

Senate Substitute for Substitute HOUSE BILL No. 2318

By Committee on Judiciary

3-19

1 AN ACT concerning ~~crimes, punishment and criminal procedure~~*{drugs};*
2 *{creating the crime of armed criminal action;}* relating to *{further*
3 *amendments to the Kansas criminal code;}* controlled substances;
4 sentencing guidelines grid for drug crimes; drug treatment programs;
5 disposition and supervision of offenders~~};~~ *electronic prescription and*
6 *prescription monitoring program*~~};~~ amending *{K.S.A. 65-4123 and}*
7 *K.S.A. 2011 Supp. {21-5109, 21-5302, 21-5402, 21-5426, 21-5604,}*
8 *21-5701, 21-5703, 21-5705, 21-5706, 21-5708, 21-5709, 21-5710, 21-*
9 *5713, 21-5714, 21-5716, {21-5806, 21-5807, 21-5904, 21-5905, 21-*
10 *5907, 21-5911, 21-6001, 21-6110, 21-6112, 21-6312, 21-6412, 21-*
11 *6413,}* 21-6604, 21-6608, 21-6611, 21-6614, 21-6805, 21-6808, 21-
12 6810, *{21-6819,}* 21-6821, 21-6824, 22-2802, 22-2908, 22-3412, 22-
13 3604, 22-3717, 38-2346, 38-2347, 38-2369, 38-2374, 38-2376, *{65-*
14 *1626, 65-1637, 65-1683, 65-1685, 65-1693, 65-4101,}* 75-5291 and 75-
15 52,144 and repealing the existing sections; also repealing K.S.A. 2011
16 Supp. 21-6614a, 21-6614b, 21-6614c and 75-5291b.

17

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

19 *{New Section 1. (a) Endangerment is recklessly exposing another*
20 *person to a danger of great bodily harm or death.*

21 *(b) Endangerment is a class A person misdemeanor.*

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

24 *Sec. 2. K.S.A. 2011 Supp. 21-5109 is hereby amended to read as*
25 *follows: 21-5109. (a) When the same conduct of a defendant may*
26 *establish the commission of more than one crime under the laws of this*
27 *state, the defendant may be prosecuted for each of such crimes. Each of*
28 *such crimes may be alleged as a separate count in a single complaint,*
29 *information or indictment.*

30 *(b) Upon prosecution for a crime, the defendant may be convicted*
31 *of either the crime charged or a lesser included crime, but not both. A*
32 *lesser included crime is:*

33 *(1) A lesser degree of the same crime;*

34 *(2) a crime where all elements of the lesser crime are identical to*
35 *some of the elements of the crime charged;*

36 *(3) an attempt to commit the crime charged; or*

1 ***(4) an attempt to commit a crime defined under paragraph (1) or***
2 ***(2).***

3 ***(c) Whenever charges are filed against a person, accusing the***
4 ***person of a crime which includes another crime of which the person has***
5 ***been convicted, the conviction of the lesser included crime shall not bar***
6 ***prosecution or conviction of the crime charged if the crime charged was***
7 ***not consummated at the time of conviction of the lesser included crime,***
8 ***but the conviction of the lesser included crime shall be annulled upon***
9 ***the filing of such charges. Evidence of the person's plea or any***
10 ***admission or statement made by the person in connection therewith in***
11 ***any of the proceedings which resulted in the person's conviction of the***
12 ***lesser included crime shall not be admissible at the trial of the crime***
13 ***charged. If the person is convicted of the crime charged, or of a lesser***
14 ***included crime, the person so convicted shall receive credit against any***
15 ***prison sentence imposed or fine to be paid for the period of confinement***
16 ***actually served or the amount of any fine actually paid under the***
17 ***sentence imposed for the annulled conviction.***

18 ***(d) Unless otherwise provided by law, when crimes differ only in***
19 ***that one is defined to prohibit a designated kind of conduct generally***
20 ***and the other to prohibit a specific instance of such conduct, the***
21 ***defendant:***

22 ***(1) May not be convicted of the two crimes based upon the same***
23 ***conduct; and***

24 ***(2) shall be sentenced according to the terms of the more specific***
25 ***crime.***

26 ***(e) A defendant may not be convicted of identical offenses based upon***
27 ***the same conduct. The prosecution may choose which such offense to***
28 ***charge and, upon conviction, the defendant shall be sentenced according***
29 ***to the terms of that offense.***

30 ***Sec. 3. K.S.A. 2011 Supp. 21-5302 is hereby amended to read as***
31 ***follows: 21-5302. (a) A conspiracy is an agreement with another person***
32 ***to commit a crime or to assist in committing a crime. No person may be***
33 ***convicted of a conspiracy unless an overt act in furtherance of such***
34 ***conspiracy is alleged and proved to have been committed by such person***
35 ***or by a co-conspirator.***

36 ***(b) It is immaterial to the criminal liability of a person charged with***
37 ***conspiracy that any other person with whom the defendant conspired***
38 ***lacked the actual intent to commit the underlying crime provided that the***
39 ***defendant believed the other person did have the actual intent to commit***
40 ***the underlying crime.***

41 ***(b)(c) It shall be a defense to a charge of conspiracy that the***
42 ***accused voluntarily and in good faith withdrew from the conspiracy, and***
43 ***communicated the fact of such withdrawal to one or more of the accused***

1 *person's co-conspirators, before any overt act in furtherance of the*
2 *conspiracy was committed by the accused or by a co-conspirator.*

3 ~~(d)~~ (1) *Conspiracy to commit an off-grid felony shall be ranked*
4 *at nondrug severity level 2. Conspiracy to commit any other nondrug*
5 *felony shall be ranked on the nondrug scale at two severity levels below*
6 *the appropriate level for the underlying or completed crime. The lowest*
7 *severity level for conspiracy to commit a nondrug felony shall be a*
8 *severity level 10.*

9 (2) *The provisions of this subsection shall not apply to a violation of*
10 *conspiracy to commit the crime of:*

11 (A) *Aggravated human trafficking, as defined in subsection (b) of*
12 *K.S.A. 2011 Supp. 21-5426, and amendments thereto, if the offender is*
13 *18 years of age or older and the victim is less than 14 years of age;*

14 (B) *terrorism as defined in K.S.A. 2011 Supp. 21-5421, and*
15 *amendments thereto;*

16 (C) *illegal use of weapons of mass destruction as defined in K.S.A.*
17 *2011 Supp. 21-5422, and amendments thereto;*

18 (D) *rape, as defined in subsection (a)(3) of K.S.A. 2011 Supp. 21-*
19 *5503, and amendments thereto, if the offender is 18 years of age or*
20 *older;*

21 (E) *aggravated indecent liberties with a child, as defined in*
22 *subsection (b)(3) of K.S.A. 2011 Supp. 21-5506, and amendments*
23 *thereto, if the offender is 18 years of age or older;*

24 (F) *aggravated criminal sodomy, as defined in subsection (b)(1) or*
25 *(b)(2) of K.S.A. 2011 Supp. 21-5504, and amendments thereto, if the*
26 *offender is 18 years of age or older;*

27 (G) *promoting prostitution, as defined in K.S.A. 2011 Supp. 21-*
28 *6420, and amendments thereto, if the offender is 18 years of age or older*
29 *and the prostitute is less than 14 years of age; or*

30 (H) *sexual exploitation of a child, as defined in subsection (a)(1) or*
31 *(a)(4) of K.S.A. 2011 Supp. 21-5510, and amendments thereto, if the*
32 *offender is 18 years of age or older and the child is less than 14 years of*
33 *age.*

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

37 ~~(e)~~(f) *A conspiracy to commit a misdemeanor is a class C*
38 *misdemeanor.*

39 *Sec. 4. K.S.A. 2011 Supp. 21-5402 is hereby amended to read as*
40 *follows: 21-5402. (a) Murder in the first degree is the killing of a human*
41 *being committed:*

42 (1) *Intentionally, and with premeditation; or*

43 (2) *in the commission of, attempt to commit, or flight from any*

1 *inherently dangerous felony.*

2 (b) *Murder in the first degree is an off-grid person felony.*

3 (c) *As used in this section, an "inherently dangerous felony"*
4 *means:*

5 (1) *Any of the following felonies, whether such felony is so distinct*
6 *from the homicide alleged to be a violation of subsection (a)(2) as not to*
7 *be an ingredient of the homicide alleged to be a violation of subsection*
8 *(a)(2):*

9 (A) *Kidnapping, as defined in subsection (a) of K.S.A. 2011 Supp.*
10 *21-5408, and amendments thereto;*

11 (B) *aggravated kidnapping, as defined in subsection (b) of K.S.A.*
12 *2011 Supp. 21-5408, and amendments thereto;*

13 (C) *robbery, as defined in subsection (a) of K.S.A. 2011 Supp. 21-*
14 *5420, and amendments thereto;*

15 (D) *aggravated robbery, as defined in subsection (b) of K.S.A. 2011*
16 *Supp. 21-5420, and amendments thereto;*

17 (E) *rape, as defined in K.S.A. 2011 Supp. 21-5503, and*
18 *amendments thereto;*

19 (F) *aggravated criminal sodomy, as defined in subsection (b) of*
20 *K.S.A. 2011 Supp. 21-5504, and amendments thereto;*

21 (G) *abuse of a child, as defined in K.S.A. 2011 Supp. 21-5602, and*
22 *amendments thereto;*

23 (H) *felony theft of property as defined in subsection (a)(1) or (a)(3)*
24 *of K.S.A. 2011 Supp. 21-5801, and amendments thereto;*

25 (I) *burglary, as defined in subsection (a) of K.S.A. 2011 Supp. 21-*
26 *5807, and amendments thereto;*

27 (J) *aggravated burglary, as defined in subsection (b) of K.S.A. 2011*
28 *Supp. 21-5807, and amendments thereto;*

29 (K) *arson, as defined in subsection (a) of K.S.A. 2011 Supp. 21-*
30 *5812, and amendments thereto;*

31 (L) *aggravated arson, as defined in subsection (b) of K.S.A. 2011*
32 *Supp. 21-5812, and amendments thereto;*

33 (M) *treason, as defined in K.S.A. 2011 Supp. 21-5901, and*
34 *amendments thereto;*

35 (N) *any felony offense as provided in K.S.A. 2011 Supp. 21-5703,*
36 *21-5705 or 21-5706, and amendments thereto;*

37 (O) *any felony offense as provided in subsection (a) or (b) of K.S.A.*
38 *2011 Supp. 21-6308, and amendments thereto;*

39 (P) *endangering the food supply, as defined in subsection (a) of*
40 *K.S.A. 2011 Supp. 21-6317, and amendments thereto;*

41 (Q) *aggravated endangering the food supply, as defined in*
42 *subsection (b) of K.S.A. 2011 Supp. 21-6317, and amendments thereto;*

43 (R) *fleeing or attempting to elude a police officer, as defined in*

1 *subsection (b) of K.S.A. 8-1568, and amendments thereto;*~~or~~

2 *(S) aggravated endangering a child, as defined in subsection (b)(1)*
 3 *of K.S.A. 2011 Supp. 21-5601, and amendments thereto;*

4 *(T) abandonment of a child, as defined in subsection (a) of K.S.A.*
 5 *2011 Supp. 21-5605, and amendments thereto; or*

6 *(U) aggravated abandonment of a child, as defined in subsection (b)*
 7 *of K.S.A. 2011 Supp. 21-5605, and amendments thereto; and*

8 *(2) any of the following felonies, only when such felony is so*
 9 *distinct from the homicide alleged to be a violation of subsection (a)(2)*
 10 *as to not be an ingredient of the homicide alleged to be a violation of*
 11 *subsection (a)(2):*

12 *(A) Murder in the first degree, as defined in subsection (a)(1);*

13 *(B) murder in the second degree, as defined in subsection (a)(1) of*
 14 *K.S.A. 2011 Supp. 21-5403, and amendments thereto;*

15 *(C) voluntary manslaughter, as defined in subsection (a)(1) of*
 16 *K.S.A. 2011 Supp. 21-5404, and amendments thereto;*

17 *(D) aggravated assault, as defined in subsection (b) of K.S.A. 2011*
 18 *Supp. 21-5412, and amendments thereto;*

19 *(E) aggravated assault of a law enforcement officer, as defined in*
 20 *subsection (d) of K.S.A. 2011 Supp. 21-5412, and amendments thereto;*

21 *(F) aggravated battery, as defined in subsection (b)(1) of K.S.A.*
 22 *2011 Supp. 21-5413, and amendments thereto; or*

23 *(G) aggravated battery against a law enforcement officer, as*
 24 *defined in subsection (d) of K.S.A. 2011 Supp. 21-5413, and*
 25 *amendments thereto.*

26 *Sec. 5. K.S.A. 2011 Supp. 21-5426 is hereby amended to read as*
 27 *follows: 21-5426. (a) Human trafficking is:*

28 *(1) The intentional recruitment, harboring, transportation,*
 29 *provision or obtaining of a person for labor or services, through the use*
 30 *of force, fraud or coercion for the purpose of subjecting the person to*
 31 *involuntary servitude or forced labor;*

32 *(2) intentionally benefitting financially or by receiving anything of*
 33 *value from participation in a venture that the person has reason to know*
 34 *has engaged in acts set forth in subsection (a)(1);*

35 *(3) knowingly coercing employment by obtaining or maintaining*
 36 *labor or services that are performed or provided by another person*
 37 *through any of the following:*

38 *(A) Causing or threatening to cause physical injury to any person;*

39 *(B) physically restraining or threatening to physically restrain*
 40 *another person;*

41 *(C) abusing or threatening to abuse the law or legal process;*

42 *(D) threatening to withhold food, lodging or clothing; or*

43 *(E) knowingly destroying, concealing, removing, confiscating or*

1 *possessing any actual or purported government identification document*
2 *of another person; or*

3 *(4) knowingly holding another person in a condition of peonage in*
4 *satisfaction of a debt owed the person who is holding such other person.*

5 *(b) Aggravated human trafficking is:*

6 ~~(1)~~ *human trafficking, as defined in subsection (a):*

7 ~~(A)~~*(1) Involving the commission or attempted commission of*
8 *kidnapping, as defined in subsection (a) of K.S.A. 2011 Supp. 21-5408,*
9 *and amendments thereto;*

10 ~~(B)~~*(2) committed in whole or in part for the purpose of the sexual*
11 *gratification of the defendant or another;*~~or~~

12 ~~(C)~~*(3) resulting in a death; or*

13 ~~(2)~~*(4) involving recruiting, harboring, transporting, providing or*
14 *obtaining, by any means, a person under 18 years of age knowing that*
15 *the person, with or without force, fraud, threat or coercion, will be used*
16 *to engage in forced labor, involuntary servitude or sexual gratification*
17 *of the defendant or another.*

18 *(c) (1) Human trafficking is a severity level 2, person felony.*

19 *(2) Aggravated human trafficking is a severity level 1, person*
20 *felony, except as provided in subsection (c)(3).*

21 *(3) Aggravated human trafficking or attempt, conspiracy or*
22 *criminal solicitation to commit aggravated human trafficking is an off-*
23 *grid person felony, when the offender is 18 years of age or older and the*
24 *victim is less than 14 years of age.*

25 *(d) If the offender is 18 years of age or older and the victim is less*
26 *than 14 years of age, the provisions of:*

27 *(1) Subsection (c) of K.S.A. 2011 Supp. 21-5301, and amendments*
28 *thereto, shall not apply to a violation of attempting to commit the crime*
29 *of aggravated human trafficking pursuant to this section;*

30 *(2) subsection (c) of K.S.A. 2011 Supp. 21-5302, and amendments*
31 *thereto, shall not apply to a violation of conspiracy to commit the crime*
32 *of aggravated human trafficking pursuant to this section; and*

33 *(3) subsection (d) of K.S.A. 2011 Supp. 21-5303, and amendments*
34 *thereto, shall not apply to a violation of criminal solicitation to commit*
35 *the crime of aggravated human trafficking pursuant to this section.*

36 *(e) The provisions of this section shall not apply to the use of the*
37 *labor of any person incarcerated in a state or county correctional facility*
38 *or city jail.*

39 *(f) As used in this section, "peonage" means a condition of*
40 *involuntary servitude in which the victim is forced to work for another*
41 *person by the use or threat of physical restraint or physical injury, or by*
42 *the use or threat of coercion through law or the legal process.*

43 *Sec. 6. K.S.A. 2011 Supp. 21-5604 is hereby amended to read as*

1 follows: 21-5604. (a) Incest is marriage to or engaging in otherwise
2 lawful sexual intercourse or sodomy, as defined in K.S.A. 2011 Supp. 21-
3 5501, and amendments thereto, with a person who is 18 or more years of
4 age and who is known to the offender to be related to the offender as any
5 of the following biological relatives: Parent, child, grandparent of any
6 degree, grandchild of any degree, brother, sister, half-brother, half-
7 sister, uncle, aunt, nephew or niece.

8 (b) Aggravated incest is:

9 (1) Marriage to a person who is under 18 years of age and who is
10 known to the offender to be related to the offender as any of the
11 following biological, step or adoptive relatives: Child, grandchild of any
12 degree, brother, sister, half-brother, half-sister, uncle, aunt, nephew or
13 niece; or

14 (2) engaging in the following acts with a person who is 16 or more
15 years of age but under 18 years of age and who is known to the offender
16 to be related to the offender as any of the following biological, step or
17 adoptive relatives: Child, grandchild of any degree, brother, sister, half-
18 brother, half-sister, uncle, aunt, nephew or niece:

19 (A) Otherwise lawful sexual intercourse or sodomy as defined by
20 K.S.A. 2011 Supp. 21-5501, and amendments thereto; or

21 (B) any lewd fondling, as described in subsection (a)(1) of K.S.A.
22 2011 Supp. 21-5506, and amendments thereto.

23 (c) (1) Incest is a severity level 10, person felony.

24 (2) Aggravated incest as defined in:

25 (A) Subsection (b)(2)(A) is a:

26 (i) Severity level 5, person felony, except as provided in subsection
27 (c)(2)(A)(ii); and

28 (ii) severity level 3, person felony if the victim is the offender's
29 biological, step or adoptive child; and

30 (B) subsection (b)(1) or (b)(2)(B) is a severity level 7, person felony.

31 ~~Section 7.~~{Sec. 7.} K.S.A. 2011 Supp. 21-5701 is hereby amended to
32 read as follows: 21-5701. As used in K.S.A. 2011 Supp. 21-5701 through
33 21-5717, and amendments thereto:

34 (a) "Controlled substance" means any drug, substance or immediate
35 precursor included in any of the schedules designated in K.S.A. 65-4105,
36 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

37 (b) (1) "Controlled substance analog" means a substance that is
38 intended for human consumption, and:

39 (A) The chemical structure of which is substantially similar to the
40 chemical structure of a controlled substance listed in or added to the
41 schedules designated in K.S.A. 65-4105 or 65-4107, and amendments
42 thereto;

43 (B) which has a stimulant, depressant or hallucinogenic effect on the

1 central nervous system substantially similar to the stimulant, depressant or
2 hallucinogenic effect on the central nervous system of a controlled
3 substance included in the schedules designated in K.S.A. 65-4105 or 65-
4 4107, and amendments thereto; or

5 (C) with respect to a particular individual, which the individual
6 represents or intends to have a stimulant, depressant or hallucinogenic
7 effect on the central nervous system substantially similar to the stimulant,
8 depressant or hallucinogenic effect on the central nervous system of a
9 controlled substance included in the schedules designated in K.S.A. 65-
10 4105 or 65-4107, and amendments thereto.

11 (2) "Controlled substance analog" does not include:

12 (A) A controlled substance;

13 (B) a substance for which there is an approved new drug application;

14 or

15 (C) a substance with respect to which an exemption is in effect for
16 investigational use by a particular person under section 505 of the federal
17 food, drug, and cosmetic act (21 U.S.C. 355) to the extent conduct with
18 respect to the substance is permitted by the exemption.

19 (c) "Cultivate" means the planting or promotion of growth of five or
20 more plants which contain or can produce controlled substances.

21 (d) "Distribute" means the actual, constructive or attempted transfer
22 from one person to another of some item whether or not there is an agency
23 relationship. "Distribute" includes, but is not limited to, sale, offer for sale
24 or any act that causes some item to be transferred from one person to
25 another. "Distribute" does not include acts of administering, dispensing or
26 prescribing a controlled substance as authorized by the pharmacy act of the
27 state of Kansas, the uniform controlled substances act, or otherwise
28 authorized by law.

29 (e) "Drug" means:

30 (1) Substances recognized as drugs in the official United States
31 pharmacopoeia, official homeopathic pharmacopoeia of the United States
32 or official national formulary or any supplement to any of them;

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

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

37 (4) substances intended for use as a component of any article
38 specified in paragraph (1), (2) or (3). It does not include devices or their
39 components, parts or accessories.

40 (f) "Drug paraphernalia" means all equipment and materials of any
41 kind which are used, or primarily intended or designed for use in planting,
42 propagating, cultivating, growing, harvesting, manufacturing,
43 compounding, converting, producing, processing, preparing, testing,

1 analyzing, packaging, repackaging, storing, containing, concealing,
2 injecting, ingesting, inhaling or otherwise introducing into the human body
3 a controlled substance and in violation of this act. "Drug paraphernalia"
4 shall include, but is not limited to:

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

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

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

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

14 (5) scales and balances used or intended for use in weighing or
15 measuring controlled substances;

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

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

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

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

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

27 (11) hypodermic syringes, needles and other objects used or intended
28 for use in parenterally injecting controlled substances into the human
29 body;

30 (12) objects used or primarily intended or designed for use in
31 ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish,
32 hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into
33 the human body, such as:

34 (A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with
35 or without screens, permanent screens, hashish heads or punctured metal
36 bowls;

37 (B) water pipes, bongs or smoking pipes designed to draw smoke
38 through water or another cooling device;

39 (C) carburetion pipes, glass or other heat resistant tubes or any other
40 device used or intended to be used, designed to be used to cause
41 vaporization of a controlled substance for inhalation;

42 (D) smoking and carburetion masks;

43 (E) roach clips, objects used to hold burning material, such as a

- 1 marijuana cigarette, that has become too small or too short to be held in
2 the hand;
- 3 (F) miniature cocaine spoons and cocaine vials;
 - 4 (G) chamber smoking pipes;
 - 5 (H) carburetor smoking pipes;
 - 6 (I) electric smoking pipes;
 - 7 (J) air-driven smoking pipes;
 - 8 (K) chillums;
 - 9 (L) bongs;
 - 10 (M) ice pipes or chillers;
 - 11 (N) any smoking pipe manufactured to disguise its intended purpose;
 - 12 (O) wired cigarette papers; or
 - 13 (P) cocaine freebase kits.
- 14 (g) "Immediate precursor" means a substance which the board of
15 pharmacy has found to be and by rules and regulations designates as being
16 the principal compound commonly used or produced primarily for use and
17 which is an immediate chemical intermediary used or likely to be used in
18 the manufacture of a controlled substance, the control of which is
19 necessary to prevent, curtail or limit manufacture.
- 20 (h) "Isomer" means all enantiomers and diastereomers.
- 21 (i) "Manufacture" means the production, preparation, propagation,
22 compounding, conversion or processing of a controlled substance either
23 directly or indirectly or by extraction from substances of natural origin or
24 independently by means of chemical synthesis or by a combination of
25 extraction and chemical synthesis ~~and includes any packaging or~~
26 ~~repackaging of the substance or labeling or relabeling of its container.~~
27 "Manufacture" does not include :
- 28 (1) The preparation or compounding of a controlled substance by an
29 individual for the individual's own lawful use or the preparation,
30 compounding, packaging or labeling of a controlled substance:
- 31 (⊕) (A) By a practitioner or the practitioner's agent pursuant to a
32 lawful order of a practitioner as an incident to the practitioner's
33 administering or dispensing of a controlled substance in the course of the
34 practitioner's professional practice; or
 - 35 (⊖) (B) by a practitioner or by the practitioner's authorized agent
36 under such practitioner's supervision for the purpose of or as an incident to
37 research, teaching or chemical analysis or by a pharmacist or medical care
38 facility as an incident to dispensing of a controlled substance ; or
 - 39 (2) *the addition of diluents or adulterants, including, but not limited*
40 *to, quinine hydrochloride, mannitol, mannite, dextrose or lactose, which*
41 *are intended for use in cutting a controlled substance.*
- 42 (j) "Marijuana" means all parts of all varieties of the plant Cannabis
43 whether growing or not, the seeds thereof, the resin extracted from any

1 part of the plant and every compound, manufacture, salt, derivative,
2 mixture or preparation of the plant, its seeds or resin. "Marijuana" does not
3 include the mature stalks of the plant, fiber produced from the stalks, oil or
4 cake made from the seeds of the plant, any other compound, manufacture,
5 salt, derivative, mixture or preparation of the mature stalks, except the
6 resin extracted therefrom, fiber, oil or cake or the sterilized seed of the
7 plant which is incapable of germination.

8 (k) "Minor" means a person under 18 years of age.

9 (l) "Narcotic drug" means any of the following whether produced
10 directly or indirectly by extraction from substances of vegetable origin or
11 independently by means of chemical synthesis or by a combination of
12 extraction and chemical synthesis:

13 (1) Opium and opiate and any salt, compound, derivative or
14 preparation of opium or opiate;

15 (2) any salt, compound, isomer, derivative or preparation thereof
16 which is chemically equivalent or identical with any of the substances
17 referred to in paragraph (1) but not including the isoquinoline alkaloids of
18 opium;

19 (3) opium poppy and poppy straw;

20 (4) coca leaves and any salt, compound, derivative or preparation of
21 coca leaves and any salt, compound, isomer, derivative or preparation
22 thereof which is chemically equivalent or identical with any of these
23 substances, but not including decocainized coca leaves or extractions of
24 coca leaves which do not contain cocaine or ecgonine.

25 (m) "Opiate" means any substance having an addiction-forming or
26 addiction-sustaining liability similar to morphine or being capable of
27 conversion into a drug having addiction-forming or addiction-sustaining
28 liability. "Opiate" does not include, unless specifically designated as
29 controlled under K.S.A. 65-4102, and amendments thereto, the
30 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts
31 (dextromethorphan). "Opiate" does include its racemic and levorotatory
32 forms.

33 (n) "Opium poppy" means the plant of the species *Papaver*
34 *somniferum* L. except its seeds.

35 (o) "Person" means individual, corporation, government or
36 governmental subdivision or agency, business trust, estate, trust,
37 partnership, association or any other legal entity.

38 (p) "Poppy straw" means all parts, except the seeds, of the opium
39 poppy, after mowing.

40 (q) "Possession" means having joint or exclusive control over an item
41 with knowledge of and intent to have such control or knowingly keeping
42 some item in a place where the person has some measure of access and
43 right of control.

1 (r) "School property" means property upon which is located a
2 structure used by a unified school district or an accredited nonpublic
3 school for student instruction or attendance or extracurricular activities of
4 pupils enrolled in kindergarten or any of the grades one through 12. This
5 definition shall not be construed as requiring that school be in session or
6 that classes are actually being held at the time of the offense or that
7 children must be present within the structure or on the property during the
8 time of any alleged criminal act. If the structure or property meets the
9 above definition, the actual use of that structure or property at the time
10 alleged shall not be a defense to the crime charged or the sentence
11 imposed.

12 (s) "Simulated controlled substance" means any product which
13 identifies itself by a common name or slang term associated with a
14 controlled substance and which indicates on its label or accompanying
15 promotional material that the product simulates the effect of a controlled
16 substance.

17 Sec. ~~8.~~ K.S.A. 2011 Supp. 21-5703 is hereby amended to read as
18 follows: 21-5703. (a) It shall be unlawful for any person to manufacture
19 any controlled substance or controlled substance analog.

20 (b) Violation or attempted violation of subsection (a) is a ~~drug~~
21 ~~severity level 1 felony~~ :

22 (1) *Drug severity level 2 felony, except as provided in subsections (b)*
23 *(2) and (b)(3);*

24 (2) *drug severity level 1 felony if the offender has a prior conviction*
25 *under this section, under K.S.A. 65-4159, prior to its repeal, or under a*
26 *substantially similar offense from another jurisdiction; and*

27 (3) *drug severity level 1 felony if the controlled substance is*
28 *methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-*
29 *4107, and amendments thereto, or an analog thereof.*

30 (c) The provisions of subsection (d) of K.S.A. 2011 Supp. 21-5301,
31 and amendments thereto, shall not apply to a violation of attempting to
32 unlawfully manufacture any controlled substance *or controlled substance*
33 *analog* pursuant to this section.

34 (d) For persons arrested and charged under this section, bail shall
35 be at least \$50,000 cash or surety, unless the court determines, on the
36 record, that the defendant is not likely to re-offend, the court imposes
37 pretrial supervision, or the defendant agrees to participate in a licensed or
38 certified drug treatment program.

39 (e) The sentence of a person who violates this section shall not be
40 subject to statutory provisions for suspended sentence, community service
41 work or probation.

42 (f) The sentence of a person who violates this section or K.S.A.
43 65-4159 prior to its repeal, shall not be reduced because these sections

1 prohibit conduct identical to that prohibited by K.S.A. 65-4161 or 65-
2 4163, prior to ~~such sections~~ *their* repeal, or K.S.A. 2011 Supp. 21-5705,
3 and amendments thereto.

4 Sec. ~~9.~~ *{9.}* K.S.A. 2011 Supp. 21-5705 is hereby amended to read as
5 follows: 21-5705. (a) It shall be unlawful for any person to ~~cultivate,~~
6 distribute or possess with the intent to distribute any of the following
7 controlled substances or controlled substance analogs thereof:

8 (1) Opiates, opium or narcotic drugs, or any stimulant designated in
9 subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments
10 thereto;

11 (2) any depressant designated in subsection (e) of K.S.A. 65-4105,
12 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109
13 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

14 (3) any stimulant designated in subsection (f) of K.S.A. 65-4105,
15 subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of
16 K.S.A. 65-4109, and amendments thereto;

17 (4) any hallucinogenic drug designated in subsection (d) of K.S.A.
18 65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-
19 4109, and amendments thereto;

20 (5) any substance designated in subsection (g) of K.S.A. 65-4105 and
21 subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments
22 thereto;

23 (6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
24 4109, and amendments thereto; or

25 (7) any substance designated in subsection (h) of K.S.A. 65-4105,
26 and amendments thereto.

27 (b) It shall be unlawful for any person to distribute or possess with
28 the intent to distribute a controlled substance or a controlled substance
29 analog designated in K.S.A. 65-4113, and amendments thereto.

30 ~~(e) (1) Violation of subsection (a) is a drug severity level 3 felony,~~
31 ~~except that:~~

32 ~~(A) Violation of subsection (a) is a drug severity level 2 felony if the~~
33 ~~trier of fact makes a finding that the offender is 18 or more years of age~~
34 ~~and the substance was distributed to or possessed with intent to distribute~~
35 ~~to a minor or the violation occurs on or within 1,000 feet of any school~~
36 ~~property;~~

37 ~~(B) violation of subsection (a)(1) is a drug severity level 2 felony if~~
38 ~~that person has one prior conviction under subsection (a)(1), under K.S.A.~~
39 ~~65-4161 prior to its repeal, or under a substantially similar offense from~~
40 ~~another jurisdiction; and~~

41 ~~(C) violation of subsection (a)(1) is a drug severity level 1 felony if~~
42 ~~that person has two prior convictions under subsection (a)(1), under~~
43 ~~K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense~~

1 from another jurisdiction.

2 ~~(2) Violation of subsection (b) is a class A nonperson misdemeanor,~~
3 ~~except that, violation of subsection (b) is a drug severity level 4 felony if~~
4 ~~the substance was distributed to or possessed with the intent to distribute~~
5 ~~to a child under 18 years of age.~~

6 ~~(d) It shall not be a defense to charges arising under this section that~~
7 ~~the defendant was acting in an agency relationship on behalf of any other~~
8 ~~party in a transaction involving a controlled substance.~~

9 *(c) It shall be unlawful for any person to cultivate any controlled*
10 *substance or controlled substance analog listed in subsection (a).*

11 *(d) (1) Except as provided further, violation of subsection (a) is a:*

12 *(A) Drug severity level 4 felony if the quantity of the material was*
13 *less than 3.5 grams;*

14 *(B) drug severity level 3 felony if the quantity of the material was at*
15 *least 3.5 grams but less than 100 grams;*

16 *(C) drug severity level 2 felony if the quantity of the material was at*
17 *least 100 grams but less than 1 kilogram; and*

18 *(D) drug severity level 1 felony if the quantity of the material was 1*
19 *kilogram or more.*

20 *(2) Violation of subsection (a) with respect to material containing any*
21 *quantity of marijuana, or an analog thereof, is a:*

22 *(A) Drug severity level 4 felony if the quantity of the material was*
23 *less than 25 grams;*

24 *(B) drug severity level 3 felony if the quantity of the material was at*
25 *least 25 grams but less than 450 grams;*

26 *(C) drug severity level 2 felony if the quantity of the material was at*
27 *least 450 grams but less than 30 kilograms; and*

28 *(D) drug severity level 1 felony if the quantity of the material was 30*
29 *kilograms or more.*

30 *(3) Violation of subsection (a) with respect to material containing any*
31 *quantity of heroin, as defined by subsection (c)(1) of K.S.A. 65-4105, and*
32 *amendments thereto, or methamphetamine, as defined by subsection (d)(3)*
33 *or (f)(1) of K.S.A. 65-4107, and amendments thereto, or an analog thereof,*
34 *is a:*

35 *(A) Drug severity level 4 felony if the quantity of the material was*
36 *less than 1 gram;*

37 *(B) drug severity level 3 felony if the quantity of the material was at*
38 *least 1 gram but less than 3.5 grams;*

39 *(C) drug severity level 2 felony if the quantity of the material was at*
40 *least 3.5 grams but less than 100 grams; and*

41 *(D) drug severity level 1 felony if the quantity of the material was*
42 *100 grams or more.*

43 *(4) Violation of subsection (a) with respect to material containing any*

1 quantity of a controlled substance designated in K.S.A. 65-4105, 65-4107,
2 65-4109 or 65-4111, and amendments thereto, or an analog thereof,
3 distributed by dosage unit, is a:

4 (A) Drug severity level 4 felony if the number of dosage units was
5 fewer than 10;

6 (B) drug severity level 3 felony if the number of dosage units was at
7 least 10 but less than 100;

8 (C) drug severity level 2 felony if the number of dosage units was at
9 least 100 but less than 1,000; and

10 (D) drug severity level 1 felony if the number of dosage units was
11 1,000 or more.

12 (5) For any violation of subsection (a), the severity level of the
13 offense shall be increased one level if the controlled substance or
14 controlled substance analog was distributed or possessed with the intent
15 to distribute on or within 1,000 feet of any school property.

16 (6) Violation of subsection (b) is a:

17 (A) Class A person misdemeanor, except as provided in subsection (d)
18 (6)(B); and

19 (B) nondrug severity level 7, person felony if the substance was
20 distributed to or possessed with the intent to distribute to a minor.

21 (7) Violation of subsection (c) is a:

22 (A) Drug severity level 3 felony if the number of plants cultivated was
23 more than 4 but fewer than 50;

24 (B) drug severity level 2 felony if the number of plants cultivated was
25 at least 50 but fewer than 100; and

26 (C) drug severity level 1 felony if the number of plants cultivated was
27 100 or more.

28 (e) In any prosecution under this section, there shall be a rebuttable
29 presumption of an intent to distribute if any person possesses the following
30 quantities of controlled substances or analogs thereof:

31 (1) 450 grams or more of marijuana;

32 (2) 3.5 grams or more of heroin or methamphetamine;

33 (3) 100 dosage units or more containing a controlled substance; or

34 (4) 100 grams or more of any other controlled substance.

35 (f) It shall not be a defense to charges arising under this section that
36 the defendant:

37 (1) Was acting in an agency relationship on behalf of any other party
38 in a transaction involving a controlled substance or controlled substance
39 analog;

40 (2) did not know the quantity of the controlled substance or
41 controlled substance analog; or

42 (3) did not know the specific controlled substance or controlled
43 substance analog contained in the material that was distributed or

1 *possessed with the intent to distribute.*

2 *(g) As used in this section:*

3 *(1) "Material" means the total amount of any substance, including a*
4 *compound or a mixture, which contains any quantity of a controlled*
5 *substance or controlled substance analog.*

6 *(2) "Dosage unit" means a controlled substance or controlled*
7 *substance analog distributed or possessed with the intent to distribute as a*
8 *discrete unit, including but not limited to, one pill, one capsule or one*
9 *microdot, and not distributed by weight.*

10 *(A) For steroids, or controlled substances in liquid solution legally*
11 *manufactured for prescription use, or an analog thereof, "dosage unit"*
12 *means the smallest medically approved dosage unit, as determined by the*
13 *label, materials provided by the manufacturer, a prescribing authority,*
14 *licensed health care professional or other qualified health authority.*

15 *(B) For illegally manufactured controlled substances in liquid*
16 *solution, or controlled substances in liquid products not intended for*
17 *ingestion by human beings, or an analog thereof, "dosage unit" means 10*
18 *milligrams, including the liquid carrier medium, except as provided in*
19 *subsection (g)(2)(C).*

20 *(C) For lysergic acid diethylamide (LSD) in liquid form, or an*
21 *analog thereof, a dosage unit is defined as 0.4 milligrams, including the*
22 *liquid medium.*

23 *Sec. ~~4~~ {10.} K.S.A. 2011 Supp. 21-5706 is hereby amended to read*
24 *as follows: 21-5706. (a) It shall be unlawful for any person to possess any*
25 *opiates, opium or narcotic drugs, or any stimulant designated in subsection*
26 *(d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or a*
27 *controlled substance analog thereof.*

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

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

33 *(2) any stimulant designated in subsection (f) of K.S.A. 65-4105,*
34 *subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of*
35 *K.S.A. 65-4109, and amendments thereto;*

36 *(3) any hallucinogenic drug designated in subsection (d) of K.S.A.*
37 *65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-*
38 *4109, and amendments thereto;*

39 *(4) any substance designated in subsection (g) of K.S.A. 65-4105 and*
40 *subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments*
41 *thereto;*

42 *(5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-*
43 *4109, and amendments thereto;*

1 (6) any substance designated in K.S.A. 65-4113, and amendments
2 thereto; or

3 (7) any substance designated in subsection (h) of K.S.A. 65-4105,
4 and amendments thereto.

5 (c) (1) Violation of subsection (a) is a drug severity level 4 5 felony;
6 *and*

7 (2) (A) violation of subsection (b) is a class A nonperson
8 misdemeanor, except ~~that~~, *as provided in subsection (c)(2)(B); and*

9 (B) violation of subsection (b)(1) through (b)(5) or (b)(7) is a drug
10 severity level 4 5 felony if that person has a prior conviction under such
11 subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially
12 similar offense from another jurisdiction, or under any city ordinance or
13 county resolution for a substantially similar offense if the substance
14 involved was 3, 4-methylenedioxyamphetamine (MDMA), marijuana
15 as designated in subsection (d) of K.S.A. 65-4105, and amendments
16 thereto, or any substance designated in subsection (h) of K.S.A. 65-4105,
17 and amendments thereto, *or an analog thereof.*

18 (d) It shall not be a defense to charges arising under this section that
19 the defendant was acting in an agency relationship on behalf of any other
20 party in a transaction involving a controlled substance *or controlled*
21 *substance analog.*

22 Sec. ~~5~~ **{11}** K.S.A. 2011 Supp. 21-5708 is hereby amended to read as
23 follows: 21-5708. (a) Unlawfully obtaining a prescription-only drug is:

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

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

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

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

35 (5) providing false information, with the intent to deceive, to a
36 practitioner or mid-level practitioner for the purpose of obtaining a
37 prescription-only drug.

38 (b) Unlawfully selling a prescription-only drug is unlawfully
39 obtaining a prescription-only drug, as defined in subsection (a), and:

40 (1) Selling the prescription-only drug so obtained;

41 (2) offering for sale the prescription-only drug so obtained; or

42 (3) possessing with intent to sell the prescription-only drug so
43 obtained.

1 (c) (1) Unlawfully obtaining a prescription-only drug is a :

2 (A) Class A nonperson misdemeanor, except ~~that~~, as provided in
3 subsection (c)(1)(B); and

4 ~~(B) Unlawfully obtaining a prescription-only drug is a nondrug~~
5 severity level 9, nonperson felony if that person has a prior conviction of
6 ~~paragraph (1) under this section, K.S.A. 2010 Supp. 21-36a08, prior to its~~
7 ~~transfer~~, or K.S.A. 21-4214, prior to its repeal.

8 ~~(C) (2) Unlawfully selling a prescription-only drug is a nondrug~~
9 severity level 6, nonperson felony.

10 (d) As used in this section:

11 (1) "Pharmacist," "practitioner," "mid-level practitioner" and
12 "prescription-only drug" shall have the meanings ascribed thereto by
13 K.S.A. 65-1626, and amendments thereto.

14 (2) "Prescription order" means an order transmitted in writing, orally,
15 telephonically or by other means of communication for a prescription-only
16 drug to be filled by a pharmacist. "Prescription order" does not mean a
17 drug dispensed pursuant to such an order.

18 (e) The provisions of this section shall not be applicable to
19 prosecutions involving prescription-only drugs which could be brought
20 under K.S.A. 2011 Supp. 21-5705 or 21-5706, and amendments thereto.

21 Sec. ~~6.~~ ~~{12.}~~ K.S.A. 2011 Supp. 21-5709 is hereby amended to read
22 as follows: 21-5709. (a) It shall be unlawful for any person to possess
23 ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal,
24 iodine, anhydrous ammonia, pressurized ammonia or
25 phenylpropanolamine, or their salts, isomers or salts of isomers with an
26 intent to use the product to manufacture a controlled substance.

27 (b) It shall be unlawful for any person to use or possess with intent to
28 use any drug paraphernalia to:

29 (1) Manufacture, cultivate, plant, propagate, harvest, test, analyze or
30 distribute a controlled substance; or

31 (2) store, contain, conceal, inject, ingest, inhale or otherwise
32 introduce a controlled substance into the human body.

33 (c) It shall be unlawful for any person to use or possess with intent to
34 use anhydrous ammonia or pressurized ammonia in a container not
35 approved for that chemical by the Kansas department of agriculture.

36 (d) It shall be unlawful for any person to purchase, receive or
37 otherwise acquire at retail any compound, mixture or preparation
38 containing more than 3.6 grams of pseudoephedrine base or ephedrine
39 base in any single transaction or any compound, mixture or preparation
40 containing more than nine grams of pseudoephedrine base or ephedrine
41 base within any 30-day period.

42 (e) (1) Violation of subsection (a) is a drug severity level ~~2~~ 3 felony;

43 (2) violation of subsection (b)(1) is a :

- 1 (A) Drug severity level 4 5 felony, except that violation of subsection
2 ~~(b)(1)~~ is as provided in subsection (e)(2)(B); and
3 (B) class A nonperson misdemeanor if the drug paraphernalia was
4 used to cultivate fewer than five marijuana plants;
5 (3) violation of subsection (b)(2) is a class A nonperson
6 misdemeanor;
7 (4) violation of subsection (c) is a drug severity level 4 5 felony; and
8 (5) violation of subsection (d) is a class A nonperson misdemeanor.
9 (f) For persons arrested and charged under subsection (a) or (c), bail
10 shall be at least \$50,000 cash or surety, unless the court determines, on the
11 record, that the defendant is not likely to reoffend, the court imposes
12 pretrial supervision or the defendant agrees to participate in a licensed or
13 certified drug treatment program.

14 Sec. ~~7~~ **13**. K.S.A. 2011 Supp. 21-5710 is hereby amended to read
15 as follows: 21-5710. (a) It shall be unlawful for any person to advertise,
16 market, label, distribute or possess with the intent to distribute:

17 (1) Any product containing ephedrine, pseudoephedrine, red
18 phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia,
19 pressurized ammonia or phenylpropanolamine or their salts, isomers or
20 salts of isomers if the person knows or reasonably should know that the
21 purchaser will use the product to manufacture a controlled substance or
22 *controlled substance analog*; or

23 (2) any product containing ephedrine, pseudoephedrine or
24 phenylpropanolamine, or their salts, isomers or salts of isomers for
25 indication of stimulation, mental alertness, weight loss, appetite control,
26 energy or other indications not approved pursuant to the pertinent federal
27 over-the-counter drug final monograph or tentative final monograph or
28 approved new drug application.

29 (b) It shall be unlawful for any person to distribute, possess with the
30 intent to distribute or manufacture with intent to distribute any drug
31 paraphernalia, knowing or under circumstances where one reasonably
32 should know that it will be used to manufacture or distribute a controlled
33 substance or *controlled substance analog* in violation of K.S.A. 2011
34 Supp. 21-5701 through 21-5717, and amendments thereto.

35 (c) It shall be unlawful for any person to distribute, possess with
36 intent to distribute or manufacture with intent to distribute any drug
37 paraphernalia, knowing or under circumstances where one reasonably
38 should know, that it will be used as such in violation of K.S.A. 2011 Supp.
39 21-5701 through 21-5717, and amendments thereto, except subsection (b)
40 of K.S.A. 2011 Supp. 21-5706, and amendments thereto.

41 (d) It shall be unlawful for any person to distribute, possess with
42 intent to distribute or manufacture with intent to distribute any drug
43 paraphernalia, knowing, or under circumstances where one reasonably

1 should know, that it will be used as such in violation of subsection (b) of
2 K.S.A. 2011 Supp. 21-5706, and amendments thereto.

3 (e) (1) Violation of subsection (a) is a drug severity level 2 3 felony;

4 (2) violation of subsection (b) is a :

5 (A) Drug severity level 4 5 felony, except ~~that violation of subsection~~
6 ~~(b) is a~~ *as provided in subsection (e)(2)(B); and*

7 (B) drug severity level 3 4 felony if the trier of fact makes a finding
8 that ~~the offender is 18 or more years of age and~~ the offender distributed or
9 caused drug paraphernalia to be distributed to a minor or on or within
10 1,000 feet of any school property;

11 (3) violation of subsection (c) is a :

12 (A) *Nondrug* severity level 9, nonperson felony, except ~~that violation~~
13 ~~of subsection (c) is a~~ *as provided in subsection (e)(3)(B); and*

14 (B) drug severity level 4 5 felony if the trier of fact makes a finding
15 that ~~the offender is 18 or more years of age and~~ the offender distributed or
16 caused drug paraphernalia to be distributed to a minor or on or within
17 1,000 feet of any school property; *and*

18 (4) violation of subsection (d) is a :

19 (A) Class A nonperson misdemeanor, except ~~that violation of~~
20 ~~subsection (d) is a~~ *as provided in subsection (e)(4)(B); and*

21 (B) *nondrug* severity level 9, nonperson felony if the trier of fact
22 makes a finding that ~~the offender is 18 or more years of age and~~ the
23 offender distributed or caused drug paraphernalia to be distributed to a
24 minor or on or within 1,000 feet of any school property.

25 (f) For persons arrested and charged under subsection (a), bail shall
26 be at least \$50,000 cash or surety, unless the court determines, on the
27 record, that the defendant is not likely to re-offend, the court imposes
28 pretrial supervision or the defendant agrees to participate in a licensed or
29 certified drug treatment program.

30 (g) As used in this section, "or under circumstances where one
31 reasonably should know" that an item will be used in violation of this
32 section, shall include, but not be limited to, the following:

33 (1) Actual knowledge from prior experience or statements by
34 customers;

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

36 (3) receipt of packaging material, advertising information or other
37 manufacturer supplied information regarding the item's use as drug
38 paraphernalia; or

39 (4) receipt of a written warning from a law enforcement or
40 prosecutorial agency having jurisdiction that the item has been previously
41 determined to have been designed specifically for use as drug
42 paraphernalia.

43 Sec. ~~8.~~ {14.} K.S.A. 2011 Supp. 21-5713 is hereby amended to read

1 as follows: 21-5713. (a) It shall be unlawful for any person to distribute,
2 possess with the intent to distribute, or manufacture with the intent to
3 distribute any simulated controlled substance.

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

6 (c) (1) Violation of subsection (a) is a :

7 (A) Nondrug severity level 9, nonperson felony, except ~~that violation~~
8 ~~of subsection (a) is a~~ *as provided in subsection (c)(1)(B); and*

9 (B) nondrug severity level 7, nonperson felony if the trier of fact
10 makes a finding that the offender is 18 or more years of age and the
11 violation occurred on or within 1,000 feet of any school property; and

12 (2) violation of subsection (b) is a class A nonperson misdemeanor.

13 Sec. ~~9~~ *{15}* K.S.A. 2011 Supp. 21-5714 is hereby amended to read
14 as follows: 21-5714. (a) It shall be unlawful for any person to distribute or
15 possess with the intent to distribute any substance which is not a controlled
16 substance:

17 (1) Upon an express representation that the substance is a controlled
18 substance or that the substance is of such nature or appearance that the
19 recipient will be able to distribute the substance as a controlled substance;
20 or

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

23 (b) Violation of subsection (a) is a :

24 (1) Class A nonperson misdemeanor, except ~~that violation of~~
25 ~~subsection (a) is a~~ *as provided in subsection (b)(2); and*

26 (2) nondrug severity level 9, nonperson felony if the distributor is 18
27 or more years of age, distributing to a ~~person under 18 years of age~~ *minor*
28 and at least three years older than the ~~person under 18 years of age~~ *minor*
29 to whom the distribution is made.

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

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

36 (2) the distribution of the substance included an exchange of or
37 demand for money or other consideration for distribution of the substance
38 and the amount of the consideration was substantially in excess of the
39 reasonable value of the substance; or

40 (3) the physical appearance of the capsule or other material
41 containing the substance is substantially identical to a specific controlled
42 substance.

43 (d) *A person who commits a violation of subsection (a) also may be*

1 *prosecuted for, convicted of and punished for theft.*

2 Sec. ~~10~~ **{16.}** K.S.A. 2011 Supp. 21-5716 is hereby amended to read
3 as follows: 21-5716. (a) It shall be unlawful for any person to receive or
4 acquire proceeds or engage in transactions involving proceeds, known to
5 be derived from a violation of K.S.A. 2011 Supp. 21-5701 through 21-
6 5717, and amendments thereto, or any substantially similar offense from
7 another jurisdiction. The provisions of this subsection do not apply to any
8 transaction between an individual and that individual's counsel necessary
9 to preserve that individual's right to representation, as guaranteed by
10 section 10 of the bill of rights of the constitution of the state of Kansas and
11 by the sixth amendment to the United States constitution. This exception
12 does not create any presumption against or prohibition of the right of the
13 state to seek and obtain forfeiture of any proceeds derived from a violation
14 of K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto.

15 (b) It shall be unlawful for any person to distribute, invest, conceal,
16 transport or maintain an interest in or otherwise make available anything
17 of value which that person knows is intended to be used for the purpose of
18 committing or furthering the commission of any crime in K.S.A. 2011
19 Supp. 21-5701 through 21-5717, and amendments thereto, or any
20 substantially similar offense from another jurisdiction.

21 (c) It shall be unlawful for any person to direct, plan, organize,
22 initiate, finance, manage, supervise or facilitate the transportation or
23 transfer of proceeds known to be derived from commission of any crime in
24 K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto, or
25 any substantially similar offense from another jurisdiction.

26 (d) It shall be unlawful for any person to conduct a financial
27 transaction involving proceeds derived from commission of any crime in
28 K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto, or
29 any substantially similar offense from another jurisdiction, when the
30 transaction is designed in whole or in part to conceal or disguise the
31 nature, location, source, ownership or control of the proceeds known to be
32 derived from commission of any crime in K.S.A. 2011 Supp. 21-5701
33 through 21-5717, and amendments thereto, or any substantially similar
34 offense from another jurisdiction, or to avoid a transaction reporting
35 requirement under state or federal law.

36 (e) *Violation of this section is a:*

37 (1) ~~Violation of this section is a~~ Drug severity level 4 5 felony if the
38 value of the proceeds is less than \$5,000;

39 (2) ~~violation of this section is a~~ drug severity level 3 4 felony if the
40 value of the proceeds is at least \$5,000 but less than \$100,000;

41 (3) ~~violation of this section shall be a~~ drug severity level 2 3 felony if
42 the value of the proceeds is at least \$100,000 but less than ~~\$500,000-~~
43 ~~\$250,000~~;

1 (4) drug severity level 2 felony if the value of the proceeds is at least
2 \$250,000 but less than \$500,000; and

3 ~~(4)~~ (5) violation of this section shall be a drug severity level 1 felony
4 if the value of the proceeds is \$500,000 or more.

5 ***{Sec. 17. K.S.A. 2011 Supp. 21-5806 is hereby amended to read as***
6 ***follows: 21-5806. (a) Unlawful use of recordings is:***

7 ***(1) Knowingly, and without the consent of the owner, duplicating or***
8 ***causing to be duplicated any sounds recorded on a phonograph record,***
9 ***disc, wire, tape, film or other article on which sounds are recorded, or***
10 ***recording or causing to be recorded any live performance, with the***
11 ***intent to sell, rent or cause to be sold or rented, any such duplicated***
12 ***sounds or any such recorded performance, or to give away such***
13 ***duplicated sounds or recorded performance as part of a promotion for***
14 ***any product or service;***

15 ***(2) distributing or possessing with the intent to distribute, any***
16 ***article produced in violation of subsection (a)(1) knowing or having***
17 ***reasonable grounds to know that such article was produced in violation***
18 ***of law;***~~or~~

19 ***(3) possessing any article produced in violation of subsection (a)(1)***
20 ***knowing or having reasonable grounds to know that such article was***
21 ***produced in violation of law; or***

22 ~~(3)~~(4) ***knowingly selling, renting, offering for sale or rental, or***
23 ***possessing, transporting or manufacturing with intent to sell or rent, any***
24 ***phonograph record, audio or video disc, wire, audio or video tape, film***
25 ***or other article now known or later developed on which sounds, images,***
26 ***or both sounds and images are recorded or otherwise stored, unless the***
27 ***outside cover, box or jacket clearly and conspicuously discloses the***
28 ***name and address of the manufacturer of such recorded article.***

29 ***(b) Unlawful use of recordings:***

30 ***(1) Is a severity level 9, nonperson felony, except as provided in***
31 ***subsections (b)(2) and (b)(3);***~~and~~

32 ***(2) as defined in subsection (a)(2) or ~~(a)(3)~~ (a)(4), is a class A***
33 ***nonperson misdemeanor if the offense involves fewer than seven audio***
34 ***visual recordings, or fewer than 100 sound recordings during a 180-day***
35 ***period; and***

36 ***(3) as defined in subsection (a)(3), is a class B nonperson***
37 ***misdemeanor.***

38 ***(c) The provisions of subsection (a)(1) shall not apply to:***

39 ***(1) Any broadcaster who, in connection with or as part of a radio or***
40 ***television broadcast or cable transmission, or for the purpose of archival***
41 ***preservation, duplicates any such sounds recorded on a sound***
42 ***recording;***

43 ***(2) any person who duplicates such sounds or such performance***

1 *for personal use, and without compensation for such duplication; or*

2 *(3) any sounds initially fixed in a tangible medium of expression*
3 *after February 15, 1972.*

4 *(d) The provisions of subsections (a)(1) and (a)(3) shall not apply to*
5 *any computer program or any audio or visual recording that is part of*
6 *any computer program or to any article or device on which is exclusively*
7 *recorded any such computer program.*

8 *(e) As used in this section:*

9 *(1) "Owner" means the person who owns the original fixation of*
10 *sounds embodied in the master phonograph record, master disc, master*
11 *wire, master tape, master film or other device used for reproducing*
12 *sounds on phonograph records, discs, wires, tapes, films or other articles*
13 *now known or later developed upon which sound is recorded or*
14 *otherwise stored, and from which the duplicated recorded sounds are*
15 *directly or indirectly derived, or the person who owns the right to record*
16 *such live performance; and*

17 *(2) "computer program" means a set of statements or instructions*
18 *to be used directly or indirectly in a computer in order to bring about a*
19 *certain result.*

20 *(f) It shall be the duty of all law enforcement officers, upon*
21 *discovery, to confiscate all recorded devices that do not conform to the*
22 *provisions of this section and that are possessed for the purpose of*
23 *selling or renting such recorded devices, and all equipment and*
24 *components used or intended to be used to knowingly manufacture*
25 *recorded devices that do not conform to the provisions of such section*
26 *for the purpose of selling or renting such recorded devices. The*
27 *nonconforming recorded devices that are possessed for the purpose of*
28 *selling or renting such recorded devices are contraband and shall be*
29 *delivered to the district attorney for the county in which the confiscation*
30 *was made, by court order, and shall be destroyed or otherwise disposed*
31 *of, if the court finds that the person claiming title to such recorded*
32 *devices possessed such recorded devices for the purpose of selling or*
33 *renting such recorded devices. The equipment and components*
34 *confiscated shall be delivered to the district attorney for the county in*
35 *which the confiscation was made, by court order upon conviction, and*
36 *may be given to a charitable or educational organization.*

37 *Sec. 18. K.S.A. 2011 Supp. 21-5807 is hereby amended to read as*
38 *follows: 21-5807. (a) Burglary is, without authority, entering into or*
39 *remaining within any:*

40 *(1) Dwelling, with intent to commit a felony, theft or ~~sexual battery~~*
41 *sexually motivated crime therein;*

42 *(2) building, manufactured home, mobile home, tent or other*
43 *structure which is not a dwelling, with intent to commit a felony, theft or*

1 ~~sexual battery~~ *sexually motivated crime therein; or*

2 (3) *vehicle, aircraft, watercraft, railroad car or other means of*
3 *conveyance of persons or property, with intent to commit a felony, theft*
4 *or ~~sexual battery~~ sexually motivated crime therein.*

5 (b) *Aggravated burglary is, without authority, entering into or*
6 *remaining within any building, manufactured home, mobile home, tent*
7 *or other structure, or any vehicle, aircraft, watercraft, railroad car or*
8 *other means of conveyance of persons or property in which there is a*
9 *human being with intent to commit a felony, theft or ~~sexual battery~~*
10 *sexually motivated crime therein.*

11 (c) (1) *Burglary as defined in:*

12 (A) *Subsection (a)(1) is a severity level 7, person felony;*

13 (B) *subsection (a)(2) is a severity level 7, nonperson felony; and*

14 (C) *subsection (a)(3) is a severity level 9, nonperson felony.*

15 (2) *Aggravated burglary is a severity level 5, person felony.*

16 (d) *As used in this section, "sexually motivated" means that one of the*
17 *purposes for which the defendant committed the crime was for the purpose*
18 *of the defendant's sexual gratification.*

19 *Sec. 19. K.S.A. 2011 Supp. 21-5904 is hereby amended to read as*
20 *follows: 21-5904. (a) Interference with law enforcement is:*

21 (1) *Falsely reporting to a law enforcement officer or state*
22 *investigative agency ~~that a crime has been committed, knowing that such~~*
23 *information is false and intending that the officer or agency shall act in*
24 *reliance upon such information; or:*

25 (A) *That a particular person has committed a crime, knowing that*
26 *such information is false and intending that the officer or agency shall act*
27 *in reliance upon such information; or*

28 (B) *any information, knowing that such information is false and*
29 *intending to influence, impede or obstruct such officer's or agency's duty;*

30 (2) *concealing, destroying or materially altering evidence with the*
31 *intent to prevent or hinder the apprehension or prosecution of any person;*
32 *or*

33 ~~(2)~~(3) *knowingly obstructing, resisting or opposing any person*
34 *authorized by law to serve process in the service or execution or in the*
35 *attempt to serve or execute any writ, warrant, process or order of a court,*
36 *or in the discharge of any official duty.*

37 (b) (1) *Interference with law enforcement as defined in subsection*
38 *(a)(1) or (a)(2) is a class A nonperson misdemeanor, except as provided*
39 *in subsection (b)(2).*

40 (2) *Interference with law enforcement as defined in:*

41 (A) *Subsection (a)(1)(A) or (a)(2) is a severity level 8, nonperson*
42 *felony in the case of a felony; and*

43 (B) *subsection (a)(1)(B) is a severity level 9, nonperson felony in the*

1 *case of a felony.*

2 ~~(2)~~(3) *Interference with law enforcement as defined in subsection*
 3 ~~(a)(2)~~ (a)(3) *is a:*

4 (A) *Severity level 9, nonperson felony in the case of a felony, or*
 5 *resulting from parole or any authorized disposition for a felony; and*

6 (B) *class A nonperson misdemeanor in the case of a misdemeanor,*
 7 *or resulting from any authorized disposition for a misdemeanor, or a*
 8 *civil case.*

9 *Sec. 20. K.S.A. 2011 Supp. 21-5905 is hereby amended to read as*
 10 *follows: 21-5905. (a) Interference with the judicial process is:*

11 (1) *Communicating with any judicial officer in relation to any*
 12 *matter which is or may be brought before such judge, magistrate, master*
 13 *or juror with intent improperly to influence such officer;*

14 (2) *committing any of the following acts, with intent to influence,*
 15 *impede or obstruct the finding, decision, ruling, order, judgment or*
 16 *decree of such judicial officer or prosecutor on any matter then pending*
 17 *before the officer or prosecutor:*

18 (A) *Communicating in any manner a threat of violence to any*
 19 *judicial officer or any prosecutor;*

20 (B) *harassing a judicial officer or a prosecutor by repeated*
 21 *vituperative communication; or*

22 (C) *picketing, parading or demonstrating near such officer's or*
 23 *prosecutor's residence or place of abode;*

24 (3) *picketing, parading or demonstrating in or near a building*
 25 *housing a judicial officer or a prosecutor with intent to impede or*
 26 *obstruct the finding, decision, ruling, order, judgment or decree of such*
 27 *judicial officer or prosecutor on any matter then pending before the*
 28 *officer or prosecutor;*

29 (4) *knowingly accepting or agreeing to accept anything of value as*
 30 *consideration for a promise:*

31 (A) *Not to initiate or aid in the prosecution of a person who has*
 32 *committed a crime; or*

33 (B) *to conceal ~~or~~ destroy or materially alter evidence of a crime; ~~or~~*

34 (5) *concealing, destroying or materially altering evidence with the*
 35 *intent to influence, impede or obstruct any proceeding, civil or criminal;*
 36 *or*

37 ~~(5)~~(6) *when performed by a person summoned or sworn as a juror*
 38 *in any case:*

39 (A) *Intentionally soliciting, accepting or agreeing to accept from*
 40 *another any benefit as consideration to wrongfully give a verdict for or*
 41 *against any party in any proceeding, civil or criminal;*

42 (B) *intentionally promising or agreeing to wrongfully give a verdict*
 43 *for or against any party in any proceeding, civil or criminal; or*

1 ***(C) knowingly receiving any evidence or information from anyone***
 2 ***in relation to any matter or cause for the trial of which such juror has***
 3 ***been or will be sworn, without the authority of the court or officer before***
 4 ***whom such juror has been summoned, and without immediately***
 5 ***disclosing the same to such court or officer.***

6 ***(b) Interference with the judicial process as defined in:***

7 ***(1) Subsection (a)(1) is a severity level 9, nonperson felony;***

8 ***(2) subsection (a)(2) and (a)(3) is a class A nonperson***
 9 ***misdemeanor;***

10 ***(3) subsection (a)(4) is a:***

11 ***(A) Severity level 8, nonperson felony if the crime is a felony; ~~or~~***
 12 ***and***

13 ***(B) class A nonperson misdemeanor if the crime is a misdemeanor;***

14 ***(4) subsection (a)(5) is a:***

15 ***(A) Severity level 8, nonperson felony if the proceeding is a felony***
 16 ***prosecution; and***

17 ***(B) class A nonperson misdemeanor if the proceeding is any***
 18 ***proceeding other than a felony prosecution;***

19 ***~~(4)(5) subsection ~~(a)(5)(A)~~(a)(6)(A) is a severity level 7, nonperson~~***
 20 ***felony; and***

21 ***~~(5)(6) subsection ~~(a)(5)(B)~~ or ~~(a)(5)(C)~~(a)(6)(B) or (a)(6)(C) is a~~***
 22 ***severity level 9, nonperson felony.***

23 ***(c) Nothing in this section shall limit or prevent the exercise by any***
 24 ***court of this state of its power to punish for contempt.***

25 ***Sec. 21. K.S.A. 2011 Supp. 21-5907 is hereby amended to read as***
 26 ***follows: 21-5907. (a) Simulating legal process is:***

27 ***(1) Distributing to another any document which simulates or***
 28 ***purports to be, or is designed to cause others to believe it to be, a***
 29 ***summons, petition, complaint or other ~~judicial process, with intent~~***
 30 ***~~thereby to induce payment of a claim~~legal process, with the intent to***
 31 ***mislead the recipient and cause the recipient to take action in reliance***
 32 ***thereon; or***

33 ***(2) printing or distributing any such document, knowing that it***
 34 ***shall be so used.***

35 ***(b) Simulating legal process is a class A nonperson misdemeanor.***

36 ***(c) This section shall not apply to the printing or distribution of***
 37 ***blank forms of legal documents intended for actual use in judicial***
 38 ***proceedings.***

39 ***Sec. 22. K.S.A. 2011 Supp. 21-5911 is hereby amended to read as***
 40 ***follows: 21-5911. (a) Escape from custody is escaping while held in***
 41 ***custody on a: (1) Charge~~or~~ conviction of or arrest for a misdemeanor;***

42 ***(2) charge~~or~~ adjudication or arrest as a juvenile offender where***
 43 ***the act, if committed by an adult, would constitute a misdemeanor; or***

1 (3) *commitment to the state security hospital as provided in K.S.A.*
2 *22-3428, and amendments thereto, based on a finding that the person*
3 *committed an act constituting a misdemeanor or by a person 18 years of*
4 *age or over who is being held in custody on a adjudication of a*
5 *misdemeanor.*

6 (b) *Aggravated escape from custody is:*

7 (1) *Escaping while held in custody:*

8 (A) *Upon a charge~~or~~ conviction of or arrest for a felony;*

9 (B) *upon a charge~~or~~ adjudication or arrest as a juvenile offender*
10 *where the act, if committed by an adult, would constitute a felony;*

11 (C) *prior to or upon a finding of probable cause for evaluation as a*
12 *sexually violent predator as provided in K.S.A. 59-29a05, and*
13 *amendments thereto;*

14 (D) *upon commitment to a treatment facility as a sexually violent*
15 *predator as provided in K.S.A. 59-29a01 et seq., and amendments*
16 *thereto;*

17 (E) *upon a commitment to the state security hospital as provided in*
18 *K.S.A. 22-3428, and amendments thereto, based on a finding that the*
19 *person committed an act constituting a felony;*

20 (F) *by a person 18 years of age or over who is being held on an*
21 *adjudication of a felony; or*

22 (G) *upon incarceration at a state correctional institution while in*
23 *the custody of the secretary of corrections.*

24 (2) *Escaping effected or facilitated by the use of violence or the*
25 *threat of violence against any person while held in custody:*

26 (A) *On a charge or conviction of any crime;*

27 (B) *on a charge or adjudication as a juvenile offender where the*
28 *act, if committed by an adult, would constitute a felony;*

29 (C) *prior to or upon a finding of probable cause for evaluation as a*
30 *sexually violent predator as provided in K.S.A. 59-29a05, and*
31 *amendments thereto;*

32 (D) *upon commitment to a treatment facility as a sexually violent*
33 *predator as provided in K.S.A. 59-29a01 et seq., and amendments*
34 *thereto;*

35 (E) *upon a commitment to the state security hospital as provided in*
36 *K.S.A. 22-3428, and amendments thereto, based on a finding that the*
37 *person committed an act constituting any crime;*

38 (F) *by a person 18 years of age or over who is being held on a*
39 *charge or adjudication of a misdemeanor or felony; or*

40 (G) *upon incarceration at a state correctional institution while in*
41 *the custody of the secretary of corrections.*

42 (c) (1) *Escape from custody is a class A nonperson misdemeanor.*

43 (2) *Aggravated escape from custody as defined in:*

1 (A) *Subsection (b)(1)(A), (b)(1)(C), (b)(1)(D), (b)(1)(E) or (b)(1)(F)*
2 *is a severity level 8, nonperson felony;*

3 (B) *subsection (b)(1)(B) or (b)(1)(G) is a severity level 5, nonperson*
4 *felony;*

5 (C) *subsection (b)(2)(A), (b)(2)(C), (b)(2)(D), (b)(2)(E) or (b)(2)(F)*
6 *is a severity level 6, person felony; and*

7 (D) *subsection (b)(2)(B) or (b)(2)(G) is a severity level 5, person*
8 *felony.*

9 (d) *As used in this section and K.S.A. 2011 Supp. 21-5912, and*
10 *amendments thereto:*

11 (1) *"Custody" means arrest; detention in a facility for holding*
12 *persons charged with or convicted of crimes or charged or adjudicated*
13 *as a juvenile offender; detention for extradition or deportation;*
14 *detention in a hospital or other facility pursuant to court order, imposed*
15 *as a specific condition of probation or parole or imposed as a specific*
16 *condition of assignment to a community correctional services program;*
17 *commitment to the state security hospital as provided in K.S.A. 22-3428,*
18 *and amendments thereto; or any other detention for law enforcement*
19 *purposes. "Custody" does not include general supervision of a person*
20 *on probation or parole or constraint incidental to release on bail;*

21 (2) *"escape" means departure from custody without lawful*
22 *authority or failure to return to custody following temporary leave*
23 *lawfully granted pursuant to express authorization of law or order of a*
24 *court;*

25 (3) *"juvenile offender" means the same as in K.S.A. 2011 Supp. 38-*
26 *2302, and amendments thereto; and*

27 (4) *"state correctional institution" means the same as in K.S.A. 75-*
28 *5202, and amendments thereto.*

29 (e) *As used in this section, the term "charge" shall not require that*
30 *the offender was held on a written charge contained in a complaint,*
31 *information or indictment, if such offender was arrested prior to such*
32 *offender's escape from custody.*

33 **Sec. 23. K.S.A. 2011 Supp. 21-6001 is hereby amended to read as**
34 **follows: 21-6001. (a) Bribery is:**

35 ~~(1) Offering, giving or promising to give, directly or indirectly, to any~~
36 ~~person who is a public officer, candidate for public office or public~~
37 ~~employee any benefit, reward or consideration to which the person is not~~
38 ~~legally entitled with intent thereby to influence the person with respect to~~
39 ~~the performance of the person's powers or duties as a public officer or~~
40 ~~employee; or~~

41 ~~(2) the act of a person who is a public officer, candidate for public~~
42 ~~office or public employee, in requesting, receiving or agreeing to receive,~~
43 ~~directly or indirectly, any benefit, reward or consideration given with~~

1 ~~intent that the person will be so influenced.~~

2 (1) *With the intent to improperly influence a public official, offering,*
3 *giving or promising to give, directly or indirectly, to any public official any*
4 *benefit, reward or consideration which the public official is not permitted*
5 *by law to accept, in exchange for the performance or omission of*
6 *performance of the public official's powers or duties or a promise to*
7 *perform or omit performance of such powers or duties; or*

8 (2) *the act of a public official intentionally requesting, receiving or*
9 *agreeing to receive, directly or indirectly, any benefit, reward or*
10 *consideration, which the public official is not permitted by law to accept,*
11 *with the intent to improperly influence such public official and in*
12 *exchange for the performance or omission of performance of the public*
13 *official's powers or duties or a promise to perform or omit performance of*
14 *such powers or duties.*

15 (b) ***Bribery is a severity level 7, nonperson felony. Upon conviction***
16 ***of bribery, a public officer or public employee a public official shall***
17 ***forfeit the person's office or employment. Notwithstanding an***
18 ***expungement of the conviction pursuant to K.S.A. 2011 Supp. 21-6614,***
19 ***and amendments thereto, any person convicted of bribery under the***
20 ***provisions of this section shall be forever disqualified from holding***
21 ***public office or public employment in this state.***

22 (c) *As used in this section, "public official" means any person who is*
23 *a public officer, candidate for public office or public employee.*

24 ***Sec. 24. K.S.A. 2011 Supp. 21-6110 is hereby amended to read as***
25 ***follows: 21-6110. (a) ~~No person shall~~It shall be unlawful, with no***
26 ***requirement of a culpable mental state, to smoke in an enclosed area or at***
27 ***a public meeting including, but not limited to:***

28 (1) ***Public places;***

29 (2) ***taxicabs and limousines;***

30 (3) ***restrooms, lobbies, hallways and other common areas in public***
31 ***and private buildings, condominiums and other multiple-residential***
32 ***facilities;***

33 (4) ***restrooms, lobbies and other common areas in hotels and motels***
34 ***and in at least 80% of the sleeping quarters within a hotel or motel that***
35 ***may be rented to guests;***

36 (5) ***access points of all buildings and facilities not exempted***
37 ***pursuant to subsection (d); and***

38 (6) ***any place of employment.***

39 (b) ***Each employer having a place of employment that is an***
40 ***enclosed area shall provide a smoke-free workplace for all employees.***
41 ***Such employer shall also adopt and maintain a written smoking policy***
42 ***which shall prohibit smoking without exception in all areas of the place***
43 ***of employment. Such policy shall be communicated to all current***

1 *employees within one week of its adoption and shall be communicated to*
2 *all new employees upon hiring. Each employer shall provide a written*
3 *copy of the smoking policy upon request to any current or prospective*
4 *employee.*

5 *(c) Notwithstanding any other provision of this section, K.S.A. 2011*
6 *Supp. 21-6111 or 21-6112, and amendments thereto, the proprietor or*
7 *other person in charge of an adult care home, as defined in K.S.A. 39-*
8 *923, and amendments thereto, or a medical care facility, may designate a*
9 *portion of such adult care home, or the licensed long-term care unit of*
10 *such medical care facility, as a smoking area, and smoking may be*
11 *permitted within such designated smoking area.*

12 *(d) The provisions of this section shall not apply to:*

13 *(1) The outdoor areas of any building or facility beyond the access*
14 *points of such building or facility;*

15 *(2) private homes or residences, except when such home or*
16 *residence is used as a day care home, as defined in K.S.A. 65-530, and*
17 *amendments thereto;*

18 *(3) a hotel or motel room rented to one or more guests if the total*
19 *percentage of such hotel or motel rooms in such hotel or motel does not*
20 *exceed 20%;*

21 *(4) the gaming floor of a lottery gaming facility or racetrack*
22 *gaming facility, as those terms are defined in K.S.A. 74-8702, and*
23 *amendments thereto;*

24 *(5) that portion of an adult care home, as defined in K.S.A. 39-923,*
25 *and amendments thereto, that is expressly designated as a smoking area*
26 *by the proprietor or other person in charge of such adult care home*
27 *pursuant to subsection (c) and that is fully enclosed and ventilated;*

28 *(6) that portion of a licensed long-term care unit of a medical care*
29 *facility that is expressly designated as a smoking area by the proprietor*
30 *or other person in charge of such medical care facility pursuant to*
31 *subsection (c) and that is fully enclosed and ventilated and to which*
32 *access is restricted to the residents and their guests;*

33 *(7) tobacco shops;*

34 *(8) a class A or class B club defined in K.S.A. 41-2601, and*
35 *amendments thereto, which (A) held a license pursuant to K.S.A. 41-*
36 *2606 et seq., and amendments thereto, as of January 1, 2009; and (B)*
37 *notifies the secretary of health and environment in writing, not later*
38 *than 90 days after the effective date of this act, that it wishes to continue*
39 *to allow smoking on its premises;*

40 *(9) a private club in designated areas where minors are prohibited;*
41 *and*

42 *(10) any benefit cigar dinner or other cigar dinner of a*
43 *substantially similar nature that:*

1 (A) *Is conducted specifically and exclusively for charitable*
2 *purposes by a nonprofit organization which is exempt from federal*
3 *income taxation pursuant to section 501(c)(3) of the federal internal*
4 *revenue code of 1986;*

5 (B) *is conducted no more than once per calendar year by such*
6 *organization; and*

7 (C) *has been held during each of the previous three years prior to*
8 *January 1, 2011.*

9 Sec. 25. *K.S.A. 2011 Supp. 21-6112 is hereby amended to read as*
10 *follows: 21-6112. (a) It shall be unlawful for any person who owns,*
11 *manages, operates or otherwise controls the use of any public place, or*
12 *other area where smoking is prohibited, to fail to comply with all or any*
13 *of the provisions of K.S.A. 2011 Supp. 21-6109 through 21-6116, and*
14 *amendments thereto.*

15 (b) *It shall be unlawful for any person who owns, manages,*
16 *operates or otherwise controls the use of any public place, or other area*
17 *where smoking is prohibited, to allow smoking to occur where prohibited*
18 *by law. Any such person shall be deemed to allow smoking to occur*
19 *under this subsection if such person: (1) Has knowledge that smoking is*
20 *occurring; and (2) ~~acquiesces to the~~recklessly permits smoking under the*
21 *totality of the circumstances.*

22 (c) *It shall be unlawful for any person, with no requirement of a*
23 *culpable mental state, to smoke in any area where smoking is prohibited*
24 *by the provisions of K.S.A. 2011 Supp. 21-6110, and amendments*
25 *thereto.*

26 (d) *Any person who violates any provision of K.S.A. 2011 Supp. 21-*
27 *6109 through 21-6116, and amendments thereto, shall be guilty of a*
28 *cigarette or tobacco infraction punishable by a fine:*

29 (1) *Not exceeding \$100 for the first violation;*

30 (2) *not exceeding \$200 for a second violation within a one year*
31 *period after the first violation; or*

32 (3) *not exceeding \$500 for a third or subsequent violation within a*
33 *one year period after the first violation.*

34 For purposes of this subsection, the number of violations within a
35 year shall be measured by the date the smoking violations occur.

36 (e) *Each individual allowed to smoke by a person who owns,*
37 *manages, operates or otherwise controls the use of any public place, or*
38 *other area where smoking is prohibited, in violation of subsection (b)*
39 *shall be considered a separate violation for purposes of determining the*
40 *number of violations under subsection (d).*

41 (f) *No employer shall discharge, refuse to hire or ~~in any manner~~*
42 *retaliate take any other adverse action against an employee, applicant for*
43 *employment or customer ~~because~~ with the intent to retaliate against that*

1 employee, applicant or customer ~~reports or attempts~~ for reporting or
2 attempting to prosecute a violation of any of the provisions of K.S.A. 2011
3 Supp. 21-6109 through 21-6116, and amendments thereto.

4 **Sec. 26. K.S.A. 2011 Supp. 21-6312 is hereby amended to read as**
5 **follows: 21-6312. (a) Criminal possession of explosives is the possession**
6 **of any explosive or detonating substance by a person who, within five**
7 **years preceding such possession, has been convicted of a felony under**
8 **the laws of this or any other jurisdiction or has been released from**
9 **imprisonment for a felony.**

10 **(b) Criminal disposal of explosives is knowingly and without lawful**
11 **authority distributing any explosive or detonating substance to a person:**

12 **(1) Under 21 years of age, regardless of whether the seller, donor or**
13 **transferor knows the age of such person;**

14 **(2) who is both addicted to and an unlawful user of a controlled**
15 **substance; or**

16 **(3) who, within the preceding five years, has been convicted of a**
17 **felony under the laws of this or any other jurisdiction or has been**
18 **released from imprisonment for a felony.**

19 **(c) Carrying concealed explosives is carrying any explosive or**
20 **detonating substance on the person in a wholly or partly concealed**
21 **manner.**

22 **(d) (1) Criminal possession of explosives is a severity level 7, person**
23 **felony.**

24 **(2) Criminal disposal of explosives is a severity level 10, person**
25 **felony.**

26 **(3) Carrying concealed explosives is a class \subseteq A person**
27 **misdemeanor.**

28 **(e) As used in subsections (a) and (b), "explosives" means any**
29 **chemical compound, mixture or device, of which the primary purpose is**
30 **to function by explosion, and includes, but is not limited to, dynamite**
31 **and other high explosives, black powder, pellet powder, initiating**
32 **explosives, detonators, safety fuses, squibs, detonating cord, igniter cord**
33 **and igniters.**

34 **Sec. 27. K.S.A. 2011 Supp. 21-6412 is hereby amended to read as**
35 **follows: 21-6412. (a) Cruelty to animals is:**

36 **(1) Knowingly and maliciously killing, injuring, maiming,**
37 **torturing, burning or mutilating any animal;**

38 **(2) knowingly abandoning any animal in any place without making**
39 **provisions for its proper care;**

40 **(3) having physical custody of any animal and knowingly failing to**
41 **provide such food, potable water, protection from the elements,**
42 **opportunity for exercise and other care as is needed for the health or**
43 **well-being of such kind of animal;**

1 (4) *intentionally using a wire, pole, stick, rope or any other object to*
2 *cause an equine to lose its balance or fall, for the purpose of sport or*
3 *entertainment;*

4 (5) *knowingly but not maliciously killing or injuring any animal; or*

5 (6) *knowingly and maliciously administering any poison to any*
6 *domestic animal.*

7 (b) *Cruelty to animals as defined in:*

8 (1) *Subsection (a)(1) or (a)(6) is a nonperson felony. Upon*
9 *conviction of subsection (a)(1) or (a)(6), a person shall be sentenced to*
10 *not less than 30 days or more than one year's imprisonment and be fined*
11 *not less than \$500 nor more than \$5,000. The person convicted shall not*
12 *be eligible for release on probation, suspension or reduction of sentence*
13 *or parole until the person has served the minimum mandatory sentence*
14 *as provided herein. During the mandatory 30 days imprisonment, such*
15 *offender shall have a psychological evaluation prepared for the court to*
16 *assist the court in determining conditions of probation. Such conditions*
17 *shall include, but not be limited to, the completion of an anger*
18 *management program; and*

19 (2) *subsection (a)(2), (a)(3), (a)(4) or (a)(5) is a:*

20 (A) *Class A nonperson misdemeanor, except as provided in*
21 *subsection (b)(2)(B); and*

22 (B) *nonperson felony upon the second or subsequent conviction of*
23 *cruelty to animals as defined in subsection (a)(2), (a)(3), (a)(4) or (a)(5).*
24 *Upon such conviction, a person shall be sentenced to not less than five*
25 *days or more than one year's imprisonment and be fined not less than*
26 *\$500 nor more than \$2,500. The person convicted shall not be eligible*
27 *for release on probation, suspension or reduction of sentence or parole*
28 *until the person has served the minimum mandatory sentence as*
29 *provided herein.*

30 (c) *The provisions of this section shall not apply to:*

31 (1) *Normal or accepted veterinary practices;*

32 (2) *bona fide experiments carried on by commonly recognized*
33 *research facilities;*

34 (3) *killing, attempting to kill, trapping, catching or taking of any*
35 *animal in accordance with the provisions of chapter 32 or chapter 47 of*
36 *the Kansas Statutes Annotated, and amendments thereto;*

37 (4) *rodeo practices accepted by the rodeo cowboys' association;*

38 (5) *the humane killing of an animal which is diseased or disabled*
39 *beyond recovery for any useful purpose, or the humane killing of*
40 *animals for population control, by the owner thereof or the agent of*
41 *such owner residing outside of a city or the owner thereof within a city if*
42 *no animal shelter, pound or licensed veterinarian is within the city, or by*
43 *a licensed veterinarian at the request of the owner thereof, or by any*

1 *officer or agent of an incorporated humane society, the operator of an*
2 *animal shelter or pound, a local or state health officer or a licensed*
3 *veterinarian three business days following the receipt of any such*
4 *animal at such society, shelter or pound;*

5 *(6) with respect to farm animals, normal or accepted practices of*
6 *animal husbandry, including the normal and accepted practices for the*
7 *slaughter of such animals for food or by-products and the careful or*
8 *thrifty management of one's herd or animals, including animal care*
9 *practices common in the industry or region;*

10 *(7) the killing of any animal by any person at any time which may*
11 *be found outside of the owned or rented property of the owner or*
12 *custodian of such animal and which is found injuring or posing a threat*
13 *to any person, farm animal or property;*

14 *(8) an animal control officer trained by a licensed veterinarian in*
15 *the use of a tranquilizer gun, using such gun with the appropriate*
16 *dosage for the size of the animal, when such animal is vicious or could*
17 *not be captured after reasonable attempts using other methods;*

18 *(9) laying an equine down for medical or identification purposes;*

19 *(10) normal or accepted practices of pest control, as defined in*
20 *subsection (x) of K.S.A. 2-2438a, and amendments thereto; or*

21 *(11) accepted practices of animal husbandry pursuant to*
22 *regulations promulgated by the United States department of agriculture*
23 *for domestic pet animals under the animal welfare act, public law 89-*
24 *544, as amended and in effect on July 1, 2006.*

25 *(d) The provisions of subsection (a)(6) shall not apply to any person*
26 *exposing poison upon their premises for the purpose of destroying*
27 *wolves, coyotes or other predatory animals.*

28 *(e) Any public health officer, law enforcement officer, licensed*
29 *veterinarian or officer or agent of any incorporated humane society,*
30 *animal shelter or other appropriate facility may take into custody any*
31 *animal, upon either private or public property, which clearly shows*
32 *evidence of cruelty to animals. Such officer, agent or veterinarian may*
33 *inspect, care for or treat such animal or place such animal in the care of*
34 *a duly incorporated humane society or licensed veterinarian for*
35 *treatment, boarding or other care or, if an officer of such humane*
36 *society or such veterinarian determines that the animal appears to be*
37 *diseased or disabled beyond recovery for any useful purpose, for*
38 *humane killing. If the animal is placed in the care of an animal shelter,*
39 *the animal shelter shall notify the owner or custodian, if known or*
40 *reasonably ascertainable. If the owner or custodian is charged with a*
41 *violation of this section, the board of county commissioners in the*
42 *county where the animal was taken into custody shall establish and*
43 *approve procedures whereby the animal shelter may petition the district*

1 *court to be allowed to place the animal for adoption or euthanize the*
 2 *animal at any time after 21 days after the owner or custodian is notified*
 3 *or, if the owner or custodian is not known or reasonably ascertainable*
 4 *after 21 days after the animal is taken into custody, unless the owner or*
 5 *custodian of the animal files a renewable cash or performance bond*
 6 *with the county clerk of the county where the animal is being held, in an*
 7 *amount equal to not less than the cost of care and treatment of the*
 8 *animal for 30 days. Upon receiving such petition, the court shall*
 9 *determine whether the animal may be placed for adoption or euthanized.*
 10 *The board of county commissioners in the county where the animal was*
 11 *taken into custody shall review the cost of care and treatment being*
 12 *charged by the animal shelter maintaining the animal.*

13 *(f) The owner or custodian of an animal placed for adoption or*
 14 *killed pursuant to subsection (e) shall not be entitled to recover damages*
 15 *for the placement or killing of such animal unless the owner proves that*
 16 *such placement or killing was unwarranted.*

17 *(g) Expenses incurred for the care, treatment or boarding of any*
 18 *animal, taken into custody pursuant to subsection (e), pending*
 19 *prosecution of the owner or custodian of such animal for the crime of*
 20 *cruelty to animals, shall be assessed to the owner or custodian as a cost*
 21 *of the case if the owner or custodian is adjudicated guilty of such crime.*

22 ~~*(h) Upon the filing of a sworn complaint by any public health officer,*~~
 23 ~~*law enforcement officer, licensed veterinarian or officer or agent of any*~~
 24 ~~*incorporated humane society, animal shelter or other appropriate facility*~~
 25 ~~*alleging the commission of cruelty to animals, the county or district*~~
 26 ~~*attorney shall determine the validity of the complaint and shall forthwith*~~
 27 ~~*file charges for the crime if the complaint appears to be valid.*~~

28 ~~*(i) (h) If a person is adjudicated guilty of the crime of cruelty to*~~
 29 ~~*animals, and the court having jurisdiction is satisfied that an animal*~~
 30 ~~*owned or possessed by such person would be in the future subjected to*~~
 31 ~~*such crime, such animal shall not be returned to or remain with such*~~
 32 ~~*person. Such animal may be turned over to a duly incorporated humane*~~
 33 ~~*society or licensed veterinarian for sale or other disposition.*~~

34 ~~*(i) (i) As used in this section:*~~

35 ~~*(1) "Equine" means a horse, pony, mule, jenny, donkey or hinny;*~~
 36 ~~*and*~~

37 ~~*(2) "maliciously" means a state of mind characterized by actual*~~
 38 ~~*evil-mindedness or specific intent to do a harmful act without a*~~
 39 ~~*reasonable justification or excuse.*~~

40 *Sec. 28. K.S.A. 2011 Supp. 21-6413 is hereby amended to read as*
 41 *follows: 21-6413 (a) Unlawful disposition of animals is knowingly*
 42 *raffling, or giving as a prize or premium ~~or using as an advertising device~~*
 43 *~~or promotional display~~ living rabbits or chickens, ducklings or goslings.*

1 ***(b) Unlawful disposition of animals is a class C misdemeanor.***

2 ***(c) The provisions of this section shall not apply to a person giving***
3 ***such animals to minors for use in agricultural projects under the***
4 ***supervision of commonly recognized youth farm organizations.}***

5 Sec. ~~11~~ {29.} K.S.A. 2011 Supp. 21-6604 is hereby amended to read
6 as follows: 21-6604. (a) Whenever any person has been found guilty of a
7 crime, the court may adjudge any of the following:

8 (1) Commit the defendant to the custody of the secretary of
9 corrections if the current crime of conviction is a felony and the sentence
10 presumes imprisonment, or the sentence imposed is a dispositional
11 departure to imprisonment; or, if confinement is for a misdemeanor, to jail
12 for the term provided by law;

13 (2) impose the fine applicable to the offense and may impose the
14 provisions of subsection (q);

15 (3) release the defendant on probation if the current crime of
16 conviction and criminal history fall within a presumptive nonprison
17 category or through a departure for substantial and compelling reasons
18 subject to such conditions as the court may deem appropriate. In felony
19 cases except for violations of K.S.A. 8-1567, and amendments thereto, the
20 court may include confinement in a county jail not to exceed 60 days,
21 which need not be served consecutively, as a condition of an original
22 probation sentence and up to 60 days in a county jail upon each revocation
23 of the probation sentence, or community corrections placement;

24 (4) assign the defendant to a community correctional services
25 program as provided in K.S.A. 75-5291, and amendments thereto, or
26 through a departure for substantial and compelling reasons subject to such
27 conditions as the court may deem appropriate, including orders requiring
28 full or partial restitution;

29 (5) assign the defendant to a conservation camp for a period not to
30 exceed six months as a condition of probation followed by a six-month
31 period of follow-up through adult intensive supervision by a community
32 correctional services program, if the offender successfully completes the
33 conservation camp program;

34 (6) assign the defendant to a house arrest program pursuant to K.S.A.
35 2011 Supp. 21-6609, and amendments thereto;

36 (7) order the defendant to attend and satisfactorily complete an
37 alcohol or drug education or training program as provided by subsection
38 (c) of K.S.A. 2011 Supp. 21-6602, and amendments thereto;

39 (8) order the defendant to repay the amount of any reward paid by
40 any crime stoppers chapter, individual, corporation or public entity which
41 materially aided in the apprehension or conviction of the defendant; repay
42 the amount of any costs and expenses incurred by any law enforcement
43 agency in the apprehension of the defendant, if one of the current crimes

1 of conviction of the defendant includes escape from custody or aggravated
2 escape from custody, as defined in K.S.A. 2011 Supp. 21-5911, and
3 amendments thereto; repay expenses incurred by a fire district, fire
4 department or fire company responding to a fire which has been
5 determined to be arson or aggravated arson as defined in K.S.A. 2011
6 Supp. 21-5812, and amendments thereto, if the defendant is convicted of
7 such crime; repay the amount of any public funds utilized by a law
8 enforcement agency to purchase controlled substances from the defendant
9 during the investigation which leads to the defendant's conviction; or repay
10 the amount of any medical costs and expenses incurred by any law
11 enforcement agency or county. Such repayment of the amount of any such
12 costs and expenses incurred by a county, law enforcement agency, fire
13 district, fire department or fire company or any public funds utilized by a
14 law enforcement agency shall be deposited and credited to the same fund
15 from which the public funds were credited to prior to use by the county,
16 law enforcement agency, fire district, fire department or fire company;

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

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

21 (11) if the defendant is convicted of a misdemeanor or convicted of a
22 felony specified in subsection (i) of K.S.A. 2011 Supp. 21-6804, and
23 amendments thereto, assign the defendant to work release program, other
24 than a program at a correctional institution under the control of the
25 secretary of corrections as defined in K.S.A. 75-5202, and amendments
26 thereto, provided such work release program requires such defendant to
27 return to confinement at the end of each day in the work release program.
28 On a second conviction of K.S.A. 8-1567, and amendments thereto, an
29 offender placed into a work release program must serve a total of 120
30 hours of confinement. Such 120 hours of confinement shall be a period of
31 at least 48 consecutive hours of imprisonment followed by confinement
32 hours at the end of and continuing to the beginning of the offender's work
33 day. On a third or subsequent conviction of K.S.A. 8-1567, and
34 amendments thereto, an offender placed into a work release program must
35 serve a total of 240 hours of confinement. Such 240 hours of confinement
36 shall be a period of at least 48 consecutive hours of imprisonment
37 followed by confinement hours at the end of and continuing to the
38 beginning of the offender's work day;

39 (12) order the defendant to pay the full amount of unpaid costs
40 associated with the conditions of release of the appearance bond under
41 K.S.A. 22-2802, and amendments thereto;

42 (13) impose any appropriate combination of (1), (2), (3), (4), (5), (6),
43 (7), (8), (9), (10), (11) and (12); or

1 (14) suspend imposition of sentence in misdemeanor cases.

2 (b) (1) In addition to or in lieu of any of the above, the court shall
3 order the defendant to pay restitution, which shall include, but not be
4 limited to, damage or loss caused by the defendant's crime, unless the
5 court finds compelling circumstances which would render a plan of
6 restitution unworkable. In regard to a violation of K.S.A. 2011 Supp. 21-
7 6107, and amendments thereto, such damage or loss shall include, but not
8 be limited to, attorney fees and costs incurred to repair the credit history or
9 rating of the person whose personal identification documents were
10 obtained and used in violation of such section, and to satisfy a debt, lien or
11 other obligation incurred by the person whose personal identification
12 documents were obtained and used in violation of such section. If the court
13 finds a plan of restitution unworkable, the court shall state on the record in
14 detail the reasons therefor.

15 (2) If the court orders restitution, the restitution shall be a judgment
16 against the defendant which may be collected by the court by garnishment
17 or other execution as on judgments in civil cases. If, after 60 days from the
18 date restitution is ordered by the court, a defendant is found to be in
19 noncompliance with the plan established by the court for payment of
20 restitution, and the victim to whom restitution is ordered paid has not
21 initiated proceedings in accordance with K.S.A. 60-4301 et seq., and
22 amendments thereto, the court shall assign an agent procured by the
23 attorney general pursuant to K.S.A. 75-719, and amendments thereto, to
24 collect the restitution on behalf of the victim. The chief judge of each
25 judicial district may assign such cases to an appropriate division of the
26 court for the conduct of civil collection proceedings.

27 (c) In addition to or in lieu of any of the above, the court shall order
28 the defendant to submit to and complete an alcohol and drug evaluation,
29 and pay a fee therefor, when required by subsection (d) of K.S.A. 2011
30 Supp. 21-6602, and amendments thereto.

31 (d) In addition to any of the above, the court shall order the defendant
32 to reimburse the county general fund for all or a part of the expenditures
33 by the county to provide counsel and other defense services to the
34 defendant. Any such reimbursement to the county shall be paid only after
35 any order for restitution has been paid in full. In determining the amount
36 and method of payment of such sum, the court shall take account of the
37 financial resources of the defendant and the nature of the burden that
38 payment of such sum will impose. A defendant who has been required to
39 pay such sum and who is not willfully in default in the payment thereof
40 may at any time petition the court which sentenced the defendant to waive
41 payment of such sum or any unpaid portion thereof. If it appears to the
42 satisfaction of the court that payment of the amount due will impose
43 manifest hardship on the defendant or the defendant's immediate family,

1 the court may waive payment of all or part of the amount due or modify
2 the method of payment.

3 (e) In releasing a defendant on probation, the court shall direct that
4 the defendant be under the supervision of a court services officer. If the
5 court commits the defendant to the custody of the secretary of corrections
6 or to jail, the court may specify in its order the amount of restitution to be
7 paid and the person to whom it shall be paid if restitution is later ordered
8 as a condition of parole, conditional release or postrelease supervision.

9 (f) (1) When a new felony is committed while the offender is
10 incarcerated and serving a sentence for a felony, or while the offender is on
11 probation, assignment to a community correctional services program,
12 parole, conditional release or postrelease supervision for a felony, a new
13 sentence shall be imposed pursuant to the consecutive sentencing
14 requirements of K.S.A. 2011 Supp. 21-6606, and amendments thereto, and
15 the court may sentence the offender to imprisonment for the new
16 conviction, even when the new crime of conviction otherwise presumes a
17 nonprison sentence. In this event, imposition of a prison sentence for the
18 new crime does not constitute a departure.

19 (2) When a new felony is committed while the offender is
20 incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671,
21 prior to its repeal, or K.S.A. 2011 Supp. 38-2373, and amendments thereto,
22 for an offense, which if committed by an adult would constitute the
23 commission of a felony, upon conviction, the court shall sentence the
24 offender to imprisonment for the new conviction, even when the new
25 crime of conviction otherwise presumes a nonprison sentence. In this
26 event, imposition of a prison sentence for the new crime does not
27 constitute a departure. The conviction shall operate as a full and complete
28 discharge from any obligations, except for an order of restitution, imposed
29 on the offender arising from the offense for which the offender was
30 committed to a juvenile correctional facility.

31 (3) When a new felony is committed while the offender is on release
32 for a felony pursuant to the provisions of article 28 of chapter 22 of the
33 Kansas Statutes Annotated, and amendments thereto, or similar provisions
34 of the laws of another jurisdiction, a new sentence may be imposed
35 pursuant to the consecutive sentencing requirements of K.S.A. 2011 Supp.
36 21-6606, and amendments thereto, and the court may sentence the offender
37 to imprisonment for the new conviction, even when the new crime of
38 conviction otherwise presumes a nonprison sentence. In this event,
39 imposition of a prison sentence for the new crime does not constitute a
40 departure.

41 (g) Prior to imposing a dispositional departure for a defendant whose
42 offense is classified in the presumptive nonprison grid block of either
43 sentencing guideline grid, prior to sentencing a defendant to incarceration

1 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing
2 guidelines grid for nondrug crimes ~~or~~, in grid blocks 3-E, 3-F, 3-G, 3-H or
3 3-I of the sentencing guidelines grid for drug crimes *committed prior to*
4 *July 1, 2012, or in grid blocks 4-C, 4-D, 4-E, 4-F, 4-G, 4-H or 4-I of the*
5 *sentencing guidelines grid for drug crimes committed on or after July 1,*
6 *2012, prior to sentencing a defendant to incarceration whose offense is*
7 *classified in grid blocks 4-E or 4-F of the sentencing guideline guidelines*
8 *grid for drug crimes committed prior to July 1, 2012, or in grid blocks 5-*
9 *C, 5-D, 5-E or 5-F of the sentencing guidelines grid for drug crimes*
10 *committed on or after July 1, 2012, and whose offense does not meet the*
11 *requirements of K.S.A. 2011 Supp. 21-6824, and amendments thereto,*
12 *prior to revocation of a nonprison sanction of a defendant whose offense is*
13 *classified in grid blocks 4-E or 4-F of the sentencing guideline guidelines*
14 *grid for drug crimes committed prior to July 1, 2012, or in grid blocks 5-*
15 *C, 5-D, 5-E or 5-F of the sentencing guidelines grid for drug crimes*
16 *committed on or after July 1, 2012, and whose offense does not meet the*
17 *requirements of K.S.A. 2011 Supp. 21-6824, and amendments thereto, or*
18 *prior to revocation of a nonprison sanction of a defendant whose offense is*
19 *classified in the presumptive nonprison grid block of either sentencing*
20 *guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines*
21 *grid for nondrug crimes ~~or~~, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the*
22 *sentencing guidelines grid for drug crimes committed prior to July 1,*
23 *2012, or in grid blocks 4-C, 4-D, 4-E, 4-F, 4-G, 4-H or 4-I of the*
24 *sentencing guidelines grid for drug crimes committed on or after July 1,*
25 *2012, the court shall consider placement of the defendant in the Labette*
26 *correctional conservation camp, conservation camps established by the*
27 *secretary of corrections pursuant to K.S.A. 75-52,127, and amendment*
28 *thereto, or a community intermediate sanction center. Pursuant to this*
29 *paragraph the defendant shall not be sentenced to imprisonment if space is*
30 *available in a conservation camp or a community intermediate sanction*
31 *center and the defendant meets all of the conservation camp's or a*
32 *community intermediate sanction center's placement criteria unless the*
33 *court states on the record the reasons for not placing the defendant in a*
34 *conservation camp or a community intermediate sanction center.*

35 (h) The court in committing a defendant to the custody of the
36 secretary of corrections shall fix a term of confinement within the limits
37 provided by law. In those cases where the law does not fix a term of
38 confinement for the crime for which the defendant was convicted, the
39 court shall fix the term of such confinement.

40 (i) In addition to any of the above, the court shall order the defendant
41 to reimburse the state general fund for all or a part of the expenditures by
42 the state board of indigents' defense services to provide counsel and other
43 defense services to the defendant. In determining the amount and method

1 of payment of such sum, the court shall take account of the financial
2 resources of the defendant and the nature of the burden that payment of
3 such sum will impose. A defendant who has been required to pay such sum
4 and who is not willfully in default in the payment thereof may at any time
5 petition the court which sentenced the defendant to waive payment of such
6 sum or any unpaid portion thereof. If it appears to the satisfaction of the
7 court that payment of the amount due will impose manifest hardship on the
8 defendant or the defendant's immediate family, the court may waive
9 payment of all or part of the amount due or modify the method of
10 payment. The amount of attorney fees to be included in the court order for
11 reimbursement shall be the amount claimed by appointed counsel on the
12 payment voucher for indigents' defense services or the amount prescribed
13 by the board of indigents' defense services reimbursement tables as
14 provided in K.S.A. 22-4522, and amendments thereto, whichever is less.

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

19 (k) An application for or acceptance of probation or assignment to a
20 community correctional services program shall not constitute an
21 acquiescence in the judgment for purpose of appeal, and any convicted
22 person may appeal from such conviction, as provided by law, without
23 regard to whether such person has applied for probation, suspended
24 sentence or assignment to a community correctional services program.

25 (l) The secretary of corrections is authorized to make direct
26 placement to the Labette correctional conservation camp or a conservation
27 camp established by the secretary pursuant to K.S.A. 75-52,127, and
28 amendments thereto, of an inmate sentenced to the secretary's custody if
29 the inmate:

30 (1) Has been sentenced to the secretary for a probation revocation, as
31 a departure from the presumptive nonimprisonment grid block of either
32 sentencing grid, for an offense which is classified in grid blocks 5-H, 5-I,
33 or 6-G of the sentencing guidelines grid for nondrug crimes or , in grid
34 blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug
35 crimes *committed prior to July 1, 2012, or in grid blocks 4-C, 4-D, 4-E, 4-*
36 *F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes*
37 *committed on or after July 1, 2012, or for an offense which is classified in*
38 *grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes*
39 *committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of*
40 *the sentencing guidelines grid for drug crimes committed on or after July*
41 *1, 2012, and such offense does not meet the requirements of K.S.A. 2011*
42 *Supp. 21-6824, and amendments thereto; and*

43 (2) otherwise meets admission criteria of the camp.

1 If the inmate successfully completes a conservation camp program, the
2 secretary of corrections shall report such completion to the sentencing
3 court and the county or district attorney. The inmate shall then be assigned
4 by the court to six months of follow-up supervision conducted by the
5 appropriate community corrections services program. The court may also
6 order that supervision continue thereafter for the length of time authorized
7 by K.S.A. 2011 Supp. 21-6608, and amendments thereto.

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

11 (n) Except as provided by subsection (f) of K.S.A. 2011 Supp. 21-
12 6805, and amendments thereto, in addition to any of the above, for felony
13 violations of K.S.A. 2011 Supp. 21-5706, and amendments thereto, the
14 court shall require the defendant who meets the requirements established
15 in K.S.A. 2011 Supp. 21-6824, and amendments thereto, to participate in a
16 certified drug abuse treatment program, as provided in K.S.A. 2011 Supp.
17 75-52,144, and amendments thereto, including, but not limited to, an
18 approved after-care plan. If the defendant fails to participate in or has a
19 pattern of intentional conduct that demonstrates the offender's refusal to
20 comply with or participate in the treatment program, as established by
21 judicial finding, the defendant shall be subject to revocation of probation
22 and the defendant shall serve the underlying prison sentence as established
23 in K.S.A. 2011 Supp. 21-6805, and amendments thereto. For those
24 offenders who are convicted on or after July 1, 2003, upon completion of
25 the underlying prison sentence, the defendant shall not be subject to a
26 period of postrelease supervision. The amount of time spent participating
27 in such program shall not be credited as service on the underlying prison
28 sentence.

29 (o) (1) Except as provided in paragraph (3), in addition to any other
30 penalty or disposition imposed by law, upon a conviction for unlawful
31 possession of a controlled substance or controlled substance analog in
32 violation of K.S.A. 2011 Supp. 21-5706, and amendments thereto, in
33 which the trier of fact makes a finding that the unlawful possession
34 occurred while transporting the controlled substance or controlled
35 substance analog in any vehicle upon a highway or street, the offender's
36 driver's license or privilege to operate a motor vehicle on the streets and
37 highways of this state shall be suspended for one year.

38 (2) Upon suspension of a license pursuant to this subsection, the court
39 shall require the person to surrender the license to the court, which shall
40 transmit the license to the division of motor vehicles of the department of
41 revenue, to be retained until the period of suspension expires. At that time,
42 the licensee may apply to the division for return of the license. If the
43 license has expired, the person may apply for a new license, which shall be

1 issued promptly upon payment of the proper fee and satisfaction of other
2 conditions established by law for obtaining a license unless another
3 suspension or revocation of the person's privilege to operate a motor
4 vehicle is in effect.

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

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

31 (C) Upon expiration of the period of time for which conditions are
32 imposed pursuant to this subsection, the licensee may apply to the division
33 for the return of the license previously surrendered by such licensee. In the
34 event such license has expired, such person may apply to the division for a
35 new license, which shall be issued immediately by the division upon
36 payment of the proper fee and satisfaction of the other conditions
37 established by law, unless such person's privilege to operate a motor
38 vehicle on the highways of this state has been suspended or revoked prior
39 thereto. If any person shall violate any of the conditions imposed under
40 this paragraph, such person's driver's license or privilege to operate a
41 motor vehicle on the highways of this state shall be revoked for a period of
42 not less than 60 days nor more than one year by the judge of the court in
43 which such person is convicted of violating such conditions.

1 (4) As used in this subsection, "highway" and "street" means the
2 same as in K.S.A. 8-1424 and 8-1473, and amendments thereto.

3 (p) In addition to any of the above, for any criminal offense that
4 includes the domestic violence designation pursuant to K.S.A. 2011 Supp.
5 22-4616, and amendments thereto, the court shall require the defendant to
6 undergo a domestic violence offender assessment and follow all
7 recommendations unless otherwise ordered by the court or the department
8 of corrections. The court may order a domestic violence offender
9 assessment and any other evaluation prior to sentencing if the assessment
10 or evaluation would assist the court in determining an appropriate
11 sentence. The entity completing the assessment or evaluation shall provide
12 the assessment or evaluation and recommendations to the court and the
13 court shall provide the domestic violence assessment and any other
14 evaluation to any entity responsible for supervising such defendant. A
15 defendant ordered to undergo a domestic violence offender assessment
16 shall be required to pay for the assessment and, unless otherwise ordered
17 by the court or the department of corrections, for completion of all
18 recommendations.

19 (q) In imposing a fine, the court may authorize the payment thereof in
20 installments. In lieu of payment of any fine imposed, the court may order
21 that the person perform community service specified by the court. The
22 person shall receive a credit on the fine imposed in an amount equal to \$5
23 for each full hour spent by the person in the specified community service.
24 The community service ordered by the court shall be required to be
25 performed by the later of one year after the fine is imposed or one year
26 after release from imprisonment or jail, or by an earlier date specified by
27 the court. If by the required date the person performs an insufficient
28 amount of community service to reduce to zero the portion of the fine
29 required to be paid by the person, the remaining balance shall become due
30 on that date. If conditional reduction of any fine is rescinded by the court
31 for any reason, then pursuant to the court's order the person may be
32 ordered to perform community service by one year after the date of such
33 rescission or by an earlier date specified by the court. If by the required date
34 the person performs an insufficient amount of community service to
35 reduce to zero the portion of the fine required to be paid by the person, the
36 remaining balance of the fine shall become due on that date. All credits for
37 community service shall be subject to review and approval by the court.

38 Sec. ~~12~~ **30.** K.S.A. 2011 Supp. 21-6608 is hereby amended to read
39 as follows: 21-6608. (a) The period of suspension of sentence, probation or
40 assignment to community corrections fixed by the court shall not exceed
41 two years in misdemeanor cases, subject to renewal and extension for
42 additional fixed periods of two years. Probation, suspension of sentence or
43 assignment to community corrections may be terminated by the court at

1 any time and upon such termination or upon termination by expiration of
2 the term of probation, suspension of sentence or assignment to community
3 corrections, an order to this effect shall be entered by the court.

4 (b) The district court having jurisdiction of the offender may parole
5 any misdemeanor sentenced to confinement in the county jail. The period
6 of such parole shall be fixed by the court and shall not exceed two years
7 and shall be terminated in the manner provided for termination of
8 suspended sentence and probation.

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

13 (1) For nondrug crimes the recommended duration of probations is:

14 (A) 36 months for crimes in crime severity levels 1 through 5; and

15 (B) 24 months for crimes in crime severity levels 6 and 7;

16 (2) for drug crimes the recommended duration of probation is 36
17 months for crimes in crime severity levels 1 and 2 *committed prior to July*
18 *1, 2012, and crimes in crime severity levels 1, 2 and 3 committed on or*
19 *after July 1, 2012;*

20 (3) except as provided further, in felony cases sentenced at severity
21 levels 9 and 10 on the sentencing guidelines grid for nondrug crimes ~~and~~,
22 severity level 4 on the sentencing guidelines grid for drug crimes
23 *committed prior to July 1, 2012, and severity level 5 of the sentencing*
24 *guidelines grid for drug crimes committed on or after July 1, 2012,* if a
25 nonprison sanction is imposed, the court shall order the defendant to serve
26 a period of probation of up to 12 months in length;

27 (4) in felony cases sentenced at severity level 8 on the sentencing
28 guidelines grid for nondrug crimes, severity level 3 on the sentencing
29 guidelines grid for drug crimes *committed prior to July 1, 2012, and*
30 *severity level 4 of the sentencing guidelines grid for drug crimes*
31 *committed on or after July 1, 2012,* and felony cases sentenced pursuant to
32 K.S.A. 2011 Supp. 21-6824, and amendments thereto, if a nonprison
33 sanction is imposed, the court shall order the defendant to serve a period of
34 probation, or assignment to a community correctional services program, as
35 provided under K.S.A. 75-5291 et seq., and amendments thereto, of up to
36 18 months in length;

37 (5) if the court finds and sets forth with particularity the reasons for
38 finding that the safety of the members of the public will be jeopardized or
39 that the welfare of the inmate will not be served by the length of the
40 probation terms provided in subsections (c)(3) and (c)(4), the court may
41 impose a longer period of probation. Such an increase shall not be
42 considered a departure and shall not be subject to appeal;

43 (6) except as provided in subsections (c)(7) and (c)(8), the total

1 period in all cases shall not exceed 60 months, or the maximum period of
2 the prison sentence that could be imposed whichever is longer. Nonprison
3 sentences may be terminated by the court at any time;

4 (7) if the defendant is convicted of nonsupport of a child, the period
5 may be continued as long as the responsibility for support continues. If the
6 defendant is ordered to pay full or partial restitution, the period may be
7 continued as long as the amount of restitution ordered has not been paid;
8 and

9 (8) the court may modify or extend the offender's period of
10 supervision, pursuant to a modification hearing and a judicial finding of
11 necessity. Such extensions may be made for a maximum period of five
12 years or the maximum period of the prison sentence that could be imposed,
13 whichever is longer, inclusive of the original supervision term.

14 Sec. ~~13~~ **31**, K.S.A. 2011 Supp. 21-6611 is hereby amended to read
15 as follows: 21-6611. (a) A person who has been convicted of a felony may,
16 in addition to the sentence authorized by law, be ordered to pay a fine
17 which shall be fixed by the court as follows:

18 (1) For any off-grid felony crime, or any felony ranked in severity
19 level 1 of the drug grid *committed prior to July 1, 2012, or in severity*
20 *levels 1 or 2 of the drug grid committed on or after July 1, 2012*, as
21 provided in K.S.A. 2011 Supp. 21-6805, and amendments thereto, a sum
22 not exceeding \$500,000;

23 (2) for any felony ranked in severity levels 1 through 5 of the
24 nondrug grid as provided in K.S.A. 2011 Supp. 21-6804, and amendments
25 thereto, or in severity levels 2 or 3 of the drug grid *committed prior to July*
26 *1, 2012, or in severity levels 3 or 4 of the drug grid committed on or after*
27 *July 1, 2012*, as provided in K.S.A. 2011 Supp. 21-6805, and amendments
28 thereto, a sum not exceeding \$300,000; and

29 (3) for any felony ranked in severity levels 6 through 10 of the
30 nondrug grid as provided in K.S.A. 2011 Supp. 21-6804, and amendments
31 thereto, or in severity level 4 of the drug grid *committed prior to July 1,*
32 *2012, or in severity level 5 of the drug grid committed on or after July 1,*
33 *2012*, as provided in K.S.A. 2011 Supp. 21-6805, and amendments thereto,
34 a sum not exceeding \$100,000.

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

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

39 (2) for a class B misdemeanor, a sum not exceeding \$1,000;

40 (3) for a class C misdemeanor, a sum not exceeding \$500; and

41 (4) for an unclassified misdemeanor, any sum authorized by the
42 statute that defines the crime. If no penalty is provided in such law, the fine
43 shall not exceed the fine provided herein for a class C misdemeanor.

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

4 (d) A person who has been convicted of a traffic infraction may be
5 sentenced to pay a fine which shall be fixed by the court, not exceeding
6 \$500.

7 (e) A person who has been convicted of a cigarette or tobacco
8 infraction shall be sentenced to pay a fine of \$25.

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

11 Sec. ~~14~~ ~~{32}~~ K.S.A. 2011 Supp. 21-6614 is hereby amended to read
12 as follows: 21-6614. (a) (1) Except as provided in subsections (b), (c) ~~and~~ ,
13 (d) *and* (e), any person convicted in this state of a traffic infraction,
14 cigarette or tobacco infraction, misdemeanor or a class D or E felony, or
15 for crimes committed on or after July 1, 1993, nondrug crimes ranked in
16 severity levels 6 through 10 ~~or~~ , *or for crimes committed on or after July*
17 *1, 1993, but prior to July 1, 2012, any felony ranked in severity level 4 of*
18 *the drug grid, or for crimes committed on or after July 1, 2012, any felony*
19 *ranked in level 5 of the drug grid, may petition the convicting court for the*
20 *expungement of such conviction or related arrest records if three or more*
21 *years have elapsed since the person: (A) Satisfied the sentence imposed; or*
22 *(B) was discharged from probation, a community correctional services*
23 *program, parole, postrelease supervision, conditional release or a*
24 *suspended sentence.*

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

30 (b) Except as provided in subsections (c) ~~and~~ , (d) *and* (e), no person
31 may petition for expungement until five or more years have elapsed since
32 the person satisfied the sentence imposed, the terms of a diversion
33 agreement or was discharged from probation, a community correctional
34 services program, parole, postrelease supervision, conditional release or a
35 suspended sentence, if such person was convicted of a class A, B or C
36 felony, or for crimes committed on or after July 1, 1993, if convicted of an
37 off-grid felony or any nondrug crime ranked in severity levels 1 through 5
38 ~~or~~ , *or for crimes committed on or after July 1, 1993, but prior to July 1,*
39 *2012, any felony ranked in severity levels 1 through 3 of the drug grid, or*
40 *for crimes committed on or after July 1, 2012, any felony ranked in level 5*
41 *of the drug grid, or:*

42 (1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its
43 repeal, or K.S.A. 2011 Supp. 21-5406, and amendments thereto, or as

1 prohibited by any law of another state which is in substantial conformity
2 with that statute;

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

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

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

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

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

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

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

24 (c) No person may petition for expungement until 10 or more years
25 have elapsed since the person satisfied the sentence imposed, the terms of
26 a diversion agreement or was discharged from probation, a community
27 correctional services program, parole, postrelease supervision, conditional
28 release or a suspended sentence, if such person was convicted of a
29 violation of K.S.A. 8-1567, and amendments thereto, including any
30 diversion for such violation.

31 (d) There shall be no expungement of convictions for the following
32 offenses or of convictions for an attempt to commit any of the following
33 offenses:

34 (1) Rape as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
35 2011 Supp. 21-5503, and amendments thereto;

36 (2) indecent liberties with a child or aggravated indecent liberties
37 with a child as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal,
38 or K.S.A. 2011 Supp. 21-5506, and amendments thereto;

39 (3) criminal sodomy as defined in subsection (a)(2) or (a)(3) of
40 K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of K.S.A.
41 2011 Supp. 21-5504, and amendments thereto;

42 (4) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior
43 to its repeal, or K.S.A. 2011 Supp. 21-5504, and amendments thereto;

1 (5) indecent solicitation of a child or aggravated indecent solicitation
2 of a child as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or
3 K.S.A. 2011 Supp. 21-5508, and amendments thereto;

4 (6) sexual exploitation of a child as defined in K.S.A. 21-3516, prior
5 to its repeal, or K.S.A. 2011 Supp. 21-5510, and amendments thereto;

6 (7) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal,
7 or K.S.A. 2011 Supp. 21-5604, and amendments thereto;

8 (8) endangering a child or aggravated endangering a child as defined
9 in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2011 Supp.
10 21-5601, and amendments thereto;

11 (9) abuse of a child as defined in K.S.A. 21-3609, prior to its repeal,
12 or K.S.A. 2011 Supp. 21-5602, and amendments thereto;

13 (10) capital murder as defined in K.S.A. 21-3439, prior to its repeal,
14 or K.S.A. 2011 Supp. 21-5401, and amendments thereto;

15 (11) murder in the first degree as defined in K.S.A. 21-3401, prior to
16 its repeal, or K.S.A. 2011 Supp. 21-5402, and amendments thereto;

17 (12) murder in the second degree as defined in K.S.A. 21-3402, prior
18 to its repeal, or K.S.A. 2011 Supp. 21-5403, and amendments thereto;

19 (13) voluntary manslaughter as defined in K.S.A. 21-3403, prior to its
20 repeal, or K.S.A. 2011 Supp. 21-5404, and amendments thereto;

21 (14) involuntary manslaughter as defined in K.S.A. 21-3404, prior to
22 its repeal, or K.S.A. 2011 Supp. 21-5405, and amendments thereto;

23 (15) sexual battery as defined in K.S.A. 21-3517, prior to its repeal,
24 or K.S.A. 2011 Supp. 21-5505, and amendments thereto, when the victim
25 was less than 18 years of age at the time the crime was committed;

26 (16) aggravated sexual battery as defined in K.S.A. 21-3518, prior to
27 its repeal, or K.S.A. 2011 Supp. 21-5505, and amendments thereto;

28 (17) a violation of K.S.A. 8-2,144, and amendments thereto,
29 including any diversion for such violation; or

30 (18) any conviction for any offense in effect at any time prior to July
31 1, 2011, that is comparable to any offense as provided in this subsection.

32 *(e) Notwithstanding any other law to the contrary, for any offender*
33 *who is required to register as provided in the Kansas offender registration*
34 *act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no*
35 *expungement of any conviction or any part of the offender's criminal*
36 *record while the offender is required to register as provided in the Kansas*
37 *offender registration act.*

38 ~~(e)~~ (f) (1) When a petition for expungement is filed, the court shall set
39 a date for a hearing of such petition and shall cause notice of such hearing
40 to be given to the prosecutor and the arresting law enforcement agency.
41 The petition shall state the:

42 (A) Defendant's full name;

43 (B) full name of the defendant at the time of arrest, conviction or

- 1 diversion, if different than the defendant's current name;
- 2 (C) defendant's sex, race and date of birth;
- 3 (D) crime for which the defendant was arrested, convicted or
- 4 diverted;
- 5 (E) date of the defendant's arrest, conviction or diversion; and
- 6 (F) identity of the convicting court, arresting law enforcement
- 7 authority or diverting authority.

8 (2) Except as otherwise provided by law, a petition for expungement
9 shall be accompanied by a docket fee in the amount of \$100. On and after
10 ~~April 15, 2010 through June 30, 2011~~ *May 19, 2011, through June 30,*
11 *2012*, the supreme court may impose a charge, not to exceed ~~\$15~~ *\$19* per
12 case, to fund the costs of non-judicial personnel. The charge established in
13 this section shall be the only fee collected or moneys in the nature of a fee
14 collected for the case. Such charge shall only be established by an act of
15 the legislature and no other authority is established by law or otherwise to
16 collect a fee.

17 (3) All petitions for expungement shall be docketed in the original
18 criminal action. Any person who may have relevant information about the
19 petitioner may testify at the hearing. The court may inquire into the
20 background of the petitioner and shall have access to any reports or
21 records relating to the petitioner that are on file with the secretary of
22 corrections or the ~~Kansas parole~~ *prisoner review* board.

23 ~~(f)~~ (g) At the hearing on the petition, the court shall order the
24 petitioner's arrest record, conviction or diversion expunged if the court
25 finds that:

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

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

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

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

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

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

3 (A) In any application for licensure as a private detective, private
4 detective agency, certification as a firearms trainer pursuant to K.S.A.
5 2011 Supp. 75-7b21, and amendments thereto, or employment as a
6 detective with a private detective agency, as defined by K.S.A. 75-7b01,
7 and amendments thereto; as security personnel with a private patrol
8 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
9 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
10 the department of social and rehabilitation services;

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

13 (C) to aid in determining the petitioner's qualifications for
14 employment with the Kansas lottery or for work in sensitive areas within
15 the Kansas lottery as deemed appropriate by the executive director of the
16 Kansas lottery;

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

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

28 (F) upon application for a commercial driver's license under K.S.A.
29 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

40 (K) for applications received on and after July 1, 2006, to aid in
41 determining the petitioner's qualifications for a license to carry a concealed
42 weapon pursuant to the personal and family protection act, K.S.A. 2011
43 Supp. 75-7c01 et seq., and amendments thereto;

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

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

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

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

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

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

30 (1) The person whose record was expunged;

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

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

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

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

1 (6) a prosecutor, and such request is accompanied by a statement that
2 the request is being made in conjunction with a prosecution of an offense
3 that requires a prior conviction as one of the elements of such offense;

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

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

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

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

29 (11) the Kansas sentencing commission;

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

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

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

1 officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;

2 (15) a law enforcement agency and the request is accompanied by a
3 statement that the request is being made to aid in determining eligibility
4 for employment as a law enforcement officer as defined by K.S.A. 22-
5 2202, and amendments thereto; ~~or~~

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

10 (17) *the Kansas bureau of investigation for the purposes of:*

11 (A) *Completing a person's criminal history record information within*
12 *the central repository, in accordance with K.S.A. 22-4701 et seq., and*
13 *amendments thereto; or*

14 (B) *providing information or documentation to the federal bureau of*
15 *investigation, in connection with the national instant criminal background*
16 *check system, to determine a person's qualification to possess a firearm.*

17 (l) *The provisions of subsection (k)(17) shall apply to records created*
18 *prior to, on and after July 1, 2011.*

19 Sec. ~~15.~~ **{33.}** K.S.A. 2011 Supp. 21-6805 is hereby amended to read
20 as follows: 21-6805. (a) The provisions of this section shall be applicable
21 to the sentencing guidelines grid for drug crimes. The following
22 sentencing guidelines grid for drug crimes shall be applicable to felony
23 crimes under K.S.A. 2011 Supp. 21-5701 through 21-5717, and
24 amendments thereto, except as otherwise provided by law:
25

SENTENCING RANGE - DRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	83 78 74	77 73 68	72 68 64	68 64 60	82 79 75	59 56 52	57 54 51	54 51 49	51 49 46
III	51 49	47 46	42 40	36 34	32 30 28	28 26 24	24 23 22	23 22 21	22 21 20
IV	42 40	36 34	32 30	26 24	22 20	18 17	16 15	14 13	12 11 10

LEGEND
Presumptive Probation
Presumptive Imprisonment

SENTENCING RANGE - DRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felonies	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felonies	2+ Misdemeanors	1 Misdemeanor No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	144 136 130	137 130 122	130 123 117	124 117 111	116 111 105	113 108 101	110 104 99	108 100 96	103 98 92
III	83 78 74	77 73 68	72 66 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
IV	51 49 46	47 44 41	43 40 37	39 36 33	35 32 29	32 29 26	29 26 23	26 23 20	23 20 17
V	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
Presumptive Imprisonment

1 (b) Sentences expressed in the sentencing guidelines grid for drug
2 crimes in subsection (a) represent months of imprisonment.

3 (c) (1) The sentencing court has discretion to sentence at any place
4 within the sentencing range. In the usual case it is recommended that the
5 sentencing judge select the center of the range and reserve the upper and
6 lower limits for aggravating and mitigating factors insufficient to warrant a
7 departure. The sentencing court shall not distinguish between the
8 controlled substances cocaine base (9041L000) and cocaine hydrochloride
9 (9041L005) when sentencing within the sentencing range of the grid
10 block.

11 (2) In presumptive imprisonment cases, the sentencing court shall
12 pronounce the complete sentence which shall include the:

13 (A) Prison sentence;

14 (B) maximum potential reduction to such sentence as a result of good
15 time; and

16 (C) period of postrelease supervision at the sentencing hearing.
17 Failure to pronounce the period of postrelease supervision shall not negate
18 the existence of such period of postrelease supervision.

19 (3) In presumptive nonprison cases, the sentencing court shall
20 pronounce the prison sentence as well as the duration of the nonprison
21 sanction at the sentencing hearing.

22 (d) Each grid block states the presumptive sentencing range for an
23 offender whose crime of conviction and criminal history place such
24 offender in that grid block. If an offense is classified in a grid block below
25 the dispositional line, the presumptive disposition shall be
26 nonimprisonment. If an offense is classified in a grid block above the
27 dispositional line, the presumptive disposition shall be imprisonment. If an
28 offense is classified in grid blocks ~~3-E, 3-F, 3-G, 3-H or 3-I~~ 4-C, 4-D, 4-E,
29 4-F, 4-G, 4-H or 4-I, the court may impose an optional nonprison sentence
30 as provided in subsection (q) of K.S.A. 2011 Supp. 21-6804, and
31 amendments thereto.

32 (e) The sentence for a second or subsequent conviction of K.S.A. 65-
33 4159, prior to its repeal, ~~or~~ K.S.A. 2010 Supp. 21-36a03, *prior to its*
34 *transfer, or K.S.A. 2011 Supp. 21-5703*, and amendments thereto,
35 manufacture of any controlled substance or controlled substance analog,
36 shall be a presumptive term of imprisonment of two times the maximum
37 duration of the presumptive term of imprisonment. The court may impose
38 an optional reduction in such sentence of not to exceed 50% of the
39 mandatory increase provided by this subsection upon making a finding on
40 the record that one or more of the mitigating factors as specified in K.S.A.
41 2011 Supp. 21-6815, and amendments thereto, justify such a reduction in
42 sentence. Any decision made by the court regarding the reduction in such
43 sentence shall not be considered a departure and shall not be subject to

1 appeal.

2 (f) (1) The sentence for a third or subsequent felony conviction of
3 K.S.A. 65-4160 or 65-4162, prior to their repeal, ~~or~~ K.S.A. 2010 Supp. 21-
4 36a06, *prior to its transfer, or K.S.A. 2011 Supp. 21-5706*, and
5 amendments thereto, shall be a presumptive term of imprisonment and the
6 defendant shall be sentenced to prison as provided by this section. The
7 defendant's term of imprisonment shall be served in the custody of the
8 secretary of corrections in a facility designated by the secretary. Subject to
9 appropriations therefore, the defendant shall participate in an intensive
10 substance abuse treatment program, of at least four months duration,
11 selected by the secretary of corrections. If the secretary determines that
12 substance abuse treatment resources are otherwise available, such term of
13 imprisonment may be served in a facility designated by the secretary of
14 corrections in the custody of the secretary of corrections to participate in
15 an intensive substance abuse treatment program. The secretary's
16 determination regarding the availability of treatment resources shall not be
17 subject to review. Upon the successful completion of such intensive
18 treatment program, the offender shall be returned to the court and the court
19 may modify the sentence by directing that a less severe penalty be
20 imposed in lieu of that originally adjudged. If the offender's term of
21 imprisonment expires, the offender shall be placed under the applicable
22 period of postrelease supervision.

23 (2) Such defendant's term of imprisonment shall not be subject to
24 modification under paragraph (1) if:

25 (A) The defendant has previously completed a certified drug abuse
26 treatment program, as provided in K.S.A. 2011 Supp. 75-52,144, and
27 amendments thereto;

28 (B) has been discharged or refused to participate in a certified drug
29 abuse treatment program, as provided in K.S.A. 2011 Supp. 75-52,144,
30 and amendments thereto;

31 (C) has completed an intensive substance abuse treatment program
32 under paragraph (1); or

33 (D) has been discharged or refused to participate in an intensive
34 substance abuse treatment program under paragraph (1).

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

37 (g) (1) Except as provided further, if the trier of fact makes a finding
38 that an offender carried a firearm to commit a drug felony, or in
39 furtherance of a drug felony, possessed a firearm, in addition to the
40 sentence imposed pursuant to K.S.A. 2011 Supp. 21-6801 through 21-
41 6824, and amendments thereto, the offender shall be sentenced to:

42 (A) Except as provided in subsection (g)(1)(B), an additional 6
43 months' imprisonment; and

1 (B) if the trier of fact makes a finding that the firearm was
2 discharged, an additional 18 months' imprisonment.

3 (2) The sentence imposed pursuant to subsection (g)(1) shall be
4 presumptive imprisonment. Such sentence shall not be considered a
5 departure and shall not be subject to appeal.

6 (3) The provisions of this subsection shall not apply to violations of
7 K.S.A. 2011 Supp. 21-5706 or 21-5713, and amendments thereto.

8 Sec. ~~16.~~ {34.} K.S.A. 2011 Supp. 21-6808 is hereby amended to read
9 as follows: 21-6808. (a) The crime severity scale contained in the
10 sentencing guidelines grid for drug offenses as provided in K.S.A. 2011
11 Supp. 21-6805, and amendments thereto, consists of 4 5 levels of crimes.
12 Crimes listed within each level are considered to be relatively equal in
13 severity. Level 1 crimes are the most severe crimes and level 4 5 crimes
14 are the least severe crimes.

15 (b) The provisions of this section shall also be applicable to the
16 presumptive sentences for anticipatory crimes as provided in K.S.A. 2011
17 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto.

18 Sec. ~~17.~~ {35.} K.S.A. 2011 Supp. 21-6810 is hereby amended to read
19 as follows: 21-6810. (a) Criminal history categories contained in the
20 sentencing guidelines grids are based on the following types of prior
21 convictions: Person felony adult convictions, nonperson felony adult
22 convictions, person felony juvenile adjudications, nonperson felony
23 juvenile adjudications, person misdemeanor adult convictions, nonperson
24 class A misdemeanor adult convictions, person misdemeanor juvenile
25 adjudications, nonperson class A misdemeanor juvenile adjudications,
26 select class B nonperson misdemeanor adult convictions, select class B
27 nonperson misdemeanor juvenile adjudications and convictions and
28 adjudications for violations of municipal ordinances or county resolutions
29 which are comparable to any crime classified under the state law of
30 Kansas as a person misdemeanor, select nonperson class B misdemeanor
31 or nonperson class A misdemeanor. A prior conviction is any conviction,
32 other than another count in the current case which was brought in the same
33 information or complaint or which was joined for trial with other counts in
34 the current case pursuant to K.S.A. 22-3203, and amendments thereto,
35 which occurred prior to sentencing in the current case regardless of
36 whether the offense that led to the prior conviction occurred before or after
37 the current offense or the conviction in the current case.

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

41 (c) Except as otherwise provided, all convictions, whether sentenced
42 consecutively or concurrently, shall be counted separately in the offender's
43 criminal history.

1 (d) Except as provided in K.S.A. 2011 Supp. 21-6815, and
2 amendments thereto, the following are applicable to determining an
3 offender's criminal history classification:

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

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

7 (3) There will be no decay factor applicable for:

8 (A) Adult convictions;

9 (B) a juvenile adjudication for an offense which would constitute a
10 person felony if committed by an adult;

11 (C) a juvenile adjudication for an offense committed before July 1,
12 1993, which would have been a class A, B or C felony, if committed by an
13 adult; or

14 (D) a juvenile adjudication for an offense committed on or after July
15 1, 1993, which would be an off-grid felony, a nondrug severity level 1, 2,
16 3, 4 or 5 felony, ~~or a drug severity level 1, 2 or 3 felony~~ *for an offense*
17 *committed on or after July 1, 1993, but prior to July 1, 2012, or a drug*
18 *severity level 1, 2, 3 or 4 felony for an offense committed on or after July*
19 *1, 2012, if committed by an adult.*

20 (4) Except as otherwise provided, a juvenile adjudication will decay
21 if the current crime of conviction is committed after the offender reaches
22 the age of 25, and the juvenile adjudication is for an offense:

23 (A) Committed before July 1, 1993, which would have been a class D
24 or E felony if committed by an adult;

25 (B) committed on or after July 1, 1993, which would be a nondrug
26 *severity level 6, 7, 8, 9 or 10, or drug level 4, nonperson felony a drug*
27 *severity level 4 felony for an offense committed on or after July 1, 1993,*
28 *but prior to July 1, 2012, or a drug severity level 5 felony for an offense*
29 *committed on or after July 1, 2012 if committed by an adult; or*

30 (C) which would be a misdemeanor if committed by an adult.

31 (5) All person misdemeanors, class A nonperson misdemeanors and
32 class B select nonperson misdemeanors, and all municipal ordinance and
33 county resolution violations comparable to such misdemeanors, shall be
34 considered and scored.

35 (6) Unless otherwise provided by law, unclassified felonies and
36 misdemeanors, shall be considered and scored as nonperson crimes for the
37 purpose of determining criminal history.

38 (7) Prior convictions of a crime defined by a statute which has since
39 been repealed shall be scored using the classification assigned at the time
40 of such conviction.

41 (8) Prior convictions of a crime defined by a statute which has since
42 been determined unconstitutional by an appellate court shall not be used
43 for criminal history scoring purposes.

1 (9) Prior convictions of any crime shall not be counted in determining
2 the criminal history category if they enhance the severity level, elevate the
3 classification from misdemeanor to felony, or are elements of the present
4 crime of conviction. Except as otherwise provided, all other prior
5 convictions will be considered and scored.

6 ***{Sec. 36. K.S.A. 2011 Supp. 21-6819 is hereby amended to read as***
7 ***follows: 21-6819. (a) The provisions of subsections (a), (b), (c), (d), (e)***
8 ***and (h) of K.S.A. 2011 Supp. 21-6606, and amendments thereto,***
9 ***regarding multiple sentences shall apply to the sentencing of offenders***
10 ***pursuant to the sentencing guidelines. The mandatory consecutive***
11 ***sentence requirements contained in subsections (c), (d) and (e) of K.S.A.***
12 ***2011 Supp. 21-6606, and amendments thereto, shall not apply if such***
13 ***application would result in a manifest injustice.***

14 ***(b) The sentencing judge shall otherwise have discretion to impose***
15 ***concurrent or consecutive sentences in multiple conviction cases. The***
16 ***sentencing judge may consider the need to impose an overall sentence***
17 ***that is proportionate to the harm and culpability and shall state on the***
18 ***record if the sentence is to be served concurrently or consecutively. In***
19 ***cases where consecutive sentences may be imposed by the sentencing***
20 ***judge, the following shall apply:***

21 ***(1) When the sentencing judge imposes multiple sentences***
22 ***consecutively, the consecutive sentences shall consist of an***
23 ***imprisonment term which ~~is~~ may not exceed the sum of the consecutive***
24 ***imprisonment terms, and a supervision term. The sentencing judge shall***
25 ***have the discretion to impose a consecutive term of imprisonment for a***
26 ***crime other than the primary crime of any term of months not to exceed***
27 ***the nonbase sentence as determined under subsection (b)(5). The***
28 ***postrelease supervision term will be based on the longest supervision***
29 ***term imposed for any of the crimes.***

30 ***(2) The sentencing judge shall establish a base sentence for the***
31 ***primary crime. The primary crime is the crime with the highest crime***
32 ***severity ranking. An off-grid crime shall not be used as the primary***
33 ***crime in determining the base sentence when imposing multiple***
34 ***sentences. If sentences for off-grid and on-grid convictions are ordered***
35 ***to run consecutively, the offender shall not begin to serve the on-grid***
36 ***sentence until paroled from the off-grid sentence, and the postrelease***
37 ***supervision term will be based on the off-grid crime. If more than one***
38 ***crime of conviction is classified in the same crime category, the***
39 ***sentencing judge shall designate which crime will serve as the primary***
40 ***crime. In the instance of sentencing with both the drug grid and the***
41 ***nondrug grid and simultaneously having a presumption of***
42 ***imprisonment and probation, the sentencing judge shall use the crime***
43 ***which presumes imprisonment as the primary crime. In the instance of***

1 *sentencing with both the drug grid and the nondrug grid and*
2 *simultaneously having a presumption of either both probation or both*
3 *imprisonment, the sentencing judge shall use the crime with the longest*
4 *sentence term as the primary crime.*

5 (3) *The base sentence is set using the total criminal history score*
6 *assigned.*

7 (4) *The total prison sentence imposed in a case involving multiple*
8 *convictions arising from multiple counts within an information,*
9 *complaint or indictment cannot exceed twice the base sentence. This*
10 *limit shall apply only to the total sentence, and it shall not be necessary*
11 *to reduce the duration of any of the nonbase sentences imposed to be*
12 *served consecutively to the base sentence. The postrelease supervision*
13 *term will reflect only the longest such term assigned to any of the crimes*
14 *for which consecutive sentences are imposed. Supervision periods shall*
15 *not be aggregated.*

16 (5) *Nonbase sentences shall not have criminal history scores*
17 *applied, as calculated in the criminal history I column of the grid, but*
18 *base sentences shall have the full criminal history score assigned. In the*
19 *event a conviction designated as the primary crime in a multiple*
20 *conviction case is reversed on appeal, the appellate court shall remand*
21 *the multiple conviction case for resentencing. Upon resentencing, if the*
22 *case remains a multiple conviction case the court shall follow all of the*
23 *provisions of this section concerning the sentencing of multiple*
24 *conviction cases.*

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

27 (7) *If the sentence for the consecutive sentences is a prison term,*
28 *the postrelease supervision term is a term of postrelease supervision as*
29 *established for the primary crime.*

30 (8) *If the sentence for the primary crime is a nonprison sentence, a*
31 *nonprison term will be imposed for each crime conviction, but the*
32 *nonprison terms shall not be aggregated or served consecutively even*
33 *though the underlying prison sentences have been ordered to be served*
34 *consecutively. Upon revocation of the nonprison sentence, the offender*
35 *shall serve the prison sentences consecutively as provided in this section.*

36 (c) *The following shall apply for a departure from the presumptive*
37 *sentence based on aggravating factors within the context of consecutive*
38 *sentences:*

39 (1) *The court may depart from the presumptive limits for*
40 *consecutive sentences only if the judge finds substantial and compelling*
41 *reasons to impose a departure sentence for any of the individual crimes*
42 *being sentenced consecutively.*

43 (2) *When a departure sentence is imposed for any of the individual*

1 *crimes sentenced consecutively, the imprisonment term of that departure*
2 *sentence shall not exceed twice the maximum presumptive imprisonment*
3 *term that may be imposed for that crime.*

4 *(3) The total imprisonment term of the consecutive sentences,*
5 *including the imprisonment term for the departure crime, shall not*
6 *exceed twice the maximum presumptive imprisonment term of the*
7 *departure sentence following aggravation.}*

8 Sec. ~~18.~~ {37.} K.S.A. 2011 Supp. 21-6821 is hereby amended to read
9 as follows: 21-6821. (a) The secretary of corrections is hereby authorized
10 to adopt rules and regulations providing for a system of good time
11 calculations. Such rules and regulations shall provide circumstances upon
12 which an inmate may earn good time credits and for the forfeiture of
13 earned credits. Such circumstances may include factors related to program
14 and work participation and conduct and the inmate's willingness to
15 examine and confront past behavioral patterns that resulted in the
16 commission of the inmate's crimes.

17 (b) For purposes of determining release of an inmate, the following
18 shall apply with regard to good time calculations:

19 (1) Good behavior by inmates is the expected norm and negative
20 behavior will be punished; and

21 (2) the amount of good time which can be earned by an inmate and
22 subtracted from any sentence is limited to:

23 (A) For a crime committed on or after July 1, 1993, an amount equal
24 to 15% of the prison part of the sentence; ~~or~~

25 (B) ~~for a drug severity level 3 or 4 or a nondrug severity level 7~~
26 ~~through 10 crime committed on or after January 1, 2008, an amount equal~~
27 ~~to 20% of the prison part of the sentence; or~~

28 (C) *for a drug severity level 3 or 4 crime committed on or after*
29 *January 1, 2008, but prior to July 1, 2012, or a drug severity level 4 or 5*
30 *crime committed on or after July 1, 2012, an amount equal to 20% of the*
31 *prison part of the sentence.*

32 (c) Any time which is earned and subtracted from the prison part of
33 the sentence of any inmate pursuant to good time calculation shall be
34 added to such inmate's postrelease supervision term.

35 (d) An inmate shall not be awarded good time credits pursuant to this
36 section for any review period established by the secretary of corrections in
37 which a court finds that the inmate has done any of the following while in
38 the custody of the secretary of corrections:

39 (1) Filed a false or malicious action or claim with the court;

40 (2) brought an action or claim with the court solely or primarily for
41 delay or harassment;

42 (3) testified falsely or otherwise submitted false evidence or
43 information to the court;

1 (4) attempted to create or obtain a false affidavit, testimony or
2 evidence; or

3 (5) abused the discovery process in any judicial action or proceeding.

4 (e) (1) For purposes of determining release of an inmate who is
5 serving only a sentence for a nondrug severity level 4 through 10 crime or
6 a drug severity level 3 or 4 crime committed on or after January 1, 2008,
7 *but prior to July 1, 2012, or an inmate who is serving only a sentence for a*
8 *nondrug severity level 4 through 10 crime or a drug severity level 4 or 5*
9 *crime committed on or after July 1, 2012, the secretary of corrections is*
10 *hereby authorized to adopt rules and regulations regarding program credit*
11 *calculations. Such rules and regulations shall provide circumstances upon*
12 *which an inmate may earn program credits and for the forfeiture of earned*
13 *credits and such circumstances may include factors substantially related to*
14 *program participation and conduct. In addition to any good time credits*
15 *earned and retained, the following shall apply with regard to program*
16 *credit calculations:*

17 (A) A system shall be developed whereby program credits may be
18 earned by inmates for the successful completion of requirements for a
19 general education diploma, a technical or vocational training program, a
20 substance abuse treatment program or any other program designated by the
21 secretary which has been shown to reduce offender's risk after release; and

22 (B) the amount of time which can be earned and retained by an
23 inmate for the successful completion of programs and subtracted from any
24 sentence is limited to not more than 60 days.

25 (2) Any time which is earned and subtracted from the prison part of
26 the sentence of any inmate pursuant to program credit calculation shall be
27 added to such inmate's postrelease supervision term, if applicable.

28 (3) When separate sentences of imprisonment for different crimes are
29 imposed on a defendant on the same date, a defendant shall only be
30 eligible for program credits if such crimes are a nondrug severity level 4
31 through 10 ~~or~~, a drug severity level 3 or 4 *committed prior to July 1,*
32 *2012, or a drug severity level 4 or 5 committed on or after July 1, 2012.*

33 (4) Program credits shall not be earned by any offender successfully
34 completing a sex offender treatment program.

35 (5) The secretary of corrections shall report to the Kansas sentencing
36 commission and the Kansas reentry policy council the data on the program
37 credit calculations.

38 Sec. ~~19~~ **38.** K.S.A. 2011 Supp. 21-6824 is hereby amended to read
39 as follows: 21-6824.. (a) There is hereby established a nonprison sanction
40 of certified drug abuse treatment programs for certain offenders who are
41 sentenced on or after November 1, 2003. Placement of offenders in
42 certified drug abuse treatment programs by the court shall be limited to
43 placement of adult offenders, convicted of a felony violation of K.S.A. 65-

1 4160 or 65-4162, prior to their repeal ~~or~~ , K.S.A. 2010 Supp. 21-36a06,
2 *prior to its transfer; or K.S.A. 2011 Supp. 21-5706*, and amendments
3 thereto:

4 (1) Whose offense is classified in grid blocks ~~4-E, 4-F, 4-G, 4-H or 4-~~
5 ~~† 5-C, 5-D, 5-E, 5-F, 5-G, 5-H or 5-I~~ of the sentencing guidelines grid for
6 drug crimes and such offender has no felony conviction of K.S.A. 65-
7 4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their repeal ~~or~~ ,
8 K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, *prior to their*
9 *transfer; or K.S.A. 2011 Supp. 21-5703, 21-5705 or 21-5716*, and
10 amendments thereto, or any substantially similar offense from another
11 jurisdiction; or

12 (2) whose offense is classified in grid blocks ~~4-A, 4-B, 4-C or 4-D~~ ~~5-~~
13 ~~A or 5-B~~ of the sentencing guidelines grid for drug crimes, such offender
14 has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163
15 or 65-4164, prior to their repeal, ~~or~~ K.S.A. 2010 Supp. 21-36a03, 21-
16 36a05 or 21-36a16, *prior to their transfer; or K.S.A. 2011 Supp. 21-5703,*
17 *21-5705 or 21-5716*, and amendments thereto, or any substantially similar
18 offense from another jurisdiction, if the person felonies in the offender's
19 criminal history were severity level 8, 9 or 10 or nongrid offenses of the
20 sentencing guidelines grid for nondrug crimes, and the court finds and sets
21 forth with particularity the reasons for finding that the safety of the
22 members of the public will not be jeopardized by such placement in a drug
23 abuse treatment program.

24 (b) As a part of the presentence investigation pursuant to K.S.A. 2011
25 Supp. 21-6813, and amendments thereto, offenders who meet the
26 requirements of subsection (a), *unless otherwise specifically ordered by*
27 *the court*, shall be subject to:

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

31 (2) a criminal risk-need assessment; ~~unless otherwise specifically~~
32 ~~ordered by the court~~. The criminal risk-need assessment shall assign a high
33 or low risk status to the offender.

34 (c) *If the offender is assigned a high risk status as determined by the*
35 *drug abuse assessment performed pursuant to subsection (b)(1) and a*
36 *moderate or high risk status as determined by the criminal risk-need*
37 *assessment performed pursuant to subsection (b)(2)*, the sentencing court
38 shall commit the offender to treatment in a drug abuse treatment program
39 until the court determines the offender is suitable for discharge by the
40 court. The term of treatment shall not exceed 18 months. The court may
41 extend the term of probation, pursuant to subsection (c)(3) of K.S.A. 2011
42 Supp. 21-6608, and amendments thereto. The term of treatment may not
43 exceed the term of probation.

1 (d) (1) Offenders who are committed to a drug abuse treatment
2 program pursuant to subsection (c) shall be supervised by community
3 correctional services.

4 (2) Offenders who are not committed to a drug abuse treatment
5 program pursuant to subsection (c) shall be supervised by community
6 correctional services or court services based on the result of the criminal
7 risk assessment.

8 (e) Placement of offenders under subsection (a)(2) shall be subject to
9 the departure sentencing statutes of the revised Kansas sentencing
10 guidelines act.

11 (f) (1) Offenders in drug abuse treatment programs shall be
12 discharged from such program if the offender:

13 (A) Is convicted of a new felony; or

14 (B) has a pattern of intentional conduct that demonstrates the
15 offender's refusal to comply with or participate in the treatment program,
16 as established by judicial finding.

17 (2) Offenders who are discharged from such program shall be subject
18 to the revocation provisions of subsection (n) of K.S.A. 2011 Supp. 21-
19 6604, and amendments thereto.

20 (g) As used in this section, "mental health professional" includes
21 licensed social workers, ~~licensed psychiatrists~~ persons licensed to practice
22 medicine and surgery, licensed psychologists, licensed professional
23 counselors or registered alcohol and other drug abuse counselors licensed
24 or certified as addiction counselors who have been certified by the
25 secretary of corrections to treat offenders pursuant to K.S.A. 2011 Supp.
26 75-52,144, and amendments thereto.

27 (h) (1) ~~The following~~ Offenders who meet the requirements of
28 subsection (a) shall not be subject to the provisions of this section and
29 shall be sentenced as otherwise provided by law, *if such offenders*:

30 (A) ~~Offenders who~~ Are residents of another state and are returning to
31 such state pursuant to the interstate corrections compact or the interstate
32 compact for adult offender supervision; or

33 (B) ~~offenders who~~ are not lawfully present in the United States and
34 being detained for deportation; *or*

35 (C) *do not meet the risk assessment levels provided in subsection (c).*

36 (2) Such sentence shall not be considered a departure and shall not be
37 subject to appeal.

38 Sec. ~~20.~~ ~~{39.}~~ K.S.A. 2011 Supp. 22-2802 is hereby amended to read
39 as follows: 22-2802. (1) Any person charged with a crime shall, at the
40 person's first appearance before a magistrate, be ordered released pending
41 preliminary examination or trial upon the execution of an appearance bond
42 in an amount specified by the magistrate and sufficient to assure the
43 appearance of such person before the magistrate when ordered and to

1 assure the public safety. If the person is being bound over for a felony, the
2 bond shall also be conditioned on the person's appearance in the district
3 court or by way of a two-way electronic audio-video communication as
4 provided in subsection (14) at the time required by the court to answer the
5 charge against such person and at any time thereafter that the court
6 requires. Unless the magistrate makes a specific finding otherwise, if the
7 person is being bonded out for a person felony or a person misdemeanor,
8 the bond shall be conditioned on the person being prohibited from having
9 any contact with the alleged victim of such offense for a period of at least
10 72 hours. The magistrate may impose such of the following additional
11 conditions of release as will reasonably assure the appearance of the
12 person for preliminary examination or trial:

13 (a) Place the person in the custody of a designated person or
14 organization agreeing to supervise such person;

15 (b) place restrictions on the travel, association or place of abode of
16 the person during the period of release;

17 (c) impose any other condition deemed reasonably necessary to
18 assure appearance as required, including a condition requiring that the
19 person return to custody during specified hours;

20 (d) place the person under a house arrest program pursuant to K.S.A.
21 2011 Supp. 21-6609, and amendments thereto; or

22 (e) place the person under the supervision of a court services officer
23 responsible for monitoring the person's compliance with any conditions of
24 release ordered by the magistrate. The magistrate may order the person to
25 pay for any costs associated with the supervision provided by the court
26 services department in an amount not to exceed \$15 per week of such
27 supervision. The magistrate may also order the person to pay for all other
28 costs associated with the supervision and conditions for compliance in
29 addition to the \$15 per week.

30 (2) In addition to any conditions of release provided in subsection (1),
31 for any person charged with a felony, the magistrate may order such
32 person to submit to a drug and alcohol abuse examination and evaluation
33 in a public or private treatment facility or state institution and, if
34 determined by the head of such facility or institution that such person is a
35 drug or alcohol abuser or is incapacitated by drugs or alcohol, to submit to
36 treatment for such drug or alcohol abuse, as a condition of release.

37 (3) The appearance bond shall be executed with sufficient solvent
38 sureties who are residents of the state of Kansas, unless the magistrate
39 determines, in the exercise of such magistrate's discretion, that requiring
40 sureties is not necessary to assure the appearance of the person at the time
41 ordered.

42 (4) A deposit of cash in the amount of the bond may be made in lieu
43 of the execution of the bond pursuant to subsection (3). Except as provided

1 in subsection (5), such deposit shall be in the full amount of the bond and
2 in no event shall a deposit of cash in less than the full amount of bond be
3 permitted. Any person charged with a crime who is released on a cash
4 bond shall be entitled to a refund of all moneys paid for the cash bond,
5 after deduction of any outstanding restitution, costs, fines and fees, after
6 the final disposition of the criminal case if the person complies with all
7 requirements to appear in court. The court may not exclude the option of
8 posting bond pursuant to subsection (3).

9 (5) Except as provided further, the amount of the appearance bond
10 shall be the same whether executed as described in subsection (3) or
11 posted with a deposit of cash as described in subsection (4). When the
12 appearance bond has been set at \$2,500 or less and the most serious charge
13 against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson
14 felony, a drug severity level 4 felony *committed prior to July 1, 2012, a*
15 *drug severity level 5 felony committed on or after July 1, 2012,* or a
16 violation of K.S.A. 8-1567, and amendments thereto, the magistrate may
17 allow the person to deposit cash with the clerk in the amount of 10% of the
18 bond, provided the person meets at least the following qualifications:

19 (A) Is a resident of the state of Kansas;

20 (B) has a criminal history score category of G, H or I;

21 (C) has no prior history of failure to appear for any court
22 appearances;

23 (D) has no detainer or hold from any other jurisdiction;

24 (E) has not been extradited from, and is not awaiting extradition to,
25 another state; and

26 (F) has not been detained for an alleged violation of probation.

27 (6) In the discretion of the court, a person charged with a crime may
28 be released upon the person's own recognizance by guaranteeing payment
29 of the amount of the bond for the person's failure to comply with all
30 requirements to appear in court. The release of a person charged with a
31 crime upon the person's own recognizance shall not require the deposit of
32 any cash by the person.

33 (7) The court shall not impose any administrative fee.

34 (8) In determining which conditions of release will reasonably assure
35 appearance and the public safety, the magistrate shall, on the basis of
36 available information, take into account the nature and circumstances of
37 the crime charged; the weight of the evidence against the defendant;
38 whether the defendant is lawfully present in the United States; the
39 defendant's family ties, employment, financial resources, character, mental
40 condition, length of residence in the community, record of convictions,
41 record of appearance or failure to appear at court proceedings or of flight
42 to avoid prosecution; the likelihood or propensity of the defendant to
43 commit crimes while on release, including whether the defendant will be

1 likely to threaten, harass or cause injury to the victim of the crime or any
2 witnesses thereto; and whether the defendant is on probation or parole
3 from a previous offense at the time of the alleged commission of the
4 subsequent offense.

5 (9) The appearance bond shall set forth all of the conditions of
6 release.

7 (10) A person for whom conditions of release are imposed and who
8 continues to be detained as a result of the person's inability to meet the
9 conditions of release shall be entitled, upon application, to have the
10 conditions reviewed without unnecessary delay by the magistrate who
11 imposed them. If the magistrate who imposed conditions of release is not
12 available, any other magistrate in the county may review such conditions.

13 (11) A magistrate ordering the release of a person on any conditions
14 specified in this section may at any time amend the order to impose
15 additional or different conditions of release. If the imposition of additional
16 or different conditions results in the detention of the person, the provisions
17 of subsection (10) shall apply.

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

22 (13) The appearance bond and any security required as a condition of
23 the defendant's release shall be deposited in the office of the magistrate or
24 the clerk of the court where the release is ordered. If the defendant is
25 bound to appear before a magistrate or court other than the one ordering
26 the release, the order of release, together with the bond and security shall
27 be transmitted to the magistrate or clerk of the court before whom the
28 defendant is bound to appear.

29 (14) Proceedings before a magistrate as provided in this section to
30 determine the release conditions of a person charged with a crime
31 including release upon execution of an appearance bond may be conducted
32 by two-way electronic audio-video communication between the defendant
33 and the judge in lieu of personal presence of the defendant or defendant's
34 counsel in the courtroom in the discretion of the court. The defendant may
35 be accompanied by the defendant's counsel. The defendant shall be
36 informed of the defendant's right to be personally present in the courtroom
37 during such proceeding if the defendant so requests. Exercising the right to
38 be present shall in no way prejudice the defendant.

39 (15) The magistrate may order the person to pay for any costs
40 associated with the supervision of the conditions of release of the
41 appearance bond in an amount not to exceed \$15 per week of such
42 supervision. As a condition of sentencing under K.S.A. 2011 Supp. 21-
43 6604, and amendments thereto, the court may impose the full amount of

1 any such costs in addition to the \$15 per week, including, but not limited
2 to, costs for treatment and evaluation under subsection (2).

3 Sec. ~~21~~ ~~{40}~~ K.S.A. 2011 Supp. 22-2908 is hereby amended to read
4 as follows: 22-2908. (a) In determining whether diversion of a defendant is
5 in the interests of justice and of benefit to the defendant and the
6 community, the county or district attorney shall consider at least the
7 following factors among all factors considered:

8 (1) The nature of the crime charged and the circumstances
9 surrounding it;

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

11 (3) whether the defendant is a first-time offender and if the defendant
12 has previously participated in diversion, according to the certification of
13 the Kansas bureau of investigation or the division of vehicles of the
14 department of revenue;

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

17 (5) whether the available diversion program is appropriate to the
18 needs of the defendant;

19 (6) the impact of the diversion of the defendant upon the community;

20 (7) recommendations, if any, of the involved law enforcement
21 agency;

22 (8) recommendations, if any, of the victim;

23 (9) provisions for restitution; and

24 (10) any mitigating circumstances.

25 (b) A county or district attorney shall not enter into a diversion
26 agreement in lieu of further criminal proceedings on a complaint if:

27 (1) The complaint alleges a violation of K.S.A. 8-1567, and
28 amendments thereto, and the defendant: (A) Has previously participated in
29 diversion upon a complaint alleging a violation of that statute or an
30 ordinance of a city in this state which prohibits the acts prohibited by that
31 statute; (B) has previously been convicted of or pleaded nolo contendere to
32 a violation of that statute or a violation of a law of another state or of a
33 political subdivision of this or any other state, which law prohibits the acts
34 prohibited by that statute; or (C) during the time of the alleged violation
35 was involved in a motor vehicle accident or collision resulting in personal
36 injury or death;

37 (2) the complaint alleges that the defendant committed a class A or B
38 felony or for crimes committed on or after July 1, 1993, an off-grid crime,
39 a severity level 1, 2 or 3 felony for nondrug crimes ~~or~~ , a drug severity
40 level 1 or 2 felony for drug crimes *committed on or after July 1, 1993, but*
41 *prior to July 1, 2012, or a drug severity level 1, 2 or 3 felony committed*
42 *on or after July 1, 2012;* or

43 (3) the complaint alleges a domestic violence offense, as defined in

1 K.S.A. 2011 Supp. 21-5111, and amendments thereto, and the defendant
2 has participated in two or more diversions in the previous five year period
3 upon complaints alleging a domestic violence offense.

4 (c) A county or district attorney may enter into a diversion agreement
5 in lieu of further criminal proceedings on a complaint for violations of
6 article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments
7 thereto, if such diversion carries the same penalties as the conviction for
8 the corresponding violations. If the defendant has previously participated
9 in one or more diversions for violations of article 10 of chapter 32 of the
10 Kansas Statutes Annotated, and amendments thereto, then each subsequent
11 diversion shall carry the same penalties as the conviction for the
12 corresponding violations.

13 Sec. ~~22-41~~ *{41}* K.S.A. 2011 Supp. 22-3412 is hereby amended to read
14 as follows: 22-3412. (a) (1) For crimes committed before July 1, 1993,
15 peremptory challenges shall be allowed as follows:

16 (A) Each defendant charged with a class A felony shall be allowed 12
17 peremptory challenges.

18 (B) Each defendant charged with a class B felony shall be allowed
19 eight peremptory challenges.

20 (C) Each defendant charged with a felony other than class A or class
21 B felony shall be allowed six peremptory challenges.

22 (D) Each defendant charged with a misdemeanor shall be allowed
23 three peremptory challenges.

24 (E) Additional peremptory challenges shall not be allowed on account
25 of separate counts charged in the complaint, information or indictment.

26 (F) The prosecution shall be allowed the same number of peremptory
27 challenges as all the defendants.

28 (2) For crimes committed on or after July 1, 1993, peremptory
29 challenges shall be allowed as follows:

30 (A) Each defendant charged with an off-grid felony ~~or~~, a nondrug ~~or~~
31 ~~drug~~-felony ranked at severity level 1, *or a drug felony ranked at severity*
32 *level 1 or 2*, shall be allowed 12 peremptory challenges.

33 (B) Each defendant charged with a nondrug felony ranked at severity
34 level 2, 3, 4, 5 or 6, or a drug felony ranked at severity level ~~2~~ *or 3 or 4*,
35 shall be allowed 8 peremptory challenges.

36 (C) Each defendant charged with an unclassified felony, a nondrug
37 severity level 7, 8, 9 or 10, or a drug severity level ~~4~~ *5* felony, shall be
38 allowed six peremptory challenges.

39 (D) Each defendant charged with a misdemeanor shall be allowed
40 three peremptory challenges.

41 (E) The prosecution shall be allowed the same number of peremptory
42 challenges as all defendants.

43 (F) The most serious penalty offense charged against each defendant

1 furnishes the criterion for determining the allowed number of peremptory
2 challenges for that defendant.

3 (G) Additional peremptory challenges shall not be allowed when
4 separate counts are charged in the complaint, information or indictment.

5 (H) Except as otherwise provided in this subsection, the provisions of
6 this section shall apply. In applying the provisions of this section, the trial
7 court may determine the number of peremptory challenges to allow by
8 reviewing the classification for the crime charged, or nearest comparable
9 felony, as it was classified under the criminal law in effect prior to July 1,
10 1993. If the severity level of the most serious crime charged raises the
11 potential penalty above that of another crime which was classified higher
12 under the criminal law in effect prior to July 1, 1993, the defendant shall
13 be allowed the number of peremptory challenges as for that higher
14 classified crime under the prior system.

15 (I) The trial court shall resolve any conflicts with a liberal
16 construction in favor of allowing the greater number of peremptory
17 challenges.

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

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

1 the same rules and regulations as though such juror had been selected as
2 one of the original jurors.

3 Sec. ~~23~~ {42.} K.S.A. 2011 Supp. 22-3604 is hereby amended to read
4 as follows: 22-3604. (1) Except as provided in subsection (3), a defendant
5 shall not be held in jail nor subject to an appearance bond during the
6 pendency of an appeal by the prosecution.

7 (2) The time during which an appeal by the prosecution is pending
8 shall not be counted for the purpose of determining whether a defendant is
9 entitled to discharge under K.S.A. 22-3402, and amendments thereto. For
10 purposes of this section, "an appeal by the prosecution" includes, but is not
11 limited to, appeals authorized by subsection (b) of K.S.A. 22-3602, and
12 amendments thereto, appeals authorized by K.S.A. 22-3603, and
13 amendments thereto, and any appeal by the prosecution which seeks
14 discretionary review in the supreme court of Kansas or the United States
15 supreme court. Such an appeal remains "pending" until final resolution by
16 the court of last resort.

17 (3) A defendant charged with a class A, B or C felony or, if the felony
18 was committed on or after July 1, 1993, an off-grid felony, a nondrug
19 severity level 1 through 5 felony or a drug severity level 1 through 3 4
20 felony crime shall not be released from jail or the conditions of such
21 person's appearance bond during the pendency of an appeal by the
22 prosecution. The time during which an appeal by the prosecution is
23 pending in a class A, B or C felony or, if the felony was committed on or
24 after July 1, 1993, an off-grid felony, a nondrug severity level 1 through 5
25 felony or a drug severity level 1 through 3 4 felony case shall not be
26 counted for the purpose of determining whether the defendant is entitled to
27 discharge under K.S.A. 22-3402, and amendments thereto.

28 Sec. ~~24~~ {43.} K.S.A. 2011 Supp. 22-3717 is hereby amended to read
29 as follows: 22-3717.(a) Except as otherwise provided by this section;
30 K.S.A. 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4635 through
31 21-4638, prior to their repeal; K.S.A. 21-4624, prior to its repeal; K.S.A.
32 21-4642, prior to its repeal; K.S.A. 2011 Supp. 21-6617, 21-6620, 21-
33 6623, 21-6624, 21-6625 and 21-6626, and amendments thereto; and
34 K.S.A. 8-1567, and amendments thereto; an inmate, including an inmate
35 sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2011
36 Supp. 21-6707, and amendments thereto, shall be eligible for parole after
37 serving the entire minimum sentence imposed by the court, less good time
38 credits.

39 (b) (1) Except as provided by K.S.A. 21-4635 through 21-4638, prior
40 to their repeal, and K.S.A. 2011 Supp. 21-6620, 21-6623, 21-6624 and 21-
41 6625, and amendments thereto, an inmate sentenced to imprisonment for
42 the crime of capital murder, or an inmate sentenced for the crime of
43 murder in the first degree based upon a finding of premeditated murder,

1 committed on or after July 1, 1994, shall be eligible for parole after
2 serving 25 years of confinement, without deduction of any good time
3 credits.

4 (2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993
5 Supp. 21-4628, prior to its repeal, K.S.A. 21-4635 through 21-4638, prior
6 to their repeal, and K.S.A. 2011 Supp. 21-6620, 21-6623, 21-6624 and 21-
7 6625, and amendments thereto, an inmate sentenced to imprisonment for
8 an off-grid offense committed on or after July 1, 1993, but prior to July 1,
9 1999, shall be eligible for parole after serving 15 years of confinement,
10 without deduction of any good time credits and an inmate sentenced to
11 imprisonment for an off-grid offense committed on or after July 1, 1999,
12 shall be eligible for parole after serving 20 years of confinement without
13 deduction of any good time credits.

14 (3) Except as provided by K.S.A. 1993 Supp. 21-4628, prior to its
15 repeal, an inmate sentenced for a class A felony committed before July 1,
16 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to
17 its repeal, or K.S.A. 2011 Supp. 21-6707, and amendments thereto, shall
18 be eligible for parole after serving 15 years of confinement, without
19 deduction of any good time credits.

20 (4) An inmate sentenced to imprisonment for a violation of
21 subsection (a) of K.S.A. 21-3402, prior to its repeal, committed on or after
22 July 1, 1996, but prior to July 1, 1999, shall be eligible for parole after
23 serving 10 years of confinement without deduction of any good time
24 credits.

25 (5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
26 4643, prior to its repeal, or K.S.A. 2011 Supp. 21-6627, and amendments
27 thereto, committed on or after July 1, 2006, shall be eligible for parole
28 after serving the mandatory term of imprisonment without deduction of
29 any good time credits.

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

34 (A) The aggregate minimum sentences, as determined pursuant to
35 K.S.A. 21-4608, prior to its repeal, or K.S.A. 2011 Supp. 21-6606, and
36 amendments thereto, less good time credits for those crimes which are not
37 class A felonies; and

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

40 (2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-
41 4643, prior to its repeal, or K.S.A. 2011 Supp. 21-6627, and amendments
42 thereto, for crimes committed on or after July 1, 2006, the inmate shall be
43 eligible for parole after serving the mandatory term of imprisonment.

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

6 (A) Except as provided in subparagraphs (D) and (E), persons
7 sentenced for nondrug severity level 1 through 4 crimes ~~and~~, drug severity
8 levels 1 and 2 crimes *committed on or after July 1, 1993, but prior to July*
9 *1, 2012, and drug severity levels 1, 2 and 3 crimes committed on or after*
10 *July 1, 2012*, must serve 36 months, plus the amount of good time and
11 program credit earned and retained pursuant to K.S.A. 21-4722, prior to its
12 repeal, or K.S.A. 2011 Supp. 21-6821, and amendments thereto, on
13 postrelease supervision.

14 (B) Except as provided in subparagraphs (D) and (E), persons
15 sentenced for nondrug severity levels 5 and 6 crimes ~~and~~, drug severity
16 level 3 crimes *committed on or after July 1, 1993, but prior to July 1,*
17 *2012, and drug severity levels 4 crimes committed on or after July 1,*
18 *2012*, must serve 24 months, plus the amount of good time and program
19 credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal,
20 or K.S.A. 2011 Supp. 21-6821, and amendments thereto, on postrelease
21 supervision.

22 (C) Except as provided in subparagraphs (D) and (E), persons
23 sentenced for nondrug severity level 7 through 10 crimes ~~and~~, drug
24 severity level 4 crimes *committed on or after July 1, 1993, but prior to*
25 *July 1, 2012, and drug severity levels 5 crimes committed on or after July*
26 *1, 2012*, must serve 12 months, plus the amount of good time and program
27 credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal,
28 or K.S.A. 2011 Supp. 21-6821, and amendments thereto, on postrelease
29 supervision.

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

36 (ii) If the sentencing judge departs from the presumptive postrelease
37 supervision period, the judge shall state on the record at the time of
38 sentencing the substantial and compelling reasons for the departure.
39 Departures in this section are subject to appeal pursuant to K.S.A. 21-
40 4721, prior to its repeal, or K.S.A. 2011 Supp. 21-6820, and amendments
41 thereto.

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

1 (a) Written briefs or oral arguments submitted by either the defendant
2 or the state;

3 (b) any evidence received during the proceeding;

4 (c) the presentence report, the victim's impact statement and any
5 psychological evaluation as ordered by the court pursuant to subsection (e)
6 of K.S.A. 21-4714, prior to its repeal, or subsection (e) of K.S.A. 2011
7 Supp. 21-6813, and amendments thereto; and

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

9 (iv) The sentencing judge may order that a psychological evaluation
10 be prepared and the recommended programming be completed by the
11 offender. The department of corrections or the ~~parole~~ *prisoner review*
12 board shall ensure that court ordered sex offender treatment be carried out.

13 (v) In carrying out the provisions of subparagraph (d)(1)(D), the court
14 shall refer to K.S.A. 21-4718, prior to its repeal, or K.S.A. 2011 Supp. 21-
15 6817, and amendments thereto.

16 (vi) Upon petition, the ~~parole~~ *prisoner review* board may provide for
17 early discharge from the postrelease supervision period upon completion
18 of court ordered programs and completion of the presumptive postrelease
19 supervision period, as determined by the crime of conviction, pursuant to
20 subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from
21 postrelease supervision is at the discretion of the ~~parole~~ board.

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

25 (viii) Persons convicted of K.S.A. 21-3510 or 21-3511, prior to their
26 repeal, or K.S.A. 2011 Supp. 21-5508, and amendments thereto, shall be
27 required to participate in a treatment program for sex offenders during the
28 postrelease supervision period.

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

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

41 (G) Except as provided in subsection (u), persons convicted of a
42 sexually violent crime committed on or after July 1, 2006, and who are
43 released from prison, shall be released to a mandatory period of

1 postrelease supervision for the duration of the person's natural life.

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

3 (A) Rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 2011 Supp.
4 21-5503, and amendments thereto;

5 (B) indecent liberties with a child, K.S.A. 21-3503, prior to its repeal,
6 or subsection (a) of K.S.A. 2011 Supp. 21-5506, and amendments thereto;

7 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, prior
8 to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5506, and
9 amendments thereto;

10 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505,
11 prior to its repeal, or subsection (a)(3) and (a)(4) of K.S.A. 2011 Supp. 21-
12 5504, and amendments thereto;

13 (E) aggravated criminal sodomy, K.S.A. 21-3506, prior to its repeal,
14 or subsection (b) of K.S.A. 2011 Supp. 21-5504, and amendments thereto;

15 (F) indecent solicitation of a child, K.S.A. 21-3510, prior to its repeal,
16 or subsection (a) of K.S.A. 2011 Supp. 21-5508, and amendments thereto;

17 (G) aggravated indecent solicitation of a child, K.S.A. 21-3511, prior
18 to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5508, and
19 amendments thereto;

20 (H) sexual exploitation of a child, K.S.A. 21-3516, prior to its repeal,
21 or K.S.A. 2011 Supp. 21-5510, and amendments thereto;

22 (I) aggravated sexual battery, K.S.A. 21-3518, prior to its repeal, or
23 subsection (b) of K.S.A. 2011 Supp. 21-5505, and amendments thereto;

24 (J) aggravated incest, K.S.A. 21-3603, prior to its repeal, or
25 subsection (b) of K.S.A. 2011 Supp. 21-5604, and amendments thereto; or

26 (K) an attempt, conspiracy or criminal solicitation, as defined in
27 K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2011
28 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a
29 sexually violent crime as defined in this section.

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

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

40 (f) If a person is sentenced to prison for a crime committed on or after
41 July 1, 1993, while on probation, parole, conditional release or in a
42 community corrections program, for a crime committed prior to July 1,
43 1993, and the person is not eligible for retroactive application of the

1 sentencing guidelines and amendments thereto pursuant to K.S.A. 21-
2 4724, prior to its repeal, the new sentence shall not be aggregated with the
3 old sentence, but shall begin when the person is paroled or reaches the
4 conditional release date on the old sentence. If the offender was past the
5 offender's conditional release date at the time the new offense was
6 committed, the new sentence shall not be aggregated with the old sentence
7 but shall begin when the person is ordered released by the ~~Kansas parole~~
8 *prisoner review* board or reaches the maximum sentence expiration date on
9 the old sentence, whichever is earlier. The new sentence shall then be
10 served as otherwise provided by law. The period of postrelease supervision
11 shall be based on the new sentence, except that those offenders whose old
12 sentence is a term of imprisonment for life, imposed pursuant to K.S.A.
13 1993 Supp. 21-4628, prior to its repeal, or an indeterminate sentence with
14 a maximum term of life imprisonment, for which there is no conditional
15 release or maximum sentence expiration date, shall remain on postrelease
16 supervision for life or until discharged from supervision by the ~~Kansas~~
17 *parole prisoner review* board.

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

34 (h) The ~~Kansas parole prisoner review~~ board shall hold a parole
35 hearing at least the month prior to the month an inmate will be eligible for
36 parole under subsections (a), (b) and (c). At least the month preceding the
37 parole hearing, the county or district attorney of the county where the
38 inmate was convicted shall give written notice of the time and place of the
39 public comment sessions for the inmate to any victim of the inmate's crime
40 who is alive and whose address is known to the county or district attorney
41 or, if the victim is deceased, to the victim's family if the family's address is
42 known to the county or district attorney. Except as otherwise provided,
43 failure to notify pursuant to this section shall not be a reason to postpone a

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

34 (i) In those cases involving inmates sentenced for a crime committed
35 after July 1, 1993, the ~~parole~~ *prisoner review* board will review the
36 inmates proposed release plan. The board may schedule a hearing if they
37 desire. The board may impose any condition they deem necessary to insure
38 public safety, aid in the reintegration of the inmate into the community, or
39 items not completed under the agreement entered into under K.S.A. 75-
40 5210a, and amendments thereto. The board may not advance or delay an
41 inmate's release date. Every inmate while on postrelease supervision shall
42 remain in the legal custody of the secretary of corrections and is subject to
43 the orders of the secretary.

1 (j) (1) Before ordering the parole of any inmate, the ~~Kansas parole~~
2 *prisoner review* board shall have the inmate appear either in person or via
3 a video conferencing format and shall interview the inmate unless
4 impractical because of the inmate's physical or mental condition or
5 absence from the institution. Every inmate while on parole shall remain in
6 the legal custody of the secretary of corrections and is subject to the orders
7 of the secretary. Whenever the ~~Kansas parole~~ board formally considers
8 placing an inmate on parole and no agreement has been entered into with
9 the inmate under K.S.A. 75-5210a, and amendments thereto, the board
10 shall notify the inmate in writing of the reasons for not granting parole. If
11 an agreement has been entered under K.S.A. 75-5210a, and amendments
12 thereto, and the inmate has not satisfactorily completed the programs
13 specified in the agreement, or any revision of such agreement, the board
14 shall notify the inmate in writing of the specific programs the inmate must
15 satisfactorily complete before parole will be granted. If parole is not
16 granted only because of a failure to satisfactorily complete such programs,
17 the board shall grant parole upon the secretary's certification that the
18 inmate has successfully completed such programs. If an agreement has
19 been entered under K.S.A. 75-5210a, and amendments thereto, and the
20 secretary of corrections has reported to the board in writing that the inmate
21 has satisfactorily completed the programs required by such agreement, or
22 any revision thereof, the board shall not require further program
23 participation. However, if the board determines that other pertinent
24 information regarding the inmate warrants the inmate's not being released
25 on parole, the board shall state in writing the reasons for not granting the
26 parole. If parole is denied for an inmate sentenced for a crime other than a
27 class A or class B felony or an off-grid felony, the board shall hold another
28 parole hearing for the inmate not later than one year after the denial unless
29 the ~~parole~~ board finds that it is not reasonable to expect that parole would
30 be granted at a hearing if held in the next three years or during the interim
31 period of a deferral. In such case, the ~~parole~~ board may defer subsequent
32 parole hearings for up to three years but any such deferral by the board
33 shall require the board to state the basis for its findings. If parole is denied
34 for an inmate sentenced for a class A or class B felony or an off-grid
35 felony, the board shall hold another parole hearing for the inmate not later
36 than three years after the denial unless the ~~parole~~ board finds that it is not
37 reasonable to expect that parole would be granted at a hearing if held in
38 the next 10 years or during the interim period of a deferral. In such case,
39 the ~~parole~~ board may defer subsequent parole hearings for up to 10 years
40 but any such deferral shall require the board to state the basis for its
41 findings.

42 (2) Inmates sentenced for a class A or class B felony who have not
43 had a parole board hearing in the five years prior to July 1, 2010, shall

1 have such inmates' cases reviewed by the parole board on or before July 1,
2 2012. Such review shall begin with the inmates with the oldest deferral
3 date and progress to the most recent. Such review shall be done utilizing
4 existing resources unless the parole board determines that such resources
5 are insufficient. If the parole board determines that such resources are
6 insufficient, then the provisions of this paragraph are subject to
7 appropriations therefor.

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

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

20 (m) Whenever the ~~Kansas parole~~ *prisoner review* board orders the
21 parole of an inmate or establishes conditions for an inmate placed on
22 postrelease supervision, 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
25 postrelease supervision that the parolee or the person on postrelease
26 supervision pay any transportation expenses resulting from returning the
27 parolee 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,
30 conditional 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
33 supervision make progress towards or successfully complete the
34 equivalent of a secondary education if the inmate has not previously
35 completed such 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
38 agencies, private corporations organized not-for-profit or charitable or
39 social 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
42 amendments thereto, unless the board finds compelling circumstances
43 which 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
4 expenditures by the state board of indigents' defense services to provide
5 counsel and other defense services to the person. In determining the
6 amount and method of payment of such sum, the ~~parole~~ board shall take
7 account of the financial resources of the person and the nature of the
8 burden that the payment of such sum will impose. Such amount shall not
9 exceed the amount claimed by appointed counsel on the payment voucher
10 for indigents' defense services or the amount prescribed by the board of
11 indigents' 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~~ *prisoner*
17 *review* board shall order as a condition of parole or postrelease supervision
18 that the inmate pay restitution in the amount and manner provided in the
19 journal entry unless the board finds compelling circumstances which
20 would render a plan of restitution unworkable.

21 (o) Whenever the ~~Kansas parole~~ *prisoner review* board grants the
22 parole of an inmate, the board, within 14 days of the date of the decision to
23 grant parole, shall give written notice of the decision to the county or
24 district attorney of the 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 on
31 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 an
36 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 taking
39 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 May 25, 2000 who are eligible for
43 modification of their postrelease supervision obligation, the department of

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

11 (u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
12 4643, prior to its repeal, or K.S.A. 2011 Supp. 21-6627, and amendments
13 thereto, for crimes committed on or after July 1, 2006, shall be placed on
14 parole for life and shall not be discharged from supervision by the ~~Kansas~~
15 ~~parole prisoner review~~ board. When the board orders the parole of an
16 inmate pursuant to this subsection, the board shall order as a condition of
17 parole that the inmate be electronically monitored for the duration of the
18 inmate's natural life.

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

26 Sec. ~~25~~ ~~{44}~~ K.S.A. 2011 Supp. 38-2346 is hereby amended to read
27 as follows: 38-2346. (a) Except as provided in subsection (b), each county
28 or district attorney may adopt a policy and establish guidelines for an
29 immediate intervention program by which a juvenile may avoid
30 prosecution. In addition to the county or district attorney adopting policies
31 and guidelines for the immediate intervention programs, the court, the
32 county or district attorney and the director of the intake and assessment
33 center, pursuant to a written agreement, may develop local programs to:

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

38 (2) Allow intake and assessment workers to issue a summons, as
39 defined in subsection (e) or if the county or district attorney has adopted
40 appropriate policies and guidelines, allow law enforcement officers to
41 issue such a summons.

42 (3) Allow the intake and assessment centers to directly purchase
43 services for the juvenile and the juvenile's family.

1 (4) Allow intake and assessment workers to direct the release of a
2 juvenile prior to a detention hearing after the completion of the intake and
3 assessment process if the juvenile intake and assessment worker has
4 reason to believe that if released the juvenile will appear for further
5 proceedings and is not dangerous to self or others.

6 (b) An immediate intervention program shall provide that an alleged
7 juvenile offender is ineligible for such program if the juvenile faces
8 pending charges as a juvenile offender, for committing acts which, if
9 committed by an adult, would constitute:

10 (1) A violation of K.S.A. 8-1567, and amendments thereto, and the
11 juvenile: (A) Has previously participated in an immediate intervention
12 program instead of prosecution of a complaint alleging a violation of that
13 statute or an ordinance of a city in this state which prohibits the acts
14 prohibited by that statute; (B) has previously been adjudicated of a
15 violation of that statute or a violation of a law of another state or of a
16 political subdivision of this or any other state, which law prohibits the acts
17 prohibited by that statute; or (C) during the time of the alleged violation
18 was involved in a motor vehicle accident or collision resulting in personal
19 injury or death; or

20 (2) a violation of an off-grid crime, a severity level 1, 2 or 3 felony
21 for nondrug crimes ~~or~~, a drug severity level 1 or 2 felony for drug crimes
22 committed prior to July 1, 2012, or a drug severity level 1, 2 or 3 felony
23 for drug crimes committed on or after July 1, 2012.

24 (c) An immediate intervention program may include a stipulation,
25 agreed to by the juvenile, the juvenile's attorney and the attorney general
26 or county or district attorney, of the facts upon which the charge is based
27 and a provision that if the juvenile fails to fulfill the terms of the specific
28 immediate intervention agreement and the immediate intervention
29 proceedings are resumed, the proceedings, including any proceedings on
30 appeal, shall be conducted on the record of the stipulation of facts.

31 (d) The county or district attorney may require the parent of a
32 juvenile to be a part of the immediate intervention program.

33 (e) "Summons" means a written order issued by an intake and
34 assessment worker or a law enforcement officer directing that a juvenile
35 appear before a designated court at a stated time and place to answer a
36 pending charge.

37 (f) The provisions of this section shall not be applicable in judicial
38 districts that adopt district court rules pursuant to K.S.A. 20-342, and
39 amendments thereto, for the administration of immediate intervention
40 programs by the district court.

41 Sec. ~~26~~ ~~{45}~~ K.S.A. 2011 Supp. 38-2347 is hereby amended to read
42 as follows: 38-2347. (a) (1) Except as otherwise provided in this section, at
43 any time after commencement of proceedings under this code against a

1 juvenile and prior to the beginning of an evidentiary hearing at which the
2 court may enter a sentence as provided in K.S.A. 2011 Supp. 38-2356, and
3 amendments thereto, the county or district attorney or the county or district
4 attorney's designee may file a motion requesting that the court authorize
5 prosecution of the juvenile as an adult under the applicable criminal
6 statute. The juvenile shall be presumed to be a juvenile unless good cause
7 is shown to prosecute the juvenile as an adult.

8 (2) The alleged juvenile offender shall be presumed to be an adult if
9 the alleged juvenile offender was: (A) 14, 15, 16 or 17 years of age at the
10 time of the offense or offenses alleged in the complaint, if any such
11 offense: (i) If committed by an adult, would constitute an off-grid crime, a
12 person felony; or a nondrug severity level 1 through 6 felony ~~or any~~; (ii)
13 *committed prior to July 1, 2012, if committed by an adult prior to July 1,*
14 *2012, would constitute a drug severity level 1, 2 or 3 felony; (iii)*
15 *committed on or after July 1, 2012, if committed by an adult on or after*
16 *July 1, 2012, would constitute a drug severity level 1, 2, 3 or 4 felony; or*
17 ~~(ii)~~ (iv) was committed while in possession of a firearm; or (B) charged
18 with a felony or with more than one offense, one or more of which
19 constitutes a felony, after having been adjudicated or convicted in a
20 separate juvenile proceeding as having committed an offense which would
21 constitute a felony if committed by an adult and the adjudications or
22 convictions occurred prior to the date of the commission of the new act
23 charged and prior to the beginning of an evidentiary hearing at which the
24 court may enter a sentence as provided in K.S.A. 2011 Supp. 38-2356, and
25 amendments thereto. If the juvenile is presumed to be an adult, the burden
26 is on the juvenile to rebut the presumption by a preponderance of the
27 evidence.

28 (3) At any time after commencement of proceedings under this code
29 against a juvenile offender and prior to the beginning of an evidentiary
30 hearing at which the court may enter a sentence as provided in K.S.A.
31 2011 Supp. 38-2356, and amendments thereto, the county or district
32 attorney or the county or district attorney's designee may file a motion
33 requesting that the court designate the proceedings as an extended
34 jurisdiction juvenile prosecution.

35 (4) If the county or district attorney or the county or district attorney's
36 designee files a motion to designate the proceedings as an extended
37 jurisdiction juvenile prosecution and the juvenile was 14, 15, 16 or 17
38 years of age at the time of the offense or offenses alleged in the complaint
39 and: (A) charged with an offense: (i) If committed by an adult, would
40 constitute an off-grid crime, a person felony; or a nondrug severity level 1
41 through 6 felony ~~or any~~; (ii) *committed prior to July 1, 2012, if*
42 *committed by an adult prior to July 1, 2012, would constitute a drug*
43 *severity level 1, 2 or 3 felony; (iii) committed on or after July 1, 2012, if*

1 *committed by an adult on or after July 1, 2012, would constitute a drug*
2 *severity level 1, 2, 3 or 4 felony; or (ii) (iv) was committed while in*
3 *possession of a firearm; or (B) charged with a felony or with more than,*
4 *one offense, one or more of which constitutes a felony, after having been*
5 *adjudicated or convicted in a separate juvenile proceeding as having*
6 *committed an act which would constitute a felony if committed by an adult*
7 *and the adjudications or convictions occurred prior to the date of the*
8 *commission of the new offense charged, the burden is on the juvenile to*
9 *rebut the designation of an extended jurisdiction juvenile prosecution by a*
10 *preponderance of the evidence. In all other motions requesting that the*
11 *court designate the proceedings as an extended jurisdiction juvenile*
12 *prosecution, the juvenile is presumed to be a juvenile. The burden of proof*
13 *is on the prosecutor to prove the juvenile should be designated as an*
14 *extended jurisdiction juvenile.*

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

23 (c) (1) Upon receiving the motion, the court shall set a time and place
24 for hearing. The court shall give notice of the hearing to the juvenile, each
25 parent, if service is possible, and the attorney representing the juvenile.
26 The motion shall be heard and determined prior to any further proceedings
27 on the complaint.

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

- 30 (A) The nature of the charges in the complaint;
31 (B) the right of the juvenile to be presumed innocent of each charge;
32 (C) the right to trial without unnecessary delay and to confront and
33 cross-examine witnesses appearing in support of the allegations of the
34 complaint;
35 (D) the right to subpoena witnesses;
36 (E) the right of the juvenile to testify or to decline to testify; and
37 (F) the sentencing alternatives the court may select as the result of the
38 juvenile being prosecuted under an extended jurisdiction juvenile
39 prosecution.

40 (d) If the juvenile fails to appear for hearing on the motion after
41 having been served with notice of the hearing, the court may hear and
42 determine the motion in the absence of the juvenile. If the court is unable
43 to obtain service of process and give notice of the hearing, the court may

1 hear and determine the motion in the absence of the alleged juvenile
2 offender after having given notice of the hearing at least once a week for
3 two consecutive weeks in the official county newspaper of the county
4 where the hearing will be held.

5 (e) In determining whether or not prosecution as an adult should be
6 authorized or designating the proceeding as an extended jurisdiction
7 juvenile prosecution, the court shall consider each of the following factors:

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

11 (2) whether the alleged offense was committed in an aggressive,
12 violent, premeditated or willful manner;

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

16 (4) the number of alleged offenses unadjudicated and pending against
17 the juvenile;

18 (5) the previous history of the juvenile, including whether the
19 juvenile had been adjudicated a juvenile offender under this code or the
20 Kansas juvenile justice code and, if so, whether the offenses were against
21 persons or property, and any other previous history of antisocial behavior
22 or patterns of physical violence;

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

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

29 (8) whether the interests of the juvenile or of the community would
30 be better served by criminal prosecution or extended jurisdiction juvenile
31 prosecution.

32 The insufficiency of evidence pertaining to any one or more of the
33 factors listed in this subsection, in and of itself, shall not be determinative
34 of the issue. Subject to the provisions of K.S.A. 2011 Supp. 38-2354, and
35 amendments thereto, written reports and other materials relating to the
36 juvenile's mental, physical, educational and social history may be
37 considered by the court.

38 (f) (1) The court may authorize prosecution as an adult upon
39 completion of the hearing if the court finds from a preponderance of the
40 evidence that the alleged juvenile offender should be prosecuted as an
41 adult for the offense charged. In that case, the court shall direct the alleged
42 juvenile offender be prosecuted under the applicable criminal statute and
43 that the proceedings filed under this code be dismissed.

1 (2) The court may designate the proceeding as an extended
2 jurisdiction juvenile prosecution upon completion of the hearing if the
3 juvenile has failed to rebut the presumption or the court finds from a
4 preponderance of the evidence that the juvenile should be prosecuted
5 under an extended jurisdiction juvenile prosecution.

6 (3) After a proceeding in which prosecution as an adult is requested
7 pursuant to subsection (a)(2), and prosecution as an adult is not authorized,
8 the court may designate the proceedings to be an extended jurisdiction
9 juvenile prosecution.

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

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

23 (h) If the juvenile is convicted, the authorization for prosecution as an
24 adult shall attach and apply to any future prosecutions of the juvenile
25 which are or would be cognizable under this code. If the juvenile is not
26 convicted, the authorization for prosecution as an adult shall not attach and
27 shall not apply to future prosecutions of the juvenile which are or would be
28 cognizable under this code.

29 (i) If the juvenile is prosecuted as an adult under subsection (a)(2)
30 and is not convicted in adult court of an offense listed in subsection (a)(2)
31 but is convicted or adjudicated of a lesser included offense, the juvenile
32 shall be a juvenile offender and receive a sentence pursuant to K.S.A. 2011
33 Supp. 38-2361, and amendments thereto.

34 Sec. ~~27~~ **{46}**. K.S.A. 2011 Supp. 38-2369 is hereby amended to read
35 as follows: 38-2369. (a) For the purpose of committing juvenile offenders
36 to a juvenile correctional facility, the following placements shall be
37 applied by the judge in felony or misdemeanor cases. If used, the court
38 shall establish a specific term of commitment as specified in this
39 subsection, unless the judge conducts a departure hearing and finds
40 substantial and compelling reasons to impose a departure sentence as
41 provided in K.S.A. 2011 Supp. 38-2371, and amendments thereto.

42 (1) Violent Offenders. (A) The violent offender I is defined as an
43 offender adjudicated as a juvenile offender for an offense which, if

1 committed by an adult, would constitute an off-grid felony. Offenders in
2 this category may be committed to a juvenile correctional facility for a
3 minimum term of 60 months and up to a maximum term of the offender
4 reaching the age of 22 years, six months. The aftercare term for this
5 offender is set at a minimum term of six months and up to a maximum
6 term of the offender reaching the age of 23 years.

7 (B) The violent offender II is defined as an offender adjudicated as a
8 juvenile offender for an offense which, if committed by an adult, would
9 constitute a nondrug level 1, 2 or 3 felony. Offenders in this category may
10 be committed to a juvenile correctional facility for a minimum term of 24
11 months and up to a maximum term of the offender reaching the age 22
12 years, six months. The aftercare term for this offender is set at a minimum
13 term of six months and up to a maximum term of the offender reaching the
14 age of 23 years.

15 (2) Serious Offenders. (A) The serious offender I is defined as an
16 offender adjudicated as a juvenile offender for an offense:

17 (i) Which, if committed by an adult, would constitute a nondrug
18 severity level 4, 5 or 6 person felony ~~or a severity level 1 or 2 drug~~
19 ~~felony~~ ;

20 (ii) *committed prior to July 1, 2012, which, if committed by an adult*
21 *prior to July 1, 2012, would constitute a drug severity level 1 or 2 felony;*
22 *or*

23 (iii) *committed on or after July 1, 2012, which, if committed by an*
24 *adult on or after July 1, 2012, would constitute a drug severity level 1, 2*
25 *or 3 felony.*

26 Offenders in this category may be committed to a juvenile correctional
27 facility for a minimum term of 18 months and up to a maximum term of 36
28 months. The aftercare term for this offender is set at a minimum term of
29 six months and up to a maximum term of 24 months.

30 (B) The serious offender II is defined as an offender adjudicated as a
31 juvenile offender for an offense which, if committed by an adult, would
32 constitute a nondrug severity level 7, 8, 9 or 10 person felony with one
33 prior felony adjudication. Offenders in this category may be committed to
34 a juvenile correctional facility for a minimum term of nine months and up
35 to a maximum term of 18 months. The aftercare term for this offender is
36 set at a minimum term of six months and up to a maximum term of 24
37 months.

38 (3) Chronic Offenders. (A) The chronic offender I, chronic felon is
39 defined as an offender adjudicated as a juvenile offender for an offense
40 ~~which, if committed by an adult, would constitute:~~

41 (i) *Which, if committed by an adult, would constitute one present*
42 *nonperson felony adjudication and two prior felony adjudications; or*

43 (ii) *committed prior to July 1, 2012, which, if committed by an adult*

1 *prior to July 1, 2012, would constitute one present drug severity level 3*
2 ~~drug~~ *felony adjudication and two prior felony adjudications; or*

3 *(iii) committed on or after July 1, 2012, which, if committed by an*
4 *adult on or after July 1, 2012, would constitute one present drug severity*
5 *level 4 felony adjudication and two prior felony adjudications.*

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

10 (B) The chronic offender II, escalating felon is defined as an offender
11 adjudicated as a juvenile offender for an offense ~~which, if committed by an~~
12 ~~adult, would constitute:~~

13 *(i) Which, if committed by an adult, would constitute one present*
14 *felony adjudication and either two prior misdemeanor adjudications or one*
15 *prior person or nonperson felony adjudication;*

16 *(ii) which, if committed by an adult, would constitute one present*
17 *felony adjudication and two prior drug severity level 4 ~~drug~~ or 5*
18 *adjudications;*

19 *(iii) committed prior to July 1, 2012, which, if committed by an adult*
20 *prior to July 1, 2012, would constitute one present drug severity level 3*
21 ~~drug~~ *felony adjudication and either two prior misdemeanor adjudications*
22 *or one prior person or nonperson felony adjudication; or*

23 *(iv) committed prior to July 1, 2012, which, if committed by an adult*
24 *prior to July 1, 2012, would constitute one present severity level 3 drug*
25 *felony adjudication and two prior drug severity level 4 ~~drug~~ or 5*
26 *adjudications;*

27 *(v) committed on or after July 1, 2012, which, if committed by an*
28 *adult on or after July 1, 2012, would constitute one present drug severity*
29 *level 4 felony adjudication and either two prior misdemeanor*
30 *adjudications or one prior person or nonperson felony adjudication; or*

31 *(vi) committed on or after July 1, 2012, which, if committed by an*
32 *adult on or after July 1, 2012, would constitute one present drug severity*
33 *level 4 felony adjudication and two prior drug severity level 4 or 5*
34 *adjudications.*

35 Offenders in this category may be committed to a juvenile correctional
36 facility for a minimum term of six months and up to a maximum term of
37 18 months. The aftercare term for this offender is set at a minimum term of
38 six months and up to a maximum term of 12 months.

39 (C) The chronic offender III, escalating misdemeanant is defined as
40 an offender adjudicated as a juvenile offender for an offense ~~which, if~~
41 ~~committed by an adult, would constitute:~~

42 *(i) Which, if committed by an adult, would constitute one present*
43 *misdemeanor adjudication and either two prior misdemeanor adjudications*

1 or one prior person or nonperson felony adjudication and two placement
2 failures;

3 (ii) *which, if committed by an adult, would constitute one present*
4 *misdemeanor adjudication and two prior drug severity level 4 ~~drug~~ or 5*
5 *felony adjudications and two placement failures;*

6 (iii) *which, if committed by an adult, would constitute one present*
7 *drug severity level 4 ~~drug~~ felony adjudication and either two prior*
8 *misdemeanor adjudications or one prior person or nonperson felony*
9 *adjudication and two placement failures; or*

10 (iv) *which, if committed by an adult, would constitute one present*
11 *drug severity level 4 ~~drug~~ felony adjudication and two prior drug severity*
12 *level 4 ~~drug~~ or 5 felony adjudications and two placement failures;*

13 (v) *committed on or after July 1, 2012, which, if committed by an*
14 *adult on or after July 1, 2012, would constitute one present drug severity*
15 *level 5 felony adjudication and either two prior misdemeanor*
16 *adjudications or one prior person or nonperson felony adjudication and*
17 *two placement failures; or*

18 (vi) *committed on or after July 1, 2012, which, if committed by an*
19 *adult on or after July 1, 2012, would constitute one present drug severity*
20 *level 5 felony adjudication and two prior drug severity level 4 or 5*
21 *adjudications and two placement failures.*

22 Offenders in this category may be committed to a juvenile correctional
23 facility for a minimum term of three months and up to a maximum term of
24 six months. The aftercare term for this offender is set at a minimum term
25 of three months and up to a maximum term of six months.

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

28 (A) Subject to the limitations in subsection (a) of K.S.A. 2011 Supp.
29 38-2366, and amendments thereto, commit the offender directly to a
30 juvenile correctional facility for a minimum term of three months and up
31 to a maximum term of six months. The aftercare term for this offender
32 shall be a minimum of two months and a maximum of six months, or the
33 length of the aftercare originally ordered, which ever is longer.

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

35 (i) Recommend additional conditions be added to those of the
36 existing conditional release.

37 (ii) Order the offender to serve a period of sanctions pursuant to
38 subsection (f) of K.S.A. 2011 Supp. 38-2361, and amendments thereto.

39 (iii) Revoke or restrict the juvenile's driving privileges as described in
40 subsection (c) of K.S.A. 2011 Supp. 38-2361, and amendments thereto.

41 (C) Discharge the offender from the custody of the commissioner,
42 release the commissioner from further responsibilities in the case and enter
43 any other appropriate orders.

1 (b) As used in this section: (1) "Placement failure" means a juvenile
2 offender in the custody of the juvenile justice authority has significantly
3 failed the terms of conditional release or has been placed out-of-home in a
4 community placement accredited by the commissioner and has
5 significantly violated the terms of that placement or violated the terms of
6 probation.

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

19 (c) All appropriate community placement options shall have been
20 exhausted before a chronic offender III, escalating misdemeanant shall be
21 placed in a juvenile correctional facility. A court finding shall be made
22 acknowledging that appropriate community placement options have been
23 pursued and no such option is appropriate.

24 (d) The commissioner shall work with the community to provide on-
25 going support and incentives for the development of additional community
26 placements to ensure that the chronic offender III, escalating
27 misdemeanant sentencing category is not frequently utilized.

28 Sec. ~~28~~ {47.} K.S.A. 2011 Supp. 38-2374 is hereby amended to read
29 as follows: 38-2374. (a) When a juvenile offender has satisfactorily
30 completed the term of incarceration at the juvenile correctional facility to
31 which the juvenile offender was committed or placed, the person in charge
32 of the juvenile correctional facility shall have authority to release the
33 juvenile offender under appropriate conditions and for a specified period
34 of time. Prior to release from a juvenile correctional facility, the
35 commissioner shall consider any recommendations made by the juvenile
36 offender's community case management officer.

37 (b) At least 21 days prior to releasing a juvenile offender as provided
38 in subsection (a), the person in charge of the juvenile correctional facility
39 shall notify the committing court of the date and conditions upon which it
40 is proposed the juvenile offender is to be released. The person in charge of
41 the juvenile correctional facility shall notify the school district in which
42 the juvenile offender will be residing if the juvenile is still required to
43 attend a school. Such notification to the school shall include the name of

1 the juvenile offender, address upon release, contact person with whom the
2 juvenile offender will be residing upon release, anticipated date of release,
3 anticipated date of enrollment in school, name and phone number of case
4 worker, crime or crimes of adjudication if not confidential based upon
5 other statutes, conditions of release and any other information the
6 commissioner deems appropriate. To ensure the educational success of the
7 student, the community case manager or a representative from the
8 residential facility where the juvenile offender will reside shall contact the
9 principal of the receiving school in a timely manner to review the juvenile
10 offender's case. If such juvenile offender's offense would have constituted
11 an off-grid crime, a nondrug felony crime ranked at severity level 1, 2, 3, 4
12 or 5, or a drug felony crime ranked at severity level 1, 2 or 3, on or after
13 July 1, 1993, or a drug felony crime ranked at severity level 4 on or after
14 July 1, 2012, if committed by an adult, the person in charge of the juvenile
15 correctional facility shall notify the county or district attorney of the
16 county where the offender was adjudicated a juvenile offender of the date
17 and conditions upon which it is proposed the juvenile offender is to be
18 released. The county or district attorney shall give written notice at least
19 seven days prior to the release of the juvenile offender to: (1) Any victim
20 of the juvenile offender's crime who is alive and whose address is known
21 to the court or, if the victim is deceased, to the victim's family if the
22 family's address is known to the court; and (2) the local law enforcement
23 agency. Failure to notify pursuant to this section shall not be a reason to
24 postpone a release. Nothing in this section shall create a cause of action
25 against the state or county or an employee of the state or county acting
26 within the scope of the employee's employment as a result of the failure to
27 notify pursuant to this section.

28 (c) Upon receipt of the notice required by subsection (b), the court
29 shall review the terms of the proposed conditional release and may
30 recommend modifications or additions to the terms.

31 (d) If, during the conditional release, the juvenile offender is not
32 returning to the county from which committed, the person in charge of the
33 juvenile correctional facility shall also give notice to the court of the
34 county in which the juvenile offender is to be residing.

35 (e) To assure compliance with conditional release from a juvenile
36 correctional facility, the commissioner shall have the authority to prescribe
37 the manner in which compliance with the conditions shall be supervised.
38 When requested by the commissioner, the appropriate court may assist in
39 supervising compliance with the conditions of release during the term of
40 the conditional release. The commissioner may require the parent of the
41 juvenile offender to cooperate and participate with the conditional release.

42 (f) For acts committed before July 1, 1999, the juvenile justice
43 authority shall notify at least 45 days prior to the discharge of the juvenile

1 offender the county or district attorney of the county where the offender
2 was adjudicated a juvenile offender of the release of such juvenile
3 offender, if such juvenile offender's offense would have constituted a class
4 A, B or C felony before July 1, 1993, or an off-grid crime, a nondrug
5 crime ranked at severity level 1, 2, 3, 4 or 5 or a drug crime ranked at
6 severity level 1, 2 or 3, on or after July 1, 1993, *or a drug crime ranked at*
7 *severity level 4 on or after July 1, 2012*, if committed by an adult. The
8 county or district attorney shall give written notice at least 30 days prior to
9 the release of the juvenile offender to: (1) Any victim of the juvenile
10 offender's crime who is alive and whose address is known to the court or,
11 if the victim is deceased, to the victim's family if the family's address is
12 known to the court; and (2) the local law enforcement agency. Failure to
13 notify pursuant to this section shall not be a reason to postpone a release.
14 Nothing in this section shall create a cause of action against the state or
15 county or an employee of the state or county acting within the scope of the
16 employee's employment as a result of the failure to notify pursuant to this
17 section.

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

20 Sec. ~~29~~ ~~{48}~~ K.S.A. 2011 Supp. 38-2376 is hereby amended to read
21 as follows: 38-2376. (a) When a juvenile offender has reached the age of
22 23 years, has been convicted as an adult while serving a term of
23 incarceration at a juvenile correctional facility, or has completed the
24 prescribed terms of incarceration at a juvenile correctional facility,
25 together with any conditional release following the program, the juvenile
26 shall be discharged by the commissioner from any further obligation under
27 the commitment unless the juvenile was sentenced pursuant to an extended
28 jurisdiction juvenile prosecution upon court order and the commissioner
29 transfers the juvenile to the custody of the secretary of corrections. The
30 discharge shall operate as a full and complete release from any obligations
31 imposed on the juvenile offender arising from the offense for which the
32 juvenile offender was committed.

33 (b) At least 45 days prior to the discharge of the juvenile offender, the
34 juvenile justice authority shall notify the court and the county or district
35 attorney of the county where the offender was adjudicated a juvenile
36 offender of the pending discharge of such juvenile offender, the offense
37 would have constituted a class A, B or C felony before July 1, 1993, or an
38 off-grid crime, a nondrug crime ranked at severity level 1, 2, 3, 4 or 5 or a
39 drug crime ranked at severity level 1, 2 or 3, on or after July 1, 1993, *or a*
40 *drug crime ranked at severity level 4 on or after July 1, 2012*, if committed
41 by an adult. The county or district attorney shall give written notice at least
42 30 days prior to the discharge of the juvenile offender pursuant to K.S.A.
43 2011 Supp. 38-2379, and amendments thereto.

1 Sec. ~~30.~~ ~~{49.}~~ K.S.A. 2011 Supp. 75-5291 is hereby amended to read
2 as follows: 75-5291. (a) (1) The secretary of corrections may make grants
3 to counties for the development, implementation, operation and
4 improvement of community correctional services that address the
5 criminogenic needs of felony offenders including, but not limited to, adult
6 intensive supervision, substance abuse and mental health services,
7 employment and residential services, and facilities for the detention or
8 confinement, care or treatment of offenders as provided in this section
9 except that no community corrections funds shall be expended by the
10 secretary for the purpose of establishing or operating a conservation camp
11 as provided by K.S.A. 75-52,127, and amendments thereto.

12 (2) Except as otherwise provided, placement of offenders in a
13 community correctional services ~~programs~~ *program* by the court shall be
14 limited to placement of adult offenders, convicted of a felony offense:

15 (A) Whose offense is classified in grid blocks 5-H, 5-I or 6-G of the
16 sentencing guidelines grid for nondrug crimes ~~or~~, in grid blocks 3-C, 3-D,
17 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes
18 *for crimes committed prior to July 1, 2012, or in grid blocks 4-C, 4-D, 4-*
19 *E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes*
20 *for crimes committed on or after July 1, 2012.* In addition, the court may
21 place in a community correctional services program adult offenders,
22 convicted of a felony offense, whose offense is classified in grid blocks 6-
23 H, 6-I, 7-C, 7-D, 7-E, 7-F, 7-G, 7-H or 7-I of the sentencing guidelines
24 grid for nondrug crimes;

25 (B) whose severity level and criminal history score designate a
26 presumptive prison sentence on either sentencing guidelines grid but
27 receive a nonprison sentence as a result of departure;

28 (C) all offenders convicted of an offense which satisfies the definition
29 of offender pursuant to K.S.A. 22-4902, and amendments thereto, and
30 which is classified as a severity level 7 or higher offense and who receive a
31 nonprison sentence, regardless of the manner in which the sentence is
32 imposed;

33 (D) any offender for whom a violation of conditions of release or
34 assignment or a nonprison sanction has been established as provided in
35 K.S.A. 22-3716, and amendments thereto, prior to revocation resulting in
36 the offender being required to serve any time for the sentence imposed or
37 which might originally have been imposed in a state facility in the custody
38 of the secretary of corrections;

39 (E) on and after January 1, 2011, for offenders who are expected to be
40 subject to supervision in Kansas, who are determined to be "high risk or
41 needs, or both" by the use of a statewide, mandatory, standardized risk
42 assessment tool or instrument which shall be specified by the Kansas
43 sentencing commission;

1 (F) placed in a community correctional services ~~programs~~ program as
2 a condition of supervision following the successful completion of a
3 conservation camp program; ~~or~~

4 (G) who ~~has~~ have been sentenced to community corrections
5 supervision pursuant to K.S.A. 21-4729, prior to its repeal, or K.S.A. 2011
6 Supp. 21-6824, and amendments thereto; *or*

7 (H) *who have been placed in a community correctional services*
8 *program for supervision by the court pursuant to K.S.A. 8-1567, and*
9 *amendments thereto.*

10 (3) Notwithstanding any law to the contrary and subject to the
11 availability of funding therefor, adult offenders sentenced to community
12 supervision in Johnson county for felony crimes that occurred on or after
13 July 1, 2002, but before July 1, 2013, shall be placed under court services
14 or community corrections supervision based upon court rules issued by the
15 chief judge of the 10th judicial district. The provisions contained in this
16 subsection shall not apply to offenders transferred by the assigned agency
17 to an agency located outside of Johnson county. The provisions of this
18 paragraph shall expire on July 1, 2013.

19 (4) Nothing in this act shall prohibit a community correctional
20 services program from providing services to juvenile offenders upon
21 approval by the local community corrections advisory board. Grants from
22 community corrections funds administered by the secretary of corrections
23 shall not be expended for such services.

24 (5) The court may require an offender for whom a violation of
25 conditions of release or assignment or a nonprison sanction has been
26 established, as provided in K.S.A. 22-3716, and amendments thereto, to
27 serve any time for the sentence imposed or which might originally have
28 been imposed in a state facility in the custody of the secretary of
29 corrections without a prior assignment to a community correctional
30 services program if the court finds and sets forth with particularity the
31 reasons for finding that the safety of the members of the public will be
32 jeopardized or that the welfare of the inmate will not be served by such
33 assignment to a community correctional services program.

34 (b) (1) In order to establish a mechanism for community correctional
35 services to participate in the department of corrections annual budget
36 planning process, the secretary of corrections shall establish a community
37 corrections advisory committee to identify new or enhanced correctional
38 or treatment interventions designed to divert offenders from prison.

39 (2) The secretary shall appoint one member from the southeast
40 community corrections region, one member from the northeast community
41 corrections region, one member from the central community corrections
42 region and one member from the western community corrections region.
43 The deputy secretary of community and field services shall designate two

1 members from the state at large. The secretary shall have final
2 appointment approval of the members designated by the deputy secretary.
3 The committee shall reflect the diversity of community correctional
4 services with respect to geographical location and average daily population
5 of offenders under supervision.

6 (3) Each member shall be appointed for a term of three years and
7 such terms shall be staggered as determined by the secretary. Members
8 shall be eligible for reappointment.

9 (4) The committee, in collaboration with the deputy secretary of
10 community and field services or the deputy secretary's designee, shall
11 routinely examine and report to the secretary on the following issues:

12 (A) Efficiencies in the delivery of field supervision services;

13 (B) effectiveness and enhancement of existing interventions;

14 (C) identification of new interventions; and

15 (D) statewide performance indicators.

16 (5) The committee's report concerning enhanced or new interventions
17 shall address:

18 (A) Goals and measurable objectives;

19 (B) projected costs;

20 (C) the impact on public safety; and

21 (D) the evaluation process.

22 (6) The committee shall submit its report to the secretary annually on
23 or before July 15 in order for the enhanced or new interventions to be
24 considered for inclusion within the department of corrections budget
25 request for community correctional services or in the department's
26 enhanced services budget request for the subsequent fiscal year.

27 Sec. ~~31~~ **{50.}** K.S.A. 2011 Supp. 75-52,144 is hereby amended to
28 read as follows: 75-52,144. (a) Drug abuse treatment programs certified in
29 accordance with subsection (b) shall provide:

30 (1) Presentence drug abuse assessments of any person who is
31 convicted of a felony violation of K.S.A. 65-4160 or 65-4162, prior to
32 such ~~sections~~ *section's* repeal ~~or~~ , K.S.A. 2010 Supp. 21-36a06, *prior to its*
33 *transfer, or K.S.A. 2011 Supp. 21-5706*, and amendments thereto, and
34 meets the requirements of K.S.A. 21-4729, prior to its repeal, or
35 *subsection (a) of* K.S.A. 2011 Supp. 21-6824, and amendments thereto;

36 (2) treatment of all persons who are convicted of a felony violation of
37 K.S.A. 65-4160 or 65-4162, prior to such ~~sections~~ *section's* repeal ~~or~~ ,
38 K.S.A. 2010 Supp. 21-36a06, *prior to its transfer, or K.S.A. 2011 Supp.*
39 *21-5706*, and amendments thereto, meet the requirements of K.S.A. 21-
40 4729, prior to its repeal, or K.S.A. 2011 Supp. 21-6824, and amendments
41 thereto, and whose sentence requires completion of a certified drug abuse
42 treatment program, as provided in this section;

43 (3) one or more treatment options in the continuum of services

1 needed to reach recovery: Detoxification, rehabilitation, continuing care
2 and aftercare, and relapse prevention;

3 (4) treatment options to incorporate family and auxiliary support
4 services; and

5 (5) treatment options for alcohol abuse when indicated by the
6 assessment of the offender or required by the court.

7 (b) The presentence criminal risk-need assessment shall be conducted
8 by a court services officer or a community corrections officer. The
9 presentence drug abuse treatment program placement assessment shall be
10 conducted by a drug abuse treatment program certified in accordance with
11 the provisions of this subsection to provide assessment and treatment
12 services. A drug abuse treatment program shall be certified by the
13 secretary of corrections. The secretary may establish qualifications for the
14 certification of programs, which may include requirements for supervision
15 and monitoring of clients; fee reimbursement procedures; handling of
16 conflicts of interest; delivery of services to clients unable to pay; and other
17 matters relating to quality and delivery of services by the program. Drug
18 abuse treatment may include community based and faith based programs.
19 The certification shall be for a four-year period. Recertification of a
20 program shall be by the secretary. To be eligible for certification under this
21 subsection, the secretary shall determine that a drug abuse treatment
22 program: (1) Meets the qualifications established by the secretary; (2) is
23 capable of providing the assessments, supervision and monitoring required
24 under subsection (a); (3) has employed or contracted with certified
25 treatment providers; and (4) meets any other functions and duties specified
26 by law.

27 (c) Any treatment provider who is employed or has contracted with a
28 certified drug abuse treatment program who provides services to offenders
29 shall be certified by the secretary of corrections. The secretary shall
30 require education and training which shall include, but not be limited to,
31 case management and cognitive behavior training. The duties of providers
32 who prepare the presentence drug abuse assessment may also include
33 appearing at sentencing and probation hearings in accordance with the
34 orders of the court, monitoring offenders in the treatment programs,
35 notifying the probation department and the court of any offender failing to
36 meet the conditions of probation or referrals to treatment, appearing at
37 revocation hearings as may be required and providing assistance and data
38 reporting and program evaluation.

39 (d) The cost for all drug abuse assessments ~~and performed pursuant~~
40 *to subsection (a)(1), and the cost for all certified drug abuse treatment*
41 *programs for any person who meets the requirements of K.S.A. 2011 Supp.*
42 *21-6824, and amendments thereto,* shall be paid by the Kansas sentencing
43 commission from funds appropriated for such purpose. The Kansas

1 sentencing commission shall contract for payment for such services with
2 the supervising agency. The sentencing court shall determine the extent, if
3 any, that such person is able to pay for such assessment and treatment.
4 Such payments shall be used by the supervising agency to offset costs to
5 the state. If such financial obligations are not met or cannot be met, the
6 sentencing court shall be notified for the purpose of collection or review
7 and further action on the offender's sentence.

8 (e) The community corrections staff shall work with the substance
9 abuse treatment staff to ensure effective supervision and monitoring of the
10 offender.

11 (f) The secretary of corrections is hereby authorized to adopt rules
12 and regulations to carry out the provisions of this section.

13 *{Sec. 51. K.S.A. 2011 Supp. 65-1626 is hereby amended to read as*
14 *follows: 65-1626. For the purposes of this act:*

15 (a) *"Administer" means the direct application of a drug, whether*
16 *by injection, inhalation, ingestion or any other means, to the body of a*
17 *patient or research subject by:*

18 (1) *A practitioner or pursuant to the lawful direction of a*
19 *practitioner;*

20 (2) *the patient or research subject at the direction and in the*
21 *presence of the practitioner; or*

22 (3) *a pharmacist as authorized in K.S.A. 65-1635a, and*
23 *amendments thereto.*

24 (b) *"Agent" means an authorized person who acts on behalf of or*
25 *at the direction of a manufacturer, distributor or dispenser but shall not*
26 *include a common carrier, public warehouseman or employee of the*
27 *carrier or warehouseman when acting in the usual and lawful course of*
28 *the carrier's or warehouseman's business.*

29 (c) *"Application service provider" means an entity that sells*
30 *electronic prescription or pharmacy prescription applications as a hosted*
31 *service where the entity controls access to the application and maintains*
32 *the software and records on its server.*

33 (d) *"Authorized distributor of record" means a wholesale*
34 *distributor with whom a manufacturer has established an ongoing*
35 *relationship to distribute the manufacturer's prescription drug. An*
36 *ongoing relationship is deemed to exist between such wholesale*
37 *distributor and a manufacturer when the wholesale distributor,*
38 *including any affiliated group of the wholesale distributor, as defined in*
39 *section 1504 of the internal revenue code, complies with any one of the*
40 *following: (1) The wholesale distributor has a written agreement*
41 *currently in effect with the manufacturer evidencing such ongoing*
42 *relationship; and (2) the wholesale distributor is listed on the*
43 *manufacturer's current list of authorized distributors of record, which is*

1 *updated by the manufacturer on no less than a monthly basis.*

2 ~~(d)~~(e) *"Board" means the state board of pharmacy created by*
3 *K.S.A. 74-1603, and amendments thereto.*

4 ~~(e)~~(f) *"Brand exchange" means the dispensing of a different drug*
5 *product of the same dosage form and strength and of the same generic*
6 *name as the brand name drug product prescribed.*

7 ~~(f)~~(g) *"Brand name" means the registered trademark name given*
8 *to a drug product by its manufacturer, labeler or distributor.*

9 ~~(g)~~(h) *"Chain pharmacy warehouse" means a permanent physical*
10 *location for drugs or devices, or both, that acts as a central warehouse*
11 *and performs intracompany sales or transfers of prescription drugs or*
12 *devices to chain pharmacies that have the same ownership or control.*
13 *Chain pharmacy warehouses must be registered as wholesale*
14 *distributors.*

15 ~~(h)~~(i) *"Co-licensee" means a pharmaceutical manufacturer that*
16 *has entered into an agreement with another pharmaceutical*
17 *manufacturer to engage in a business activity or occupation related to*
18 *the manufacture or distribution of a prescription drug and the national*
19 *drug code on the drug product label shall be used to determine the*
20 *identity of the drug manufacturer.*

21 (j) *"DEA" means the U.S. department of justice, drug enforcement*
22 *administration.*

23 ~~(i)~~(k) *"Deliver" or "delivery" means the actual, constructive or*
24 *attempted transfer from one person to another of any drug whether or*
25 *not an agency relationship exists.*

26 ~~(j)~~(l) *"Direct supervision" means the process by which the*
27 *responsible pharmacist shall observe and direct the activities of a*
28 *pharmacy student or pharmacy technician to a sufficient degree to*
29 *assure that all such activities are performed accurately, safely and*
30 *without risk or harm to patients, and complete the final check before*
31 *dispensing.*

32 ~~(k)~~(m) *"Dispense" means to deliver prescription medication to the*
33 *ultimate user or research subject by or pursuant to the lawful order of a*
34 *practitioner or pursuant to the prescription of a mid-level practitioner.*

35 ~~(l)~~(n) *"Dispenser" means a practitioner or pharmacist who*
36 *dispenses prescription medication.*

37 ~~(m)~~(o) *"Distribute" means to deliver, other than by administering*
38 *or dispensing, any drug.*

39 ~~(n)~~(p) *"Distributor" means a person who distributes a drug.*

40 ~~(o)~~(q) *"Drop shipment" means the sale, by a manufacturer, that*
41 *manufacturer's co-licensee, that manufacturer's third party logistics*
42 *provider, or that manufacturer's exclusive distributor, of the*
43 *manufacturer's prescription drug, to a wholesale distributor whereby the*

1 *wholesale distributor takes title but not possession of such prescription*
2 *drug and the wholesale distributor invoices the pharmacy, the chain*
3 *pharmacy warehouse, or other designated person authorized by law to*
4 *dispense or administer such prescription drug, and the pharmacy, the*
5 *chain pharmacy warehouse, or other designated person authorized by*
6 *law to dispense or administer such prescription drug receives delivery of*
7 *the prescription drug directly from the manufacturer, that*
8 *manufacturer's co-licensee, that manufacturer's third party logistics*
9 *provider, or that manufacturer's exclusive distributor, of such*
10 *prescription drug. Drop shipment shall be part of the "normal*
11 *distribution channel."*

12 ~~(p)~~(r) *"Drug" means: (1) Articles recognized in the official United*
13 *States pharmacopoeia, or other such official compendiums of the United*
14 *States, or official national formulary, or any supplement of any of them;*
15 *(2) articles intended for use in the diagnosis, cure, mitigation, treatment*
16 *or prevention of disease in man or other animals; (3) articles, other than*
17 *food, intended to affect the structure or any function of the body of man*
18 *or other animals; and (4) articles intended for use as a component of*
19 *any articles specified in clause (1), (2) or (3) of this subsection; but does*
20 *not include devices or their components, parts or accessories, except that*
21 *the term "drug" shall not include amygdalin (laetrile) or any livestock*
22 *remedy, if such livestock remedy had been registered in accordance with*
23 *the provisions of article 5 of chapter 47 of the Kansas Statutes*
24 *Annotated, prior to its repeal.*

25 ~~(q)~~(s) *"Durable medical equipment" means technologically*
26 *sophisticated medical devices that may be used in a residence, including*
27 *the following: (1) Oxygen and oxygen delivery system; (2) ventilators;*
28 *(3) respiratory disease management devices; (4) continuous positive*
29 *airway pressure (CPAP) devices; (5) electronic and computerized*
30 *wheelchairs and seating systems; (6) apnea monitors; (7)*
31 *transcutaneous electrical nerve stimulator (TENS) units; (8) low air loss*
32 *cutaneous pressure management devices; (9) sequential compression*
33 *devices; (10) feeding pumps; (11) home phototherapy devices; (12)*
34 *infusion delivery devices; (13) distribution of medical gases to end users*
35 *for human consumption; (14) hospital beds; (15) nebulizers; or (16)*
36 *other similar equipment determined by the board in rules and*
37 *regulations adopted by the board.*

38 (t) *"Electronic prescription" means an electronically prepared*
39 *prescription that is authorized and transmitted from the prescriber to the*
40 *pharmacy by means of electronic transmission.*

41 (u) *"Electronic prescription application" means software that is used*
42 *to create electronic prescriptions and that is intended to be installed on the*
43 *prescriber's computers and servers where access and records are*

1 controlled by the prescriber.

2 (v) "Electronic signature" means a confidential personalized digital
3 key, code, number or other method for secure electronic data
4 transmissions which identified a particular person as the source of the
5 message, authenticates the signatory of the message and indicates the
6 person's approval of the information contained in the transmission.

7 (w) "Electronic transmission" means the transmission of an
8 electronic prescription, formatted as an electronic data file, from a
9 prescriber's electronic prescription application to a pharmacy's computer,
10 where the data file is imported into the pharmacy prescription application.

11 (x) "Electronically prepared prescription" means a prescription that
12 is generated using an electronic prescription application.

13 ~~(y)~~ (y) **"Exclusive distributor" means any entity that: (1) Contracts**
14 **with a manufacturer to provide or coordinate warehousing, wholesale**
15 **distribution or other services on behalf of a manufacturer and who takes**
16 **title to that manufacturer's prescription drug, but who does not have**
17 **general responsibility to direct the sale or disposition of the**
18 **manufacturer's prescription drug; (2) is registered as a wholesale**
19 **distributor under the pharmacy act of the state of Kansas; and (3) to be**
20 **considered part of the normal distribution channel, must be an**
21 **authorized distributor of record.**

22 ~~(s)~~ "Electronic transmission" means transmission of information in
23 electronic form or the transmission of the exact visual image of a
24 document by way of electronic equipment.

25 ~~(z)~~ (z) "Facsimile transmission" or "fax transmission" means the
26 transmission of a digital image of a prescription from the prescriber or the
27 prescriber's agent to the pharmacy. "Facsimile transmission" includes, but
28 is not limited to, transmission of a written prescription between the
29 prescriber's fax machine and the pharmacy's fax machine; transmission of
30 an electronically prepared prescription from the prescriber's electronic
31 prescription application to the pharmacy's fax machine, computer or
32 printer; or transmission of an electronically prepared prescription from
33 the prescriber's fax machine to the pharmacy's fax machine, computer or
34 printer.

35 (aa) "Generic name" means the established chemical name or
36 official name of a drug or drug product.

37 ~~(bb)~~ (bb) (I) "Institutional drug room" means any location where
38 prescription-only drugs are stored and from which prescription-only
39 drugs are administered or dispensed and which is maintained or
40 operated for the purpose of providing the drug needs of:

41 (A) Inmates of a jail or correctional institution or facility;

42 (B) residents of a juvenile detention facility, as defined by the
43 revised Kansas code for care of children and the revised Kansas juvenile

1 *justice code;*

2 *(C) students of a public or private university or college, a*
3 *community college or any other institution of higher learning which is*
4 *located in Kansas;*

5 *(D) employees of a business or other employer; or*

6 *(E) persons receiving inpatient hospice services.*

7 *(2) "Institutional drug room" does not include:*

8 *(A) Any registered pharmacy;*

9 *(B) any office of a practitioner; or*

10 *(C) a location where no prescription-only drugs are dispensed and*
11 *no prescription-only drugs other than individual prescriptions are stored*
12 *or administered.*

13 ~~(v)~~*(cc) "Intermediary" means any technology system that receives*
14 *and transmits an electronic prescription between the prescriber and the*
15 *pharmacy.*

16 *(dd) "Intracompany transaction" means any transaction or*
17 *transfer between any division, subsidiary, parent or affiliated or related*
18 *company under common ownership or control of a corporate entity, or*
19 *any transaction or transfer between co-licensees of a co-licensed*
20 *product.*

21 ~~(w)~~*(ee) "Medical care facility" shall have the meaning provided in*
22 *K.S.A. 65-425, and amendments thereto, except that the term shall also*
23 *include facilities licensed under the provisions of K.S.A. 75-3307b, and*
24 *amendments thereto, except community mental health centers and*
25 *facilities for the mentally retarded.*

26 ~~(x)~~*(ff) "Manufacture" means the production, preparation,*
27 *propagation, compounding, conversion or processing of a drug either*
28 *directly or indirectly by extraction from substances of natural origin,*
29 *independently by means of chemical synthesis or by a combination of*
30 *extraction and chemical synthesis and includes any packaging or*
31 *repackaging of the drug or labeling or relabeling of its container, except*
32 *that this term shall not include the preparation or compounding of a*
33 *drug by an individual for the individual's own use or the preparation,*
34 *compounding, packaging or labeling of a drug by:*

35 *(1) A practitioner or a practitioner's authorized agent incident to*
36 *such practitioner's administering or dispensing of a drug in the course*
37 *of the practitioner's professional practice;*

38 *(2) a practitioner, by a practitioner's authorized agent or under a*
39 *practitioner's supervision for the purpose of, or as an incident to,*
40 *research, teaching or chemical analysis and not for sale; or*

41 *(3) a pharmacist or the pharmacist's authorized agent acting under*
42 *the direct supervision of the pharmacist for the purpose of, or incident*
43 *to, the dispensing of a drug by the pharmacist.*

1 ~~(v)~~(gg) **"Manufacturer"** means a person licensed or approved by
2 **the FDA to engage in the manufacture of drugs and devices.**

3 ~~(z)~~(hh) **"Mid-level practitioner"** means an advanced practice
4 registered nurse issued a license pursuant to K.S.A. 65-1131, and
5 amendments thereto, who has authority to prescribe drugs pursuant to a
6 written protocol with a responsible physician under K.S.A. 65-1130, and
7 amendments thereto, or a physician assistant licensed pursuant to the
8 physician assistant licensure act who has authority to prescribe drugs
9 pursuant to a written protocol with a responsible physician under K.S.A.
10 65-28a08, and amendments thereto.

11 (ii) **"Normal distribution channel"** means a chain of custody for a
12 prescription-only drug that goes from a manufacturer of the
13 prescription-only drug, from that manufacturer to that manufacturer's
14 co-licensed partner, from that manufacturer to that manufacturer's
15 third-party logistics provider, or from that manufacturer to that
16 manufacturer's exclusive distributor, directly or by drop shipment, to:

17 (1) **A pharmacy to a patient or to other designated persons**
18 **authorized by law to dispense or administer such drug to a patient;**

19 (2) **a wholesale distributor to a pharmacy to a patient or other**
20 **designated persons authorized by law to dispense or administer such**
21 **drug to a patient;**

22 (3) **a wholesale distributor to a chain pharmacy warehouse to that**
23 **chain pharmacy warehouse's intracompany pharmacy to a patient or**
24 **other designated persons authorized by law to dispense or administer**
25 **such drug to a patient; or**

26 (4) **a chain pharmacy warehouse to the chain pharmacy**
27 **warehouse's intracompany pharmacy to a patient or other designated**
28 **persons authorized by law to dispense or administer such drug to a**
29 **patient.**

30 ~~(aa)~~(jj) **"Person"** means individual, corporation, government,
31 governmental subdivision or agency, partnership, association or any
32 other legal entity.

33 ~~(bb)~~(kk) **"Pharmacist"** means any natural person licensed under
34 **this act to practice pharmacy.**

35 ~~(cc)~~(ll) **"Pharmacist-in-charge"** means the pharmacist who is
36 responsible to the board for a registered establishment's compliance with
37 the laws and regulations of this state pertaining to the practice of
38 pharmacy, manufacturing of drugs and the distribution of drugs. The
39 pharmacist-in-charge shall supervise such establishment on a full-time
40 or a part-time basis and perform such other duties relating to
41 supervision of a registered establishment as may be prescribed by the
42 board by rules and regulations. Nothing in this definition shall relieve
43 other pharmacists or persons from their responsibility to comply with

1 **state and federal laws and regulations.**

2 (mm) "Pharmacist intern" means: (1) A student currently enrolled in
3 an accredited pharmacy program; (2) a graduate of an accredited
4 pharmacy program serving an internship; or (3) a graduate of a pharmacy
5 program located outside of the United States which is not accredited and
6 who has successfully passed equivalency examinations approved by the
7 board.

8 ~~(dd)~~(nn) "Pharmacy," "drug store" or "apothecary" means
9 premises, laboratory, area or other place: (1) Where drugs are offered
10 for sale where the profession of pharmacy is practiced and where
11 prescriptions are compounded and dispensed; or (2) which has displayed
12 upon it or within it the words "pharmacist," "pharmaceutical chemist,"
13 "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "drug
14 sundries" or any of these words or combinations of these words or
15 words of similar import either in English or any sign containing any of
16 these words; or (3) where the characteristic symbols of pharmacy or the
17 characteristic prescription sign "Rx" may be exhibited. As used in this
18 subsection, premises refers only to the portion of any building or
19 structure leased, used or controlled by the licensee in the conduct of the
20 business registered by the board at the address for which the registration
21 was issued.

22 ~~(ee)~~ "Pharmacy student" means an individual, registered with the
23 board of pharmacy, enrolled in a accredited school of pharmacy.

24 (oo) "Pharmacy prescription application" means software that is
25 used to process prescription information, is installed on a pharmacy's
26 computers or servers, and is controlled by the pharmacy.

27 ~~(ff)~~(pp) "Pharmacy technician" means an individual who, under
28 the direct supervision and control of a pharmacist, may perform
29 packaging, manipulative, repetitive or other nondiscretionary tasks
30 related to the processing of a prescription or medication order and who
31 assists the pharmacist in the performance of pharmacy related duties,
32 but who does not perform duties restricted to a pharmacist.

33 ~~(gg)~~(qq) "Practitioner" means a person licensed to practice
34 medicine and surgery, dentist, podiatrist, veterinarian, optometrist or
35 scientific investigator or other person authorized by law to use a
36 prescription-only drug in teaching or chemical analysis or to conduct
37 research with respect to a prescription-only drug.

38 ~~(hh)~~(rr) "Preceptor" means a licensed pharmacist who possesses at
39 least two years' experience as a pharmacist and who supervises students
40 obtaining the pharmaceutical experience required by law as a condition
41 to taking the examination for licensure as a pharmacist.

42 ~~(ii)~~ "Prescription" means, according to the context, either a
43 prescription order or a prescription medication.

1 (ss) *"Prescriber" means a practitioner or a mid-level practitioner.*

2 ~~(jj)~~(tt) *"Prescription" or "prescription order" means: (1) An order to*
3 *be filled by a pharmacist for prescription medication issued and signed by*
4 *a prescriber in the authorized course of such prescriber's professional*
5 *practice; or (2) an order transmitted to a pharmacist through word of*
6 *mouth, note, telephone or other means of communication directed by such*
7 *prescriber, regardless of whether the communication is oral, electronic,*
8 *facsimile or in printed form.*

9 (uu) *"Prescription medication" means any drug, including label*
10 *and container according to context, which is dispensed pursuant to a*
11 *prescription order.*

12 ~~(kk)~~(vv) *"Prescription-only drug" means any drug whether*
13 *intended for use by man or animal, required by federal or state law*
14 *(including 21 U.S.C. § 353, as amended), to be dispensed only pursuant*
15 *to a written or oral prescription or order of a practitioner or is restricted*
16 *to use by practitioners only.*

17 ~~(ll)~~ *"Prescription order" means: (1) An order to be filled by a*
18 *pharmacist for prescription medication issued and signed by a practitioner*
19 *or a mid-level practitioner in the authorized course of professional*
20 *practice; or (2) an order transmitted to a pharmacist through word of*
21 *mouth, note, telephone or other means of communication directed by such*
22 *practitioner or mid-level practitioner.*

23 ~~(mm)~~(ww) *"Probation" means the practice or operation under a*
24 *temporary license, registration or permit or a conditional license,*
25 *registration or permit of a business or profession for which a license,*
26 *registration or permit is granted by the board under the provisions of the*
27 *pharmacy act of the state of Kansas requiring certain actions to be*
28 *accomplished or certain actions not to occur before a regular license,*
29 *registration or permit is issued.*

30 ~~(nn)~~(xx) *"Professional incompetency" means:*

31 (1) *One or more instances involving failure to adhere to the*
32 *applicable standard of pharmaceutical care to a degree which*
33 *constitutes gross negligence, as determined by the board;*

34 (2) *repeated instances involving failure to adhere to the applicable*
35 *standard of pharmaceutical care to a degree which constitutes ordinary*
36 *negligence, as determined by the board; or*

37 (3) *a pattern of pharmacy practice or other behavior which*
38 *demonstrates a manifest incapacity or incompetence to practice*
39 *pharmacy.*

40 ~~(oo)~~(yy) *"Readily retrievable" means that records kept by automatic*
41 *data processing applications or other electronic or mechanized record-*
42 *keeping systems can be separated out from all other records within a*
43 *reasonable time not to exceed 48 hours of a request from the board or*

1 other authorized agent or that hard-copy records are kept on which
2 certain items are asterisked, redlined or in some other manner visually
3 identifiable apart from other items appearing on the records.

4 (zz) **"Retail dealer" means a person selling at retail**
5 **nonprescription drugs which are prepackaged, fully prepared by the**
6 **manufacturer or distributor for use by the consumer and labeled in**
7 **accordance with the requirements of the state and federal food, drug and**
8 **cosmetic acts. Such nonprescription drugs shall not include: (1) A**
9 **controlled substance; (2) a prescription-only drug; or (3) a drug**
10 **intended for human use by hypodermic injection.**

11 ~~(pp)~~(aaa) **"Secretary" means the executive secretary of the board.**

12 ~~(qq)~~(bbb) **"Third party logistics provider" means an entity that: (1)**
13 **Provides or coordinates warehousing, distribution or other services on**
14 **behalf of a manufacturer, but does not take title to the prescription drug**
15 **or have general responsibility to direct the prescription drug's sale or**
16 **disposition; (2) is registered as a wholesale distributor under the**
17 **pharmacy act of the state of Kansas; and (3) to be considered part of the**
18 **normal distribution channel, must also be an authorized distributor of**
19 **record.**

20 ~~(rr)~~(ccc) **"Unprofessional conduct" means:**

21 **(1) Fraud in securing a registration or permit;**

22 **(2) intentional adulteration or mislabeling of any drug, medicine,**
23 **chemical or poison;**

24 **(3) causing any drug, medicine, chemical or poison to be**
25 **adulterated or mislabeled, knowing the same to be adulterated or**
26 **mislabeled;**

27 **(4) intentionally falsifying or altering records or prescriptions;**

28 **(5) unlawful possession of drugs and unlawful diversion of drugs to**
29 **others;**

30 **(6) willful betrayal of confidential information under K.S.A. 65-**
31 **1654, and amendments thereto;**

32 **(7) conduct likely to deceive, defraud or harm the public;**

33 **(8) making a false or misleading statement regarding the licensee's**
34 **professional practice or the efficacy or value of a drug;**

35 **(9) commission of any act of sexual abuse, misconduct or**
36 **exploitation related to the licensee's professional practice; or**

37 **(10) performing unnecessary tests, examinations or services which**
38 **have no legitimate pharmaceutical purpose.**

39 ~~(ss)~~ **"Mid-level practitioner" means an advanced practice registered**
40 **nurse issued a license pursuant to K.S.A. 65-1131, and amendments**
41 **thereto, who has authority to prescribe drugs pursuant to a written protocol**
42 **with a responsible physician under K.S.A. 65-1130, and amendments**
43 **thereto, or a physician assistant licensed pursuant to the physician assistant**

1 ~~licensure act who has authority to prescribe drugs pursuant to a written~~
2 ~~protocol with a responsible physician under K.S.A. 65-28a08, and~~
3 ~~amendments thereto.~~

4 ~~(tt)~~(ddd) ***"Vaccination protocol" means a written protocol, agreed***
5 ***to by a pharmacist and a person licensed to practice medicine and***
6 ***surgery by the state board of healing arts, which establishes procedures***
7 ***and recordkeeping and reporting requirements for administering a***
8 ***vaccine by the pharmacist for a period of time specified therein, not to***
9 ***exceed two years.***

10 ~~(eee)~~ ***"Valid prescription order" means a prescription that is issued***
11 ***for a legitimate medical purpose by an individual prescriber licensed by***
12 ***law to administer and prescribe drugs and acting in the usual course of***
13 ***such prescriber's professional practice. A prescription issued solely on the***
14 ***basis of an internet-based questionnaire or consultation without an***
15 ***appropriate prescriber-patient relationship is not a valid prescription***
16 ***order.***

17 ~~(ttt)~~(fff) ***"Veterinary medical teaching hospital pharmacy" means***
18 ***any location where prescription-only drugs are stored as part of an***
19 ***accredited college of veterinary medicine and from which prescription-***
20 ***only drugs are distributed for use in treatment of or administration to a***
21 ***nonhuman.***

22 ~~(vv)~~(ggg) ***"Wholesale distributor" means any person engaged in***
23 ***wholesale distribution of prescription drugs or devices in or into the***
24 ***state, including, but not limited to, manufacturers, repackagers, own-***
25 ***label distributors, private-label distributors, jobbers, brokers,***
26 ***warehouses, including manufacturers' and distributors' warehouses, co-***
27 ***licensees, exclusive distributors, third party logistics providers, chain***
28 ***pharmacy warehouses that conduct wholesale distributions, and***
29 ***wholesale drug warehouses, independent wholesale drug traders and***
30 ***retail pharmacies that conduct wholesale distributions. Wholesale***
31 ***distributor shall not include persons engaged in the sale of durable***
32 ***medical equipment to consumers or patients.***

33 ~~(www)~~(hhh) ***"Wholesale distribution" means the distribution of***
34 ***prescription drugs or devices by wholesale distributors to persons other***
35 ***than consumers or patients, and includes the transfer of prescription***
36 ***drugs by a pharmacy to another pharmacy if the total number of units of***
37 ***transferred drugs during a twelve-month period does not exceed 5% of***
38 ***the total number of all units dispensed by the pharmacy during the***
39 ***immediately preceding twelve-month period. Wholesale distribution does***
40 ***not include:***

41 ***(1) The sale, purchase or trade of a prescription drug or device, an***
42 ***offer to sell, purchase or trade a prescription drug or device or the***
43 ***dispensing of a prescription drug or device pursuant to a prescription;***

1 (2) *the sale, purchase or trade of a prescription drug or device or an*
2 *offer to sell, purchase or trade a prescription drug or device for*
3 *emergency medical reasons;*

4 (3) *intracompany transactions, as defined in this section, unless in*
5 *violation of own use provisions;*

6 (4) *the sale, purchase or trade of a prescription drug or device or an*
7 *offer to sell, purchase or trade a prescription drug or device among*
8 *hospitals, chain pharmacy warehouses, pharmacies or other health care*
9 *entities that are under common control;*

10 (5) *the sale, purchase or trade of a prescription drug or device or*
11 *the offer to sell, purchase or trade a prescription drug or device by a*
12 *charitable organization described in 503(c)(3) of the internal revenue*
13 *code of 1954 to a nonprofit affiliate of the organization to the extent*
14 *otherwise permitted by law;*

15 (6) *the purchase or other acquisition by a hospital or other similar*
16 *health care entity that is a member of a group purchasing organization*
17 *of a prescription drug or device for its own use from the group*
18 *purchasing organization or from other hospitals or similar health care*
19 *entities that are members of these organizations;*

20 (7) *the transfer of prescription drugs or devices between*
21 *pharmacies pursuant to a centralized prescription processing*
22 *agreement;*

23 (8) *the sale, purchase or trade of blood and blood components*
24 *intended for transfusion;*

25 (9) *the return of recalled, expired, damaged or otherwise non-*
26 *salable prescription drugs, when conducted by a hospital, health care*
27 *entity, pharmacy, chain pharmacy warehouse or charitable institution in*
28 *accordance with the board's rules and regulations;*

29 (10) *the sale, transfer, merger or consolidation of all or part of the*
30 *business of a retail pharmacy or pharmacies from or with another retail*
31 *pharmacy or pharmacies, whether accomplished as a purchase and sale*
32 *of stock or business assets, in accordance with the board's rules and*
33 *regulations;*

34 (11) *the distribution of drug samples by manufacturers' and*
35 *authorized distributors' representatives;*

36 (12) *the sale of minimal quantities of drugs by retail pharmacies to*
37 *licensed practitioners for office use; or*

38 (13) *the sale or transfer from a retail pharmacy or chain pharmacy*
39 *warehouse of expired, damaged, returned or recalled prescription drugs*
40 *to the original manufacturer, originating wholesale distributor or to a*
41 *third party returns processor in accordance with the board's rules and*
42 *regulations.*

43 *Sec. 52. K.S.A. 2011 Supp. 65-1637 is hereby amended to read as*

1 follows: 65-1637. (a) *In every store, shop or other place defined in this*
2 *act as a "pharmacy" there shall be a pharmacist-in-charge and, except*
3 *as otherwise provided by law, the compounding and dispensing of*
4 *prescriptions shall be limited to pharmacists only.* ~~Except as otherwise~~
5 ~~provided by the pharmacy act of this state, when a pharmacist is not in~~
6 ~~attendance at a pharmacy, the premises shall be enclosed and secured.~~
7 ~~Prescription orders may be written, oral, telephonic or by electronic~~
8 ~~transmission unless prohibited by law. Blank forms for written prescription~~
9 ~~orders may have two signature lines. If there are two lines, one signature~~
10 ~~line shall state: "Dispense as written" and the other signature line shall~~
11 ~~state: "Brand exchange permissible." Prescriptions shall only be filled or~~
12 ~~refilled in accordance with the following requirements:~~

13 ~~(a) All prescriptions shall be filled in strict conformity with any~~
14 ~~directions of the prescriber, except that a pharmacist who receives a~~
15 ~~prescription order for a brand name drug product may exercise brand~~
16 ~~exchange with a view toward achieving a lesser cost to the purchaser~~
17 ~~unless:~~

18 ~~(1) The prescriber, in the case of a prescription signed by the~~
19 ~~prescriber and written on a blank form containing two signature lines,~~
20 ~~signs the signature line following the statement "dispense as written," or~~

21 ~~(2) the prescriber, in the case of a prescription signed by the~~
22 ~~prescriber, writes in the prescriber's own handwriting "dispense as written"~~
23 ~~on the prescription, or~~

24 ~~(3) the prescriber, in the case of a prescription other than one in~~
25 ~~writing signed by the prescriber, expressly indicates the prescription is to~~
26 ~~be dispensed as communicated, or~~

27 ~~(4) the federal food and drug administration has determined that a~~
28 ~~drug product of the same generic name is not bioequivalent to the~~
29 ~~prescribed brand name prescription medication.~~

30 ~~(b) Prescription orders shall be recorded in writing by the pharmacist~~
31 ~~and the record so made by the pharmacist shall constitute the original~~
32 ~~prescription to be dispensed by the pharmacist. This record, if telephoned~~
33 ~~by other than the physician shall bear the name of the person so~~
34 ~~telephoning. Nothing in this paragraph shall be construed as altering or~~
35 ~~affecting in any way laws of this state or any federal act requiring a written~~
36 ~~prescription order.~~

37 ~~(c) (1) Except as provided in paragraph (2), no prescription shall be~~
38 ~~refilled unless authorized by the prescriber either in the original~~
39 ~~prescription or by oral order which is reduced promptly to writing and~~
40 ~~filled by the pharmacist.~~

41 ~~(2) A pharmacist may refill a prescription order issued on or after the~~
42 ~~effective date of this act for any prescription drug except a drug listed on~~
43 ~~schedule II of the uniform controlled substances act or a narcotic drug.~~

1 ~~listed on any schedule of the uniform controlled substances act without the~~
2 ~~prescriber's authorization when all reasonable efforts to contact the~~
3 ~~prescriber have failed and when, in the pharmacist's professional~~
4 ~~judgment, continuation of the medication is necessary for the patient's~~
5 ~~health, safety and welfare. Such prescription refill shall only be in an~~
6 ~~amount judged by the pharmacist to be sufficient to maintain the patient~~
7 ~~until the prescriber can be contacted, but in no event shall a refill under~~
8 ~~this paragraph be more than a seven day supply or one package of the~~
9 ~~drug. However, if the prescriber states on a prescription that there shall be~~
10 ~~no emergency refilling of that prescription, then the pharmacist shall not~~
11 ~~dispense any emergency medication pursuant to that prescription. A~~
12 ~~pharmacist who refills a prescription order under this subsection (c)(2)~~
13 ~~shall contact the prescriber of the prescription order on the next business~~
14 ~~day subsequent to the refill or as soon thereafter as possible. No~~
15 ~~pharmacist shall be required to refill any prescription order under this~~
16 ~~subsection (c)(2). A prescriber shall not be subject to liability for any~~
17 ~~damages resulting from the refilling of a prescription order by a~~
18 ~~pharmacist under this subsection (c)(2) unless such damages are~~
19 ~~occasioned by the gross negligence or willful or wanton acts or omissions~~
20 ~~by the prescriber.~~

21 ~~(d) If any prescription order contains a provision that the prescription~~
22 ~~may be refilled a specific number of times within or during any particular~~
23 ~~period, such prescription shall not be refilled except in strict conformity~~
24 ~~with such requirements;~~

25 ~~(e) If a prescription order contains a statement that during any~~
26 ~~particular time the prescription may be refilled at will, there shall be no~~
27 ~~limitation as to the number of times that such prescription may be refilled~~
28 ~~except that it may not be refilled after the expiration of the time specified~~
29 ~~or one year after the prescription was originally issued, whichever occurs~~
30 ~~first.~~

31 ~~(f) Any pharmacist who exercises brand exchange and dispenses a~~
32 ~~less expensive drug product shall not charge the purchaser more than the~~
33 ~~regular and customary retail price for the dispensed drug.~~

34 ~~Nothing contained in this section shall be construed as preventing a~~
35 ~~pharmacist from refusing to fill or refill any prescription if in the~~
36 ~~pharmacist's professional judgment and discretion such pharmacist is of~~
37 ~~the opinion that it should not be filled or refilled~~

38 ~~(b) Except as otherwise provided by the pharmacy act of this state,~~
39 ~~when a pharmacist is not in attendance at a pharmacy, the premises shall~~
40 ~~be enclosed and secured.~~

41 ***New Sec. 53. (a) The pharmacist shall exercise professional***
42 ***judgment regarding the accuracy, validity and authenticity of any***
43 ***prescription order consistent with federal and state laws and rules and***

1 *regulations. A pharmacist shall not dispense a prescription drug if the*
2 *pharmacist, in the exercise of professional judgment, determines that the*
3 *prescription is not a valid prescription order.*

4 *(b) The prescriber may authorize an agent to transmit to the*
5 *pharmacy a prescription order orally, by facsimile transmission or by*
6 *electronic transmission provided that the first and last names of the*
7 *transmitting agent are included in the order.*

8 *(c) (1) A new written or electronically prepared and transmitted*
9 *prescription order shall be manually or electronically signed by the*
10 *prescriber. If transmitted by the prescriber's agent, the first and last*
11 *names of the transmitting agent shall be included in the order.*

12 *(2) If the prescription is for a controlled substance and is written or*
13 *printed from an electronic prescription application, the prescription*
14 *shall be manually signed by the prescriber prior to delivery of the*
15 *prescription to the patient or prior to facsimile transmission of the*
16 *prescription to the pharmacy.*

17 *(3) An electronically prepared prescription shall not be*
18 *electronically transmitted to the pharmacy if the prescription has been*
19 *printed prior to electronic transmission. An electronically prepared and*
20 *transmitted prescription which is printed following electronic*
21 *transmission shall be clearly labeled as a copy, not valid for dispensing.*

22 *(4) The state board of pharmacy shall conduct a study on the issues*
23 *of electronic transmission of prior authorizations and step therapy*
24 *protocols. The report on the results of such study shall be completed and*
25 *submitted to the legislature no later than January 15, 2013. The board is*
26 *hereby authorized to conduct pilot projects related to any new*
27 *technology implementation when deemed necessary and practicable.*

28 *(d) An authorization to refill a prescription order or to renew or*
29 *continue an existing drug therapy may be transmitted to a pharmacist*
30 *through oral communication, in writing, by facsimile transmission or by*
31 *electronic transmission initiated by or directed by the prescriber.*

32 *(1) If the transmission is completed by the prescriber's agent, and*
33 *the first and last names of the transmitting agent are included in the*
34 *order, the prescriber's signature is not required on the fax or alternate*
35 *electronic transmission.*

36 *(2) If the refill order or renewal order differs in any manner from*
37 *the original order, such as a change of the drug strength, dosage form or*
38 *directions for use, the prescriber shall sign the order as provided by*
39 *paragraph (1).*

40 *(e) Regardless of the means of transmission to a pharmacy, only a*
41 *pharmacist or a pharmacist intern shall be authorized to receive a new*
42 *prescription order from a prescriber or transmitting agent. A pharmacist,*
43 *a pharmacist intern or a registered pharmacy technician may receive a*

1 *refill or renewal order from a prescriber or transmitting agent if such*
2 *registered pharmacy technician's supervising pharmacist has authorized*
3 *that function.*

4 *(f) A refill is one or more dispensings of a prescription drug or*
5 *device that results in the patient's receipt of the quantity authorized by*
6 *the prescriber for a single fill as indicated on the prescription order.*

7 *(1) A prescription for a prescription drug or device that is not a*
8 *controlled substance may authorize no more than 12 refills within 18*
9 *months following the date on which the prescription is issued.*

10 *(2) A prescription for a schedule III, IV or V controlled substance*
11 *may authorize no more than five refills within six months following the*
12 *date on which the prescription is issued.*

13 *(g) Prescriptions shall only be filled or refilled in accordance with*
14 *the following requirements:*

15 *(1) All prescriptions shall be filled in strict conformity with any*
16 *directions of the prescriber, except that a pharmacist who receives a*
17 *prescription order for a brand name drug product may exercise brand*
18 *exchange with a view toward achieving a lesser cost to the purchaser*
19 *unless:*

20 *(A) The prescriber, in the case of a prescription manually or*
21 *electronically signed by the prescriber and prepared on a form*
22 *containing two signature lines, signs the signature line following the*
23 *statement "dispense as written";*

24 *(B) the prescriber, in the case of a written prescription signed by the*
25 *prescriber, writes in the prescriber's own handwriting "dispense as*
26 *written" on the prescription;*

27 *(C) the prescriber, in the case of a prescription other than one in*
28 *writing signed by the prescriber, expressly indicates the prescription is to*
29 *be dispensed as communicated; or*

30 *(D) the federal food and drug administration has determined that a*
31 *drug product of the same generic name is not bioequivalent to the*
32 *prescribed brand name prescription medication.*

33 *(h) If a prescription order contains a statement that during any*
34 *particular time the prescription may be refilled at will, there shall be no*
35 *limitation as to the number of times that such prescription may be*
36 *refilled except that it may not be refilled after the expiration of the time*
37 *specified or one year after the prescription was originally issued,*
38 *whichever occurs first.*

39 *(i) Prescription orders shall be recorded in writing by the*
40 *pharmacist and the record so made by the pharmacist shall constitute*
41 *the original prescription to be dispensed by the pharmacist. This record,*
42 *if telephoned by other than the prescriber, shall bear the name of the*
43 *person so telephoning. Nothing in this section shall be construed as*

1 *altering or affecting in any way laws of this state or any federal act*
2 *requiring a written prescription order.*

3 *(j) (1) Except as provided in paragraph (2), no prescription shall be*
4 *refilled unless authorized by the prescriber either in the original*
5 *prescription or by oral order which is reduced promptly to writing and*
6 *filled by the pharmacist.*

7 *(2) A pharmacist may refill a prescription order issued on or after*
8 *the effective date of this act for any prescription drug except a drug*
9 *listed on schedule II of the uniform controlled substances act or a*
10 *narcotic drug listed on any schedule of the uniform controlled*
11 *substances act without the prescriber's authorization when all*
12 *reasonable efforts to contact the prescriber have failed and when, in the*
13 *pharmacist's professional judgment, continuation of the medication is*
14 *necessary for the patient's health, safety and welfare. Such prescription*
15 *refill shall only be in an amount judged by the pharmacist to be*
16 *sufficient to maintain the patient until the prescriber can be contacted,*
17 *but in no event shall a refill under this paragraph be more than a seven*
18 *day supply or one package of the drug. However, if the prescriber states*
19 *on a prescription that there shall be no emergency refilling of that*
20 *prescription, then the pharmacist shall not dispense any emergency*
21 *medication pursuant to that prescription. A pharmacist who refills a*
22 *prescription order under this subsection (j)(2) shall contact the*
23 *prescriber of the prescription order on the next business day subsequent*
24 *to the refill or as soon thereafter as possible. No pharmacist shall be*
25 *required to refill any prescription order under this subsection (j)(2). A*
26 *prescriber shall not be subject to liability for any damages resulting from*
27 *the refilling of a prescription order by a pharmacist under this*
28 *subsection (j)(2) unless such damages are occasioned by the gross*
29 *negligence or willful or wanton acts or omissions by the prescriber.*

30 *(k) If any prescription order contains a provision that the*
31 *prescription may be refilled a specific number of times within or during*
32 *any particular period, such prescription shall not be refilled except in*
33 *strict conformity with such requirements.*

34 *(l) Any pharmacist who exercises brand exchange and dispenses a*
35 *less expensive drug product shall not charge the purchaser more than*
36 *the regular and customary retail price for the dispensed drug.*

37 *(m) Nothing contained in this section shall be construed as*
38 *preventing a pharmacist from refusing to fill or refill any prescription if*
39 *in the pharmacist's professional judgment and discretion such*
40 *pharmacist is of the opinion that it should not be filled or refilled.*

41 *Sec. 54. K.S.A. 2011 Supp. 65-1683 is hereby amended to read as*
42 *follows: 65-1683. (a) The board shall establish and maintain a*
43 *prescription monitoring program for the monitoring of scheduled*

1 *substances and drugs of concern dispensed in this state or dispensed to*
2 *an address in this state.*

3 *(b) Each dispenser shall submit to the board by electronic means*
4 *information required by the board regarding each prescription dispensed*
5 *for a substance included under subsection (a). The board shall*
6 *promulgate rules and regulations specifying the nationally recognized*
7 *telecommunications format to be used for submission of information*
8 *that each dispenser shall submit to the board. Such information may*
9 *include, but not be limited to:*

10 *(1) The dispenser identification number;*

11 *(2) the date the prescription is filled;*

12 *(3) the prescription number;*

13 *(4) whether the prescription is new or is a refill;*

14 *(5) the national drug code for the drug dispensed;*

15 *(6) the quantity dispensed;*

16 *(7) the number of days supply of the drug;*

17 *(8) the patient identification number;*

18 *(9) the patient's name;*

19 *(10) the patient's address;*

20 *(11) the patient's date of birth;*

21 *(12) the prescriber identification number;*

22 *(13) the date the prescription was issued by the prescriber; and*

23 *(14) the source of payment for the prescription.*

24 *(c) The board shall promulgate rules and regulations specifying the*
25 *transmission methods and frequency of the dispenser submissions*
26 *required under subsection (b).*

27 *(d) The board may issue a waiver to a dispenser that is unable to*
28 *submit prescription information by electronic means. Such waiver may*
29 *permit the dispenser to submit prescription information by paper form or*
30 *other means, provided that all information required by rules and*
31 *regulations is submitted in this alternative format.*

32 *(e) The board is hereby authorized to apply for and to accept grants*
33 *and may accept any donation, gift or bequest made to the board for*
34 *furthering any phase of the prescription monitoring program.*

35 *(f) The board shall remit all moneys received by it under subsection*
36 *(e) to the state treasurer in accordance with the provisions of K.S.A. 75-*
37 *4215, and amendments thereto. Upon receipt of such remittance, the state*
38 *treasurer shall deposit the entire amount in the state treasury to the credit*
39 *of the non-federal gifts and grants fund. All expenditures from such fund*
40 *shall be made in accordance with appropriation acts upon warrants of the*
41 *director of accounts and reports issued pursuant to vouchers approved by*
42 *the president of the board or a person designated by the president.*

43 *Sec. 55. K.S.A. 2011 Supp. 65-1685 is hereby amended to read as*

1 follows: 65-1685. (a) The prescription monitoring program database, all
2 information contained therein and any records maintained by the board,
3 or by any entity contracting with the board, submitted to, maintained or
4 stored as a part of the database, shall be privileged and confidential,
5 shall not be subject to subpoena or discovery in civil proceedings and
6 may only be used for investigatory or evidentiary purposes related to
7 violations of state or federal law and regulatory activities of entities
8 charged with administrative oversight of those persons engaged in the
9 prescribing or dispensing of scheduled substances and drugs of concern,
10 shall not be a public record and shall not be subject to the Kansas open
11 records act, K.S.A. 45-215 et seq., and amendments thereto, except as
12 provided in subsections (c) and (d).

13 (b) The board shall maintain procedures to ensure that the privacy
14 and confidentiality of patients and patient information collected,
15 recorded, transmitted and maintained is not disclosed to persons except
16 as provided in subsections (c) and (d).

17 (c) The board is hereby authorized to provide data in the
18 prescription monitoring program to the following persons:

19 (1) Persons authorized to prescribe or dispense scheduled
20 substances and drugs of concern, for the purpose of providing medical
21 or pharmaceutical care for their patients;

22 (2) an individual who requests the individual's own prescription
23 monitoring information in accordance with procedures established by
24 the board;

25 (3) designated representatives from the professional licensing,
26 certification or regulatory agencies charged with administrative
27 oversight of those persons engaged in the prescribing or dispensing of
28 scheduled substances and drugs of concern;

29 (4) local, state and federal law enforcement or prosecutorial
30 officials engaged in the administration, investigation or enforcement of
31 the laws governing scheduled substances and drugs of concern subject
32 to the requirements in K.S.A. 22-2502, and amendments thereto;

33 (5) designated representatives from the ~~Kansas health policy~~
34 ~~authority~~ department of health and environment regarding authorized
35 medicaid program recipients;

36 (6) persons authorized by a grand jury subpoena, inquisition
37 subpoena or court order in a criminal action;

38 (7) personnel of the prescription monitoring program advisory
39 committee for the purpose of operation of the program; ~~and~~

40 (8) personnel of the board for purposes of administration and
41 enforcement of this act or the uniform controlled substances act, K.S.A.
42 65-4101 et seq., and amendments thereto;

43 (9) persons authorized to prescribe or dispense scheduled substances

1 *and drugs of concern, when an individual is obtaining prescriptions in a*
2 *manner that appears to be misuse, abuse or diversion of scheduled*
3 *substances or drugs of concern; and*

4 *(10) medical examiners, coroners or other persons authorized under*
5 *law to investigate or determine causes of death.*

6 *(d) The prescription monitoring program advisory committee*
7 *established pursuant to K.S.A. 65-1689, and amendments thereto, is*
8 *authorized to review and analyze the data for purposes of identifying*
9 *patterns and activity of concern.*

10 *(1) If a review of information appears to indicate a person may be*
11 *obtaining prescriptions in a manner that may represent misuse or abuse of*
12 *controlled substances and drugs of concern, the advisory committee is*
13 *authorized to notify the prescribers and dispensers who prescribed or*
14 *dispensed the prescriptions. If the review identifies patterns or other*
15 *evidence sufficient to create a reasonable suspicion of criminal activity,*
16 *the advisory committee is authorized to notify the appropriate law*
17 *enforcement agency.*

18 *(2) If a review of information appears to indicate that a violation of*
19 *state or federal law relating to prescribing controlled substances and*
20 *drugs of concern may have occurred, or that a prescriber or dispenser has*
21 *knowingly prescribed, dispensed or obtained controlled substances and*
22 *drugs of concern in a manner that is inconsistent with recognized*
23 *standards of care for the profession, the advisory committee shall*
24 *determine whether a report to the professional licensing, certification or*
25 *regulatory agencies charged with administrative oversight of those*
26 *persons engaged in prescribing or dispensing of controlled substances and*
27 *drugs of concern or to the appropriate law enforcement agency is*
28 *warranted.*

29 *(A) For purposes of such determination the advisory committee may,*
30 *in consultation with the appropriate regulatory agencies and professional*
31 *organizations, establish criteria regarding appropriate standards and*
32 *utilize volunteer peer review committees of professionals with expertise in*
33 *the particular practice to create such standards and review individual*
34 *cases.*

35 *(B) The peer review committee or committees appointed herein shall*
36 *have authority to request and receive information in the prescription*
37 *monitoring program database from the director of the prescription*
38 *monitoring program.*

39 *(C) If the determination is made that a referral to a regulatory or law*
40 *enforcement agency is not warranted but educational or professional*
41 *advising might be appropriate, the advisory committee may refer the*
42 *prescribers or dispensers to other such resources.*

43 *(e) The board is hereby authorized to provide data in the*

1 *prescription monitoring program to public or private entities for*
2 *statistical, research or educational purposes after removing information*
3 *that could be used to identify individual practitioners, dispensers,*
4 *patients or persons who received prescriptions from dispensers.*

5 *Sec. 56. K.S.A. 2011 Supp. 65-1693 is hereby amended to read as*
6 *follows: 65-1693. (a) A dispenser who knowingly fails to submit*
7 *prescription monitoring information to the board as required by this act*
8 *or knowingly submits incorrect prescription monitoring information*
9 *shall be guilty of a severity level 10, nonperson felony.*

10 *(b) A person authorized to have prescription monitoring*
11 *information pursuant to this act who knowingly discloses such*
12 *information in violation of this act shall be guilty of a severity level 10,*
13 *nonperson felony.*

14 *(c) A person authorized to have prescription monitoring*
15 *information pursuant to this act who knowingly uses such information*
16 *in a manner or for a purpose in violation of this act shall be guilty of a*
17 *severity level 10, nonperson felony.*

18 *(d) A person who knowingly, and without authorization, obtains or*
19 *attempts to obtain prescription monitoring information shall be guilty of a*
20 *severity level 10, nonperson felony.*

21 *(e) It shall not be a violation of this act for a practitioner or*
22 *dispenser to disclose or use information obtained pursuant to this act*
23 *when such information is disclosed or used solely in the course of such*
24 *practitioner's or dispenser's care of the patient who is the subject of the*
25 *information.*

26 *Sec. 57. K.S.A. 2011 Supp. 65-4101 is hereby amended to read as*
27 *follows: 65-4101. As used in this act: (a) "Administer" means the direct*
28 *application of a controlled substance, whether by injection, inhalation,*
29 *ingestion or any other means, to the body of a patient or research subject*
30 *by: (1) A practitioner or pursuant to the lawful direction of a*
31 *practitioner; or (2) the patient or research subject at the direction and*
32 *in the presence of the practitioner.*

33 *(b) "Agent" means an authorized person who acts on behalf of or*
34 *at the direction of a manufacturer, distributor or dispenser. It does not*
35 *include a common carrier, public warehouseman or employee of the*
36 *carrier or warehouseman.*

37 *(c) "Application service provider" means an entity that sells*
38 *electronic prescription or pharmacy prescription applications as a hosted*
39 *service where the entity controls access to the application and maintains*
40 *the software and records on its server.*

41 ~~(e)~~(d) *"Board" means the state board of pharmacy.*

42 ~~(d)~~(e) *"Bureau" means the bureau of narcotics and dangerous*
43 *drugs, United States department of justice, or its successor agency.*

1 ~~(e)~~(f) **"Controlled substance" means any drug, substance or**
2 **immediate precursor included in any of the schedules designated in**
3 **K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and**
4 **amendments thereto.**

5 (g) (1) **"Controlled substance analog" means a substance that is**
6 **intended for human consumption, and:**

7 (A) **The chemical structure of which is substantially similar to the**
8 **chemical structure of a controlled substance listed in or added to the**
9 **schedules designated in K.S.A. 65-4105 or 65-4107, and amendments**
10 **thereto;**

11 (B) **which has a stimulant, depressant or hallucinogenic effect on the**
12 **central nervous system substantially similar to the stimulant, depressant**
13 **or hallucinogenic effect on the central nervous system of a controlled**
14 **substance included in the schedules designated in K.S.A. 65-4105 or 65-**
15 **4107, and amendments thereto; or**

16 (C) **with respect to a particular individual, which such individual**
17 **represents or intends to have a stimulant, depressant or hallucinogenic**
18 **effect on the central nervous system substantially similar to the stimulant,**
19 **depressant or hallucinogenic effect on the central nervous system of a**
20 **controlled substance included in the schedules designated in K.S.A. 65-**
21 **4105 or 65-4107, and amendments thereto.**

22 (2) **"Controlled substance analog" does not include:**

23 (A) **A controlled substance;**

24 (B) **a substance for which there is an approved new drug application;**
25 **or**

26 (C) **a substance with respect to which an exemption is in effect for**
27 **investigational use by a particular person under section 505 of the federal**
28 **food, drug and cosmetic act, 21 U.S.C. § 355, to the extent conduct with**
29 **respect to the substance is permitted by the exemption.**

30 ~~(h)~~(h) **"Counterfeit substance" means a controlled substance which,**
31 **or the container or labeling of which, without authorization bears the**
32 **trademark, trade name or other identifying mark, imprint, number or**
33 **device or any likeness thereof of a manufacturer, distributor or**
34 **dispenser other than the person who in fact manufactured, distributed or**
35 **dispensed the substance.**

36 ~~(i)~~(i) **"Cultivate" means the planting or promotion of growth of five**
37 **or more plants which contain or can produce controlled substances.**

38 (j) **"DEA" mean the U.S. department of justice, drug enforcement**
39 **administration.**

40 (k) **"Deliver" or "delivery" means the actual, constructive or**
41 **attempted transfer from one person to another of a controlled substance,**
42 **whether or not there is an agency relationship.**

43 ~~(l)~~(l) **"Dispense" means to deliver a controlled substance to an**

1 *ultimate user or research subject by or pursuant to the lawful order of a*
2 *practitioner, including the packaging, labeling or compounding*
3 *necessary to prepare the substance for that delivery, or pursuant to the*
4 *prescription of a mid-level practitioner.*

5 ~~(m)~~ *"Dispenser" means a practitioner or pharmacist who*
6 *dispenses.*

7 ~~(n)~~ *"Distribute" means to deliver other than by administering or*
8 *dispensing a controlled substance.*

9 ~~(o)~~ *"Distributor" means a person who distributes.*

10 ~~(p)~~ *"Drug" means:*

11 *(1) Substances recognized as drugs in the official United States*
12 *pharmacopoeia, official homeopathic pharmacopoeia of the United*
13 *States or official national formulary or any supplement to any of them;*

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

16 *(3) substances, ~~other than food~~, intended to affect the structure or*
17 *any function of the body of man or animals; and*

18 *(4) substances intended for use as a component of any article*
19 *specified in clause (1), (2) or (3) of this subsection. It does not include*
20 *devices or their components, parts or accessories.*

21 ~~(q)~~ *"Immediate precursor" means a substance which the board*
22 *has found to be and by rule and regulation designates as being the*
23 *principal compound commonly used or produced primarily for use and*
24 *which is an immediate chemical intermediary used or likely to be used in*
25 *the manufacture of a controlled substance, the control of which is*
26 *necessary to prevent, curtail or limit manufacture.*

27 ~~(r)~~ *"Electronic prescription" means an electronically prepared*
28 *prescription that is authorized and transmitted from the prescriber to the*
29 *pharmacy by means of electronic transmission.*

30 *(s) "Electronic prescription application" means software that is used*
31 *to create electronic prescriptions and that is intended to be installed on the*
32 *prescriber's computers and servers where access and records are*
33 *controlled by the prescriber.*

34 *(t) "Electronic signature" means a confidential personalized digital*
35 *key, code, number or other method for secure electronic data*
36 *transmissions which identifies a particular person as the source of the*
37 *message, authenticates the signatory of the message and indicates the*
38 *person's approval of the information contained in the transmission.*

39 *(u) "Electronic transmission" means the transmission of an electronic*
40 *prescription, formatted as an electronic data file, from a prescriber's*
41 *electronic prescription application to a pharmacy's computer, where the*
42 *data file is imported into the pharmacy prescription application.*

43 *(v) "Electronically prepared prescription" means a prescription that*

1 is generated using an electronic prescription application.

2 (w) "Facsimile transmission" or "fax transmission" means the
3 transmission of a digital image of a prescription from the prescriber or the
4 prescriber's agent to the pharmacy. "Facsimile transmission" includes, but
5 is not limited to, transmission of a written prescription between the
6 prescriber's fax machine and the pharmacy's fax machine; transmission of
7 an electronically prepared prescription from the prescriber's electronic
8 prescription application to the pharmacy's fax machine, computer or
9 printer; or transmission of an electronically prepared prescription from
10 the prescriber's fax machine to the pharmacy's fax machine, computer or
11 printer.

12 (x) "Intermediary" means any technology system that receives and
13 transmits an electronic prescription between the prescriber and the
14 pharmacy.

15 (y) "Isomer" means all enantiomers and diastereomers.

16 (z) "Manufacture" means the production, preparation,
17 propagation, compounding, conversion or processing of a controlled
18 substance either directly or indirectly or by extraction from substances
19 of natural origin or independently by means of chemical synthesis or by
20 a combination of extraction and chemical synthesis and includes any
21 packaging or repackaging of the substance or labeling or relabeling of
22 its container, except that this term does not include the preparation or
23 compounding of a controlled substance by an individual for the
24 individual's own lawful use or the preparation, compounding, packaging
25 or labeling of a controlled substance:

26 (1) By a practitioner or the practitioner's agent pursuant to a lawful
27 order of a practitioner as an incident to the practitioner's administering
28 or dispensing of a controlled substance in the course of the
29 practitioner's professional practice; or

30 (2) by a practitioner or by the practitioner's authorized agent under
31 such practitioner's supervision for the purpose of or as an incident to
32 research, teaching or chemical analysis or by a pharmacist or medical
33 care facility as an incident to dispensing of a controlled substance.

34 ~~(aa)~~ (aa) "Marijuana" means all parts of all varieties of the plant
35 Cannabis whether growing or not, the seeds thereof, the resin extracted
36 from any part of the plant and every compound, manufacture, salt,
37 derivative, mixture or preparation of the plant, its seeds or resin. It does
38 not include the mature stalks of the plant, fiber produced from the
39 stalks, oil or cake made from the seeds of the plant, any other
40 compound, manufacture, salt, derivative, mixture or preparation of the
41 mature stalks, except the resin extracted therefrom, fiber, oil, or cake or
42 the sterilized seed of the plant which is incapable of germination.

43 ~~(bb)~~ (bb) "Medical care facility" shall have the meaning ascribed to

1 *that term in K.S.A. 65-425, and amendments thereto.*

2 (cc) *"Mid-level practitioner" means an advanced practice registered*
3 *nurse issued a license pursuant to K.S.A. 65-1131, and amendments*
4 *thereto, who has authority to prescribe drugs pursuant to a written*
5 *protocol with a responsible physician under K.S.A. 65-1130, and*
6 *amendments thereto, or a physician assistant licensed under the physician*
7 *assistant licensure act who has authority to prescribe drugs pursuant to a*
8 *written protocol with a responsible physician under K.S.A. 65-28a08, and*
9 *amendments thereto.*

10 (dd) *"Narcotic drug" means any of the following whether produced*
11 *directly or indirectly by extraction from substances of vegetable origin or*
12 *independently by means of chemical synthesis or by a combination of*
13 *extraction and chemical synthesis:*

14 (1) *Opium and opiate and any salt, compound, derivative or*
15 *preparation of opium or opiate;*

16 (2) *any salt, compound, isomer, derivative or preparation thereof*
17 *which is chemically equivalent or identical with any of the substances*
18 *referred to in clause (1) but not including the isoquinoline alkaloids of*
19 *opium;*

20 (3) *opium poppy and poppy straw;*

21 (4) *coca leaves and any salt, compound, derivative or preparation of*
22 *coca leaves, and any salt, compound, isomer, derivative or preparation*
23 *thereof which is chemically equivalent or identical with any of these*
24 *substances, but not including decocainized coca leaves or extractions of*
25 *coca leaves which do not contain cocaine or ecgonine.*

26 (ee) *"Opiate" means any substance having an addiction-forming*
27 *or addiction-sustaining liability similar to morphine or being capable of*
28 *conversion into a drug having addiction-forming or addiction-sustaining*
29 *liability. It does not include, unless specifically designated as controlled*
30 *under K.S.A. 65-4102, and amendments thereto, the dextrorotatory*
31 *isomer of 3-methoxy-n-methylmorphinan and its salts*
32 *(dextromethorphan). It does include its racemic and levorotatory forms.*

33 (ff) *"Opium poppy" means the plant of the species Papaver*
34 *somniferum l. except its seeds.*

35 (gg) *"Person" means individual, corporation, government, or*
36 *governmental subdivision or agency, business trust, estate, trust,*
37 *partnership or association or any other legal entity.*

38 (hh) *"Pharmacist" means any natural person licensed under K.S.A.*
39 *65-1625 et seq., to practice pharmacy.*

40 (ii) *"Pharmacist intern" means: (1) A student currently enrolled in an*
41 *accredited pharmacy program; (2) a graduate of an accredited pharmacy*
42 *program serving such person's internship; or (3) a graduate of a*
43 *pharmacy program located outside of the United States which is not*

1 *accredited and who had successfully passed equivalency examinations*
2 *approved by the board.*

3 *(jj) "Pharmacy prescription application" means software that is used*
4 *to process prescription information, is installed on a pharmacy's*
5 *computers and servers, and is controlled by the pharmacy.*

6 *(kk) "Poppy straw" means all parts, except the seeds, of the opium*
7 *poppy, after mowing.*

8 ~~*(u) "Pharmacist" means an individual currently licensed by the board*~~
9 ~~*to practice the profession of pharmacy in this state.*~~

10 ~~*(v)(ll) "Practitioner" means a person licensed to practice medicine*~~
11 ~~*and surgery, dentist, podiatrist, veterinarian, optometrist licensed under*~~
12 ~~*the optometry law as a therapeutic licensee or diagnostic and therapeutic*~~
13 ~~*licensee, or scientific investigator or other person authorized by law to*~~
14 ~~*use a controlled substance in teaching or chemical analysis or to*~~
15 ~~*conduct research with respect to a controlled substance.*~~

16 ~~*(w)(mm) "Prescriber" means a practitioner or a mid-level*~~
17 ~~*practitioner.*~~

18 *(nn) "Production" includes the manufacture, planting, cultivation,*
19 *growing or harvesting of a controlled substance.*

20 ~~*(x)(oo) "Readily retrievable" means that records kept by automatic*~~
21 ~~*data processing applications or other electronic or mechanized record-*~~
22 ~~*keeping systems can be separated out from all other records within a*~~
23 ~~*reasonable time not to exceed 48 hours of a request from the board or*~~
24 ~~*other authorized agent or that hard-copy records are kept on which*~~
25 ~~*certain items are asterisked, redlined or in some other manner visually*~~
26 ~~*identifiable apart from other items appearing on the records.*~~

27 *(pp) "Ultimate user" means a person who lawfully possesses a*
28 *controlled substance for such person's own use or for the use of a*
29 *member of such person's household or for administering to an animal*
30 *owned by such person or by a member of such person's household.*

31 ~~*(y) "Isomer" means all enantiomers and diastereomers.*~~

32 ~~*(z) "Medical care facility" shall have the meaning ascribed to that*~~
33 ~~*term in K.S.A. 65-425, and amendments thereto.*~~

34 ~~*(aa) "Cultivate" means the planting or promotion of growth of five or*~~
35 ~~*more plants which contain or can produce controlled substances.*~~

36 ~~*(bb) (1) "Controlled substance analog" means a substance that is*~~
37 ~~*intended for human consumption, and:*~~

38 ~~*(A) The chemical structure of which is substantially similar to the*~~
39 ~~*chemical structure of a controlled substance listed in or added to the*~~
40 ~~*schedules designated in K.S.A. 65-4105 or 65-4107, and amendments*~~
41 ~~*thereto;*~~

42 ~~*(B) which has a stimulant, depressant or hallucinogenic effect on the*~~
43 ~~*central nervous system substantially similar to the stimulant, depressant or*~~

~~1 hallucinogenic effect on the central nervous system of a controlled
2 substance included in the schedules designated in K.S.A. 65-4105 or 65-
3 4107, and amendments thereto; or~~

~~4 (C) with respect to a particular individual, which the individual
5 represents or intends to have a stimulant, depressant or hallucinogenic
6 effect on the central nervous system substantially similar to the stimulant,
7 depressant or hallucinogenic effect on the central nervous system of a
8 controlled substance included in the schedules designated in K.S.A. 65-
9 4105 or 65-4107, and amendments thereto;~~

~~10 (2) "Controlled substance analog" does not include:~~

~~11 (A) A controlled substance;~~

~~12 (B) a substance for which there is an approved new drug application;~~

~~13 or~~

~~14 (C) a substance with respect to which an exemption is in effect for
15 investigational use by a particular person under section 505 of the federal
16 food, drug, and cosmetic act (21 U.S.C. § 355) to the extent conduct with
17 respect to the substance is permitted by the exemption;~~

~~18 (ee) "Mid-level practitioner" means an advanced practice registered
19 nurse issued a license pursuant to K.S.A. 65-1131, and amendments
20 thereto, who has authority to prescribe drugs pursuant to a written protocol
21 with a responsible physician under K.S.A. 65-1130, and amendments
22 thereto, or a physician assistant licensed under the physician assistant
23 licensure act who has authority to prescribe drugs pursuant to a written
24 protocol with a responsible physician under K.S.A. 65-28a08, and
25 amendments thereto;~~

~~26 **Sec. 58. K.S.A. 65-4123 is hereby amended to read as follows: 65-
27 4123. (a) Except as otherwise provided in K.S.A. 65-4117, and
28 amendments thereto, or in this subsection (a), no schedule I controlled
29 substance may be dispensed. The board by rules and regulations may
30 designate in accordance with the provisions of this subsection (a) a
31 schedule I controlled substance as a schedule I designated prescription
32 substance. A schedule I controlled substance designated as a schedule I
33 designated prescription substance may be dispensed only upon the written
34 prescription of a practitioner. Prior to designating a schedule I controlled
35 substance as a schedule I designated prescription substance, the board shall
36 find: (1) That the schedule I controlled substance has an accepted medical
37 use in treatment in the United States; (2) that the public health will benefit
38 by the designation of the substance as a schedule I designated prescription
39 substance; and (3) that the substance may be sold lawfully under federal
40 law pursuant to a prescription. No prescription for a schedule I designated
41 prescription substance may be refilled.**~~

~~42 (b) Except when dispensed by a practitioner, other than a
43 pharmacy, to an ultimate user, no controlled substance in schedule II~~

1 *may be dispensed without the written or electronic prescription of a*
2 ~~practitioner or a mid-level practitioner~~ *prescriber. In emergency situations,*
3 *as defined by rules and regulations of the board, schedule II drugs may*
4 *be dispensed upon oral prescription of a ~~practitioner or a mid-level~~*
5 ~~*practitioner*~~ *prescriber reduced promptly to writing or transmitted*
6 *electronically and filed by the pharmacy. No prescription for a schedule*
7 *II substance may be refilled.*

8 (c) *Except when dispensed by a practitioner, other than a*
9 *pharmacy, to an ultimate user, a controlled substance included in*
10 *schedule III, ~~or~~ IV or V which is a prescription drug shall not be*
11 ~~*dispensed without a written or oral prescription of a practitioner or a mid-*~~
12 ~~*level practitioner either a paper prescription manually signed by a*~~
13 ~~*prescriber, a facsimile of a manually signed paper prescription transmitted*~~
14 ~~*by the prescriber or the prescriber's agent to the pharmacy, an electronic*~~
15 ~~*prescription that has been digitally signed by a prescriber with a digital*~~
16 ~~*certificate, or an oral prescription made by an individual prescriber and*~~
17 ~~*promptly reduced to writing. The prescription shall not be filled or*~~
18 ~~*refilled more than six months after the date thereof or be refilled more*~~
19 ~~*than five times.*~~

20 (d) *A controlled substance shall not be distributed or dispensed*
21 ~~*other than for a medical purpose. Prescriptions shall be retained in*~~
22 ~~*conformity with the requirements of K.S.A. 65-4121 and amendments*~~
23 ~~*thereto, except by a valid prescription order as defined in K.S.A. 65-1626,*~~
24 ~~*and amendments thereto. Electronic prescriptions shall be retained*~~
25 ~~*electronically for five years from the date of their creation or receipt. The*~~
26 ~~*records must be readily retrievable from all other records and easily*~~
27 ~~*rendered into a format a person can read. Paper, oral and facsimile*~~
28 ~~*prescriptions shall be maintained as a hard copy for five years at the*~~
29 ~~*registered location.*~~

30 Sec. ~~32~~ {59. K.S.A. 65-4123 and} K.S.A. 2011 Supp. {21-5109, 21-
31 5302, 21-5402, 21-5426, 21-5604,} 21-5701, 21-5703, 21-5705, 21-5706,
32 21-5708, 21-5709, 21-5710, 21-5713, 21-5714, 21-5716, {21-5806, 21-
33 5807, 21-5904, 21-5905, 21-5907, 21-5911, 21-6001, 21-6110, 21-6112,
34 21-6312, 21-6412, 21-6413,} 21-6604, 21-6608, 21-6611, 21-6614, 21-
35 6614a, 21-6614b, 21-6614c, 21-6805, 21-6808, 21-6810, {21-6819,} 21-
36 6821, 21-6824, 22-2802, 22-2908, 22-3412, 22-3604, 22-3717, 38-2346,
37 38-2347, 38-2369, 38-2374, 38-2376 {65-1626, 65-1637, 65-1683, 65-
38 1685, 65-1693, 65-4101,} 75-5291, 75-5291b and 75-52,144 are hereby
39 repealed.

40 Sec. ~~33~~ {60.} This act shall take effect and be in force from and after
41 its publication in the statute book.