within 30 days of a
42 request from the commissioner. The court may appoint a *guardian ad*
43 *litem* to represent the juvenile offender at the permanency hearing. At

1 each hearing, the court shall make a written finding whether reasonable
2 efforts have been made to accomplish the permanency goal and whether
3 continued out-of-home placement is necessary for the juvenile's safety.

4 (f) Whenever a hearing is required under subsection (e), the court
5 shall notify all interested parties of the hearing date, the commissioner,
6 foster parent and preadoptive parent or relatives providing care for the
7 juvenile and hold a hearing. Individuals receiving notice pursuant to this
8 subsection shall not be made a party to the action solely on the basis of
9 this notice and opportunity to be heard. After providing the persons re-
10 ceiving notice an opportunity to be heard, the court shall determine
11 whether the juvenile's needs are being adequately met; whether services
12 set out in the permanency plan necessary for the safe return of the ju-
13 venile have been made available to the parent with whom reintegration
14 is planned; and whether reasonable efforts and progress have been made
15 to achieve the goals of the permanency plan.

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

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

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

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

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

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

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

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

12 Sec. ~~20-22~~. K.S.A. 2009 Supp. 39-970 is hereby amended to read as
13 follows: 39-970. (a) (1) No person shall knowingly operate an adult care
14 home if, in the adult care home, there works any person who has been
15 convicted of or has been adjudicated a juvenile offender because of having
16 committed an act which if done by an adult would constitute the com-
17 mission of capital murder, pursuant to K.S.A. 21-3439, *prior to its repeal*,
18 *aggravated murder, pursuant to section 2*, and amendments thereto, first
19 degree murder, pursuant to K.S.A. 21-3401 and amendments thereto,
20 second degree murder, pursuant to subsection (a) of K.S.A. 21-3402 and
21 amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-
22 3403 and amendments thereto, assisting suicide pursuant to K.S.A. 21-
23 3406 and amendments thereto, mistreatment of a dependent adult, pur-
24 suant to K.S.A. 21-3437 and amendments thereto, rape, pursuant to
25 K.S.A. 21-3502 and amendments thereto, indecent liberties with a child,
26 pursuant to K.S.A. 21-3503 and amendments thereto, aggravated inde-
27 cent liberties with a child, pursuant to K.S.A. 21-3504 and amendments
28 thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506 and
29 amendments thereto, indecent solicitation of a child, pursuant to K.S.A.
30 21-3510 and amendments thereto, aggravated indecent solicitation of a
31 child, pursuant to K.S.A. 21-3511 and amendments thereto, sexual ex-
32 ploitation of a child, pursuant to K.S.A. 21-3516 and amendments thereto,
33 sexual battery, pursuant to K.S.A. 21-3517 and amendments thereto, or
34 aggravated sexual battery, pursuant to K.S.A. 21-3518 and amendments
35 thereto, an attempt to commit any of the crimes listed in this subsection
36 (a)(1), pursuant to K.S.A. 21-3301, and amendments thereto, a conspiracy
37 to commit any of the crimes listed in this subsection (a)(1), pursuant to
38 K.S.A. 21-3302, and amendments thereto, or criminal solicitation of any
39 of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303,
40 and amendments thereto, or similar statutes of other states or the federal
41 government.

42 (2) A person operating an adult care home may employ an applicant
43 who has been convicted of any of the following if five or more years have

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

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

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

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

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

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

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

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

1 investigation that further confirmation is required. The secretary shall
2 provide to the operator requesting information under this section infor-
3 mation in writing and within three working days of receipt of such infor-
4 mation from the appropriate court of jurisdiction or Kansas department
5 of corrections regarding confirmation regarding the criminal history rec-
6 ord information.

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

12 (4) The secretary of health and environment shall not provide each
13 operator requesting information under this section with the juvenile crim-
14 inal history record information which relates to a person subject to a
15 background check as is provided by K.S.A. 2009 Supp. 38-2326, and
16 amendments thereto, except for adjudications of a juvenile offender for
17 an offense described in K.S.A. 21-3701, and amendments thereto. The
18 secretary shall notify the operator that requested the information, in writ-
19 ing and within three working days of receipt of such information from
20 the Kansas bureau of investigation, whether juvenile criminal history rec-
21 ord information received pursuant to this section reveals that the operator
22 would or would not be prohibited by this section from employing the
23 subject of the request for information and whether such information con-
24 tains adjudications of a juvenile offender for an offense described in
25 K.S.A. 21-3701, and amendments thereto.

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

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

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

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

42 (j) The operator of an adult care home shall not be required under
43 this section to conduct a background check on an applicant for employ-

1 ment with the adult care home if the applicant has been the subject of a
2 background check under this act within one year prior to the application
3 for employment with the adult care home. The operator of an adult care
4 home where the applicant was the subject of such background check may
5 release a copy of such background check to the operator of an adult care
6 home where the applicant is currently applying.

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

12 (l) For purposes of this section, the Kansas bureau of investigation
13 shall only report felony convictions, convictions under K.S.A. 21-3437,
14 21-3517 and 21-3701, and amendments thereto, adjudications of a juve-
15 nile offender which if committed by an adult would have been a felony
16 conviction, and adjudications of a juvenile offender for an offense de-
17 scribed in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments
18 thereto, to the secretary of health and environment when a background
19 check is requested.

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

22 Sec. ~~21~~ **23**. K.S.A. 2009 Supp. 65-5117 is hereby amended to read
23 as follows: 65-5117. (a) (1) No person shall knowingly operate a home
24 health agency if, for the home health agency, there works any person who
25 has been convicted of or has been adjudicated a juvenile offender because
26 of having committed an act which if done by an adult would constitute
27 the commission of capital murder, pursuant to K.S.A. 21-3439 *prior to*
28 *its repeal, aggravated murder, pursuant to section 2*, and amendments
29 thereto, first degree murder, pursuant to K.S.A. 21-3401 and amend-
30 ments thereto, second degree murder, pursuant to subsection (a) of
31 K.S.A. 21-3402 and amendments thereto, voluntary manslaughter, pur-
32 suant to K.S.A. 21-3403 and amendments thereto, assisting suicide, pur-
33 suant to K.S.A. 21-3406 and amendments thereto, mistreatment of a de-
34 pendent adult, pursuant to K.S.A. 21-3437 and amendments thereto,
35 rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent lib-
36 erties with a child, pursuant to K.S.A. 21-3503 and amendments thereto,
37 aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and
38 amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-
39 3506 and amendments thereto, indecent solicitation of a child, pursuant
40 to K.S.A. 21-3510 and amendments thereto, aggravated indecent solici-
41 tation of a child, pursuant to K.S.A. 21-3511 and amendments thereto,
42 sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amend-
43 ments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amend-

1 ments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518
2 and amendments thereto, an attempt to commit any of the crimes listed
3 in this subsection (a)(1), pursuant to K.S.A. 21-3301, and amendments
4 thereto, a conspiracy to commit any of the crimes listed in this subsection
5 (a)(1), pursuant to K.S.A. 21-3302, and amendments thereto, or criminal
6 solicitation of any of the crimes listed in this subsection (a)(1), pursuant
7 to K.S.A. 21-3303, and amendments thereto, or similar statutes of other
8 states or the federal government.

9 (2) A person operating a home health agency may employ an appli-
10 cant who has been convicted of any of the following if five or more years
11 have elapsed since the applicant satisfied the sentence imposed or was
12 discharged from probation, a community correctional services program,
13 parole, postrelease supervision, conditional release or a suspended sen-
14 tence; or if five or more years have elapsed since the applicant has been
15 finally discharged from the custody of the commissioner of juvenile justice
16 or from probation or has been adjudicated a juvenile offender, whichever
17 time is longer: (A) a felony conviction for a crime which is described in: (A)
18 Article 34 of chapter 21 of the Kansas Statutes Annotated and amend-
19 ments thereto, except those crimes listed in subsection (a)(1); (B) articles
20 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments
21 thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-
22 3605 and amendments thereto; (C) an attempt to commit any of the
23 crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, and
24 amendments thereto; (D) a conspiracy to commit any of the crimes listed
25 in subsection (a)(2) pursuant to K.S.A. 21-3302, and amendments thereto;
26 (E) criminal solicitation of any of the crimes listed in subsection (a)(2)
27 pursuant to K.S.A. 21-3303, and amendments thereto; or (F) similar stat-
28 utes of other states or the federal government.

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

34 (c) The secretary of health and environment shall have access to any
35 criminal history record information in the possession of the Kansas bureau
36 of investigation regarding felony convictions, convictions under K.S.A. 21-
37 3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a
38 juvenile offender which if committed by an adult would have been a
39 felony conviction, and adjudications of a juvenile offender for an offense
40 described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments
41 thereto, concerning persons working for a home health agency. The sec-
42 retary shall have access to these records for the purpose of determining
43 whether or not the home health agency meets the requirements of this

1 section. The Kansas bureau of investigation may charge to the department
2 of health and environment a reasonable fee for providing criminal history
3 record information under this subsection.

4 (d) For the purpose of complying with this section, the operator of a
5 home health agency shall request from the department of health and
6 environment information regarding only felony convictions, convictions
7 under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto,
8 adjudications of a juvenile offender which if committed by an adult would
9 have been a felony conviction, and adjudications of a juvenile offender
10 for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and
11 amendments thereto, and which relates to a person who works for the
12 home health agency or is being considered for employment by the home
13 health agency, for the purpose of determining whether such person is
14 subject to the provisions of this section. For the purpose of complying
15 with this section, information relating to convictions and adjudications by
16 the federal government or to convictions and adjudications in states other
17 than Kansas shall not be required until such time as the secretary of health
18 and environment determines the search for such information could rea-
19 sonably be performed and the information obtained within a two-week
20 period. For the purpose of complying with this section, the operator of a
21 home health agency shall receive from any employment agency which
22 provides employees to work for the home health agency written certifi-
23 cation that such employees are not prohibited from working for the home
24 health agency under this section. For the purpose of complying with this
25 section, a person who operates a home health agency may hire an appli-
26 cant for employment on a conditional basis pending the results from the
27 department of health and environment of a request for information under
28 this subsection. No home health agency, the operator or employees of a
29 home health agency or an employment agency, or the operator or em-
30 ployees of an employment agency, which provides employees to work for
31 the home health agency shall be liable for civil damages resulting from
32 any decision to employ, to refuse to employ or to discharge from em-
33 ployment any person based on such home health agency's compliance
34 with the provisions of this section if such home health agency or employ-
35 ment agency acts in good faith to comply with this section.

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

40 (f) (1) The secretary of health and environment shall provide each
41 operator requesting information under this section with the criminal his-
42 tory record information concerning felony convictions and convictions
43 under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto,

1 in writing and within three working days of receipt of such information
2 from the Kansas bureau of investigation. The criminal history record in-
3 formation shall be provided regardless of whether the information dis-
4 closes that the subject of the request has been convicted of an offense
5 enumerated in subsection (a).

6 (2) When an offense enumerated in subsection (a) exists in the crim-
7 inal history record information, and when further confirmation regarding
8 criminal history record information is required from the appropriate court
9 of jurisdiction or Kansas department of corrections, the secretary shall
10 notify each operator that requests information under this section in writ-
11 ing and within three working days of receipt from the Kansas bureau of
12 investigation that further confirmation is required. The secretary shall
13 provide to the operator requesting information under this section infor-
14 mation in writing and within three working days of receipt of such infor-
15 mation from the appropriate court of jurisdiction or Kansas department
16 of corrections regarding confirmation regarding the criminal history rec-
17 ord information.

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

23 (4) The secretary of health and environment shall not provide each
24 operator requesting information under this section with the juvenile crim-
25 inal history record information which relates to a person subject to a
26 background check as is provided by K.S.A. 2009 Supp. 38-2326, and
27 amendments thereto, except for adjudications of a juvenile offender for
28 an offense described in K.S.A. 21-3701, and amendments thereto. The
29 secretary shall notify the operator that requested the information, in writ-
30 ing and within three working days of receipt of such information from
31 the Kansas bureau of investigation, whether juvenile criminal history rec-
32 ord information received pursuant to this section reveals that the operator
33 would or would not be prohibited by this section from employing the
34 subject of the request for information and whether such information con-
35 tains adjudications of a juvenile offender for an offense described in
36 K.S.A. 21-3701, and amendments thereto.

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

42 (g) No person who works for a home health agency and who is cur-
43 rently licensed or registered by an agency of this state to provide profes-

1 sional services in this state and who provides such services as part of the
2 work which such person performs for the home health agency shall be
3 subject to the provisions of this section.

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

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

11 (j) The operator of a home health agency shall not be required under
12 this section to conduct a background check on an applicant for employ-
13 ment with the home health agency if the applicant has been the subject
14 of a background check under this act within one year prior to the appli-
15 cation for employment with the home health agency. The operator of a
16 home health agency where the applicant was the subject of such back-
17 ground check may release a copy of such background check to the op-
18 erator of a home health agency where the applicant is currently applying.

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

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

30 Sec. ~~22~~ **24**. K.S.A. 2009 Supp. 72-1397 is hereby amended to read
31 as follows: 72-1397. (a) The state board of education shall not knowingly
32 issue a license to or renew the license of any person who has been con-
33 victed of:

- 34 (1) Rape, as defined in K.S.A. 21-3502, and amendments thereto;
- 35 (2) indecent liberties with a child, as defined in K.S.A. 21-3503, and
36 amendments thereto;
- 37 (3) aggravated indecent liberties with a child, as defined in K.S.A. 21-
38 3504, and amendments thereto;
- 39 (4) criminal sodomy, as defined in subsection (a)(2) or (a)(3) of K.S.A.
40 21-3505, and amendments thereto;
- 41 (5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, and
42 amendments thereto;
- 43 (6) indecent solicitation of a child, as defined in K.S.A. 21-3510, and

1 amendments thereto;
2 (7) aggravated indecent solicitation of a child, as defined in K.S.A.
3 21-3511, and amendments thereto;
4 (8) sexual exploitation of a child, as defined in K.S.A. 21-3516, and
5 amendments thereto;
6 (9) aggravated incest, as defined in K.S.A. 21-3603, and amendments
7 thereto;
8 (10) aggravated endangering a child, as defined in K.S.A. 21-3608a,
9 and amendments thereto;
10 (11) abuse of a child, as defined in K.S.A. 21-3609, and amendments
11 thereto;
12 (12) capital murder, as defined in K.S.A. 21-3439, ~~and amendments~~
13 ~~thereto prior to its repeal~~;
14 (13) *aggravated murder, as defined in section 2, and amendments*
15 *thereto*;
16 ~~(13)~~ (14) murder in the first degree, as defined in K.S.A. 21-3401,
17 and amendments thereto;
18 ~~(14)~~ (15) murder in the second degree, as defined in K.S.A. 21-3402,
19 and amendments thereto;
20 ~~(15)~~ (16) voluntary manslaughter, as defined in K.S.A. 21-3403, and
21 amendments thereto;
22 ~~(16)~~ (17) involuntary manslaughter, as defined in K.S.A. 21-3404, and
23 amendments thereto;
24 ~~(17)~~ (18) involuntary manslaughter while driving under the influence
25 of alcohol or drugs, as defined in K.S.A. 21-3442, and amendments
26 thereto;
27 ~~(18)~~ (19) sexual battery, as defined in K.S.A. 21-3517, and amend-
28 ments thereto, when, at the time the crime was committed, the victim
29 was less than 18 years of age or a student of the person committing such
30 crime;
31 ~~(19)~~ (20) aggravated sexual battery, as defined in K.S.A. 21-3518, and
32 amendments thereto;
33 ~~(20)~~ (21) attempt under K.S.A. 21-3301, and amendments thereto, to
34 commit any act specified in this subsection;
35 ~~(21)~~ (22) conspiracy under K.S.A. 21-3302, and amendments thereto,
36 to commit any act specified in this subsection;
37 ~~(22)~~ (23) an act in another state or by the federal government that is
38 comparable to any act described in this subsection; or
39 ~~(23)~~ (24) an offense in effect at any time prior to the effective date
40 of this act that is comparable to an offense as provided in this subsection.
41 (b) Except as provided in subsection (c), the state board of education
42 shall not knowingly issue a license to or renew the license of any person
43 who has been convicted of, or has entered into a criminal diversion agree-

1 ment after having been charged with:

- 2 (1) A felony under K.S.A. 2009 Supp. 21-36a01 through 21-36a17,
3 and amendments thereto;
 - 4 (2) a felony described in any section of article 34 of chapter 21 of the
5 Kansas Statutes Annotated, other than an act specified in subsection (a),
6 or a battery, as described in K.S.A. 21-3412, and amendments thereto,
7 or domestic battery, as described in K.S.A. 21-3412a, and amendments
8 thereto, if the victim is a minor or student;
 - 9 (3) a felony described in any section of article 35 of chapter 21 of the
10 Kansas Statutes Annotated, other than an act specified in subsection (a);
 - 11 (4) any act described in any section of article 36 of chapter 21 of the
12 Kansas Statutes Annotated, other than an act specified in subsection (a);
 - 13 (5) a felony described in article 37 of chapter 21 of the Kansas Stat-
14 utes Annotated;
 - 15 (6) promoting obscenity, as described in K.S.A. 21-4301, and amend-
16 ments thereto, promoting obscenity to minors, as described in K.S.A. 21-
17 4301a, and amendments thereto, or promoting to minors obscenity harm-
18 ful to minors, as described in K.S.A. 21-4301c, and amendments thereto;
 - 19 (7) endangering a child, as defined in K.S.A. 21-3608, and amend-
20 ments thereto;
 - 21 (8) driving under the influence of alcohol or drugs in violation of
22 K.S.A. 8-1567 or 8-2,144, and amendments thereto, when the violation
23 is punishable as a felony;
 - 24 (9) attempt under K.S.A. 21-3301, and amendments thereto, to com-
25 mit any act specified in this subsection;
 - 26 (10) conspiracy under K.S.A. 21-3302, and amendments thereto, to
27 commit any act specified in this subsection; or
 - 28 (11) an act committed in violation of a federal law or in violation of
29 another state's law that is comparable to any act described in this
30 subsection.
- 31 (c) The state board of education may issue a license to or renew the
32 license of a person who has been convicted of committing an offense or
33 act described in subsection (b) or who has entered into a criminal diver-
34 sion agreement after having been charged with an offense or act described
35 in subsection (b) if the state board determines, following a hearing, that
36 the person has been rehabilitated for a period of at least five years from
37 the date of conviction of the offense or commission of the act or, in the
38 case of a person who has entered into a criminal diversion agreement,
39 that the person has satisfied the terms and conditions of the agreement.
40 The state board of education may consider factors including, but not
41 limited to, the following in determining whether to grant a license:
- 42 (1) The nature and seriousness of the offense or act;
 - 43 (2) the conduct of the person subsequent to commission of the of-

1 fense or act;

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

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

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

5 and

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

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

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

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

22 ~~Sec. 23-25.~~ K.S.A. 2009 Supp. 75-52,148 is hereby amended to read
23 as follows: 75-52,148. (a) The department of corrections shall be required
24 to review and report on the following serious offenses committed by sex
25 offenders, as defined by K.S.A. 22-4902, and amendments thereto, while
26 such offenders are in the custody of the secretary of corrections:

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

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

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

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

35 ~~(4)~~ (5) rape, as provided in K.S.A. 21-3502, and amendments thereto;

36 ~~(5)~~ (6) aggravated criminal sodomy, as provided in K.S.A. 21-3506,
37 and amendments thereto;

38 ~~(6)~~ (7) sexual exploitation of a child, as provided in K.S.A. 21-3516,
39 and amendments thereto;

40 ~~(7)~~ (8) kidnapping as provided in K.S.A. 21-3420, and amendments
41 thereto;

42 ~~(8)~~ (9) aggravated kidnapping, as provided in K.S.A. 21-3421, and
43 amendments thereto;

1 ~~(9)~~ (10) criminal restraint, as provided in K.S.A. 21-3424, and amend-
2 ments thereto;
3 ~~(10)~~ (11) indecent solicitation of a child, as provided in K.S.A. 21-
4 3510, and amendments thereto;
5 ~~(11)~~ (12) aggravated indecent solicitation of a child, as provided in
6 K.S.A. 21-3511, and amendments thereto;
7 ~~(12)~~ (13) indecent liberties with a child, as provided in K.S.A. 21-
8 3503, and amendments thereto;
9 ~~(13)~~ (14) aggravated indecent liberties with a child, as provided in
10 K.S.A. 21-3504, and amendments thereto;
11 ~~(14)~~ (15) criminal sodomy, as provided in K.S.A. 21-3505, and
12 amendments thereto;
13 ~~(15)~~ (16) aggravated child abuse, as provided in K.S.A. 21-3609, and
14 amendments thereto;
15 ~~(16)~~ (17) aggravated robbery, as provided in K.S.A. 21-3427, and
16 amendments thereto;
17 ~~(17)~~ (18) burglary, as provided in K.S.A. 21-3715, and amendments
18 thereto;
19 ~~(18)~~ (19) aggravated burglary, as provided in K.S.A. 21-3716, and
20 amendments thereto;
21 ~~(19)~~ (20) theft, as provided in K.S.A. 21-3701, and amendments
22 thereto;
23 ~~(20)~~ (21) vehicular homicide, as provided in K.S.A. 21-3405, and
24 amendments thereto;
25 ~~(21)~~ (22) involuntary manslaughter while driving under the influence,
26 as provided in K.S.A. 21-3442, and amendments thereto; or
27 ~~(22)~~ (23) stalking, as provided in K.S.A. 21-3438, and amendments
28 thereto.
29 (b) The secretary of corrections shall submit such report to the
30 speaker of the house of representatives and the president of the senate
31 annually, beginning January 1, 2007.
32 Sec. ~~24~~ **26**. K.S.A. 21-3439, 21-3452, 21-4622, 21-4623, 21-4624,
33 21-4625, 21-4626, 21-4627, 21-4629, 21-4630, 21-4631, 21-4634, 21-
34 4635, 21-4641, 21-4706, 22-3405, 22-3705, **22-3728** and 22-4210 and
35 K.S.A. 2009 Supp. 21-4619, **21-4642**, 22-3717, 22-4902, 38-2255, 38-
36 2271, 38-2312, 38-2365, 39-970, 65-5117, 72-1397 and 75-52,148 are
37 hereby repealed.
38 Sec. ~~25~~ **27**. This act shall take effect and be in force from and after
39 its publication in the statute book.