

SENATE BILL No. 112

AN ACT concerning crimes, punishment and criminal procedure; relating to evidence; videotaping of certain felony, custodial interrogations; domestic battery; creating the crime of aggravated domestic battery; controlled substances; unlawful possession of drug paraphernalia; burglary; cruelty to animals; unlawful conduct of dog fighting; sentencing for crimes committed against a law enforcement officer; expungement; arrest records; post-trial motions, correction of sentence; postrelease supervision; persons convicted of a sexually violent crime; amending K.S.A. 22-3504 and K.S.A. 2016 Supp. 21-5414, 21-5709, 21-5807, 21-6412, 21-6414, 21-6804, 22-2410 and 22-3717 and repealing the existing sections.

WHEREAS, The provisions of K.S.A. 2016 Supp. 21-6804(y), as amended by this act, shall be known and may be cited as the law enforcement protection act.

Now, therefore:

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

New Section 1. (a) All law enforcement agencies in this state shall adopt a detailed, written policy requiring electronic recording of any custodial interrogation conducted at a place of detention.

(b) All local law enforcement agencies in this state shall collaborate with the county or district attorney in the appropriate jurisdiction regarding the contents of written policies required by this section.

(c) Policies adopted pursuant to this section shall be made available to all officers of such agency and shall be available for public inspection during normal business hours.

(d) Policies adopted pursuant to this section shall be implemented by all Kansas law enforcement agencies on or before July 1, 2018.

(e) Policies adopted pursuant to this section shall include the following:

(1) A requirement that an electronic recording shall be made of an entire custodial interrogation at a place of detention when the interrogation concerns a homicide or a felony sex offense;

(2) a requirement that if the defendant elects to make or sign a written statement during the course of a custodial interrogation concerning a homicide or a felony sex offense, the making and signing of the statement shall be electronically recorded;

(3) a statement of exceptions to the requirement to electronically record custodial interrogations, including, but not limited to:

(A) An equipment malfunction preventing electronic recording of the interrogation in its entirety, and replacement equipment is not immediately available;

(B) the officer, in good faith, fails to record the interrogation because the officer inadvertently fails to operate the recording equipment properly, or without the officer's knowledge the recording equipment malfunctions or stops recording;

(C) the suspect affirmatively asserts the desire to speak with officers without being recorded;

(D) multiple interrogations are taking place, exceeding the available electronic recording capacity;

(E) the statement is made spontaneously and not in response to an interrogation question;

(F) the statement is made during questioning that is routinely asked during the processing of an arrest of a suspect;

(G) the statement is made at a time when the officer is unaware of the suspect's involvement in an offense covered by the policy;

(H) exigent circumstances make recording impractical;

(I) at the time of the interrogation, the officer, in good faith, is unaware of the type of offense involved; and

(J) the recording is damaged or destroyed, without bad faith on the part of any person or entity in control of the recording; and

(4) requirements pertaining to the retention and storage requirements of the electronic recording.

(f) (1) During trial, the officer may be questioned pursuant to the rules of evidence regarding any violation of the policies adopted pursuant to this section.

(2) Lack of an electronic recording shall not be the sole basis for suppression of the interrogation or confession.

(g) Every electronic recording of any statement as required by this section shall be confidential and exempt from the Kansas open records act in accordance with K.S.A. 45-229, and amendments thereto. The provisions of this subsection shall expire on July 1, 2022, unless the legislature

reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2022.

(h) The following words and phrases, as used in this section, are defined as follows:

(1) “Custodial interrogation” means questioning of a person to whom warnings given pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), are required to be given;

(2) “place of detention” means a fixed location under the control of a Kansas law enforcement agency where individuals are questioned about alleged crimes; and

(3) “electronic recording” means audio or audiovisual recording. An audiovisual recording is preferred.

(i) This section shall take effect on and after July 1, 2017.

Sec. 2. On and after July 1, 2017, K.S.A. 2016 Supp. 21-5414 is hereby amended to read as follows: 21-5414. (a) Domestic battery is:

(1) Knowingly or recklessly causing bodily harm ~~by to a person with whom the offender is involved or has been involved in a dating relationship or a family or household member against a family or household member~~; or

(2) knowingly causing physical contact with *a person with whom the offender is involved or has been involved in a dating relationship or a family or household member* ~~by a family or household member~~, when done in a rude, insulting or angry manner.

(b) *Aggravated domestic battery is:*

(1) *Knowingly impeding the normal breathing or circulation of the blood by applying pressure on the throat, neck or chest of a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting or angry manner; or*

(2) *knowingly impeding the normal breathing or circulation of the blood by blocking the nose or mouth of a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting or angry manner.*

~~(b)(c)~~ (1) Domestic battery is:

~~(1)(A)~~ Except as provided in subsection ~~(b)(2)~~ (c)(1)(B) or ~~(b)(3)(c)(1)(C)~~, a class B person misdemeanor and the offender shall be sentenced to not less than 48 consecutive hours nor more than six months’ imprisonment and fined not less than \$200, nor more than \$500 or in the court’s discretion the court may enter an order which requires the offender to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program;

~~(2)(B)~~ except as provided in subsection ~~(b)(3)(c)(1)(C)~~, a class A person misdemeanor, if, within five years immediately preceding commission of the crime, an offender is convicted of domestic battery a second time and the offender shall be sentenced to not less than 90 days nor more than one year’s imprisonment and fined not less than \$500 nor more than \$1,000. The five days imprisonment mandated by this paragraph may be served in a work release program only after such offender has served 48 consecutive hours imprisonment, provided such work release program requires such offender to return to confinement at the end of each day in the work release program. The offender shall serve at least five consecutive days imprisonment before the offender is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the offender shall be required to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program, unless otherwise ordered by the court ~~or department of corrections~~; and

~~(3)(C)~~ a person felony, if, within five years immediately preceding commission of the crime, an offender is convicted of domestic battery a third or subsequent time, and the offender shall be sentenced to not less than 90 days nor more than one year’s imprisonment and fined not less than \$1,000 nor more than \$7,500. The offender convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the offender has served at least 90 days imprisonment. As a

condition of any grant of probation, suspension of sentence or parole or of any other release, the offender shall be required to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program, unless otherwise ordered by the court ~~or department of corrections~~. If the offender does not undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program, the offender shall serve not less than 180 days nor more than one year's imprisonment. The 90 days imprisonment mandated by this paragraph may be served in a work release program only after such offender has served 48 consecutive hours imprisonment, provided such work release program requires such offender to return to confinement at the end of each day in the work release program.

(2) *Aggravated domestic battery is a severity level 7, person felony.*

~~(c)~~(d) *In determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offense under this section, a court shall consider information presented to the court relating to any current or prior protective order issued against such person.*

(e) As used in this section:

(1) *“Dating relationship” means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: Nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since the termination of the relationship, if applicable;*

(2) *“family or household member” means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. “Family or household member” also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and*

(3) *“protective order” means:*

(A) *A protection from abuse order issued pursuant to K.S.A. 60-3105, 60-3106 or 60-3107, and amendments thereto;*

(B) *a protective order issued by a court or tribunal of any state or Indian tribe that is consistent with the provisions of 18 U.S.C. § 2265;*

(C) *a restraining order issued pursuant to K.S.A. 23-2707, 38-2243, 38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-1607, prior to its transfer;*

(D) *an order issued in this or any other state as a condition of pretrial release, diversion, probation, suspended sentence, postrelease supervision or at any other time during the criminal case or upon appeal that orders the person to refrain from having any direct or indirect contact with a family or household member;*

(E) *an order issued in this or any other state as a condition of release after conviction or as a condition of a supersedeas bond pending disposition of an appeal, that orders the person to refrain from having any direct or indirect contact with another person; or*

(F) *a protection from stalking order issued pursuant to K.S.A. 60-31a05 or 60-31a06, and amendments thereto.*

~~(2)~~(f) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under ~~this section~~ subsection (c)(1):

~~(A)~~(1) *“Conviction” includes being convicted of a violation of K.S.A. 21-3412a, prior to its repeal, this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;*

~~(B)~~(2) *“conviction” includes being convicted of a violation of a law of another state, or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;*

~~(C)~~(3) *only convictions occurring in the immediately preceding five years including prior to July 1, 2001, shall be taken into account, but the*

court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and

~~(D)~~(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

~~(E)~~(g) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of ~~this section~~ subsection (a) or (b) or an ordinance of any city or resolution of any county which prohibits the acts that ~~this section~~ subsection (a) or (b) prohibits only twice during any five-year period.

Sec. 3. On and after July 1, 2017, K.S.A. 2016 Supp. 21-5709 is hereby amended to read as follows: 21-5709. (a) It shall be unlawful for any person to possess ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with an intent to use the product to manufacture a controlled substance.

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

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

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

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

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

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

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

(A) Drug severity level 5 felony, except as provided in subsection (e)(2)(B); and

(B) class ~~A~~ B nonperson misdemeanor if the drug paraphernalia was used to cultivate fewer than five marijuana plants;

(3) violation of subsection (b)(2) is a class ~~A~~ B nonperson misdemeanor;

(4) violation of subsection (c) is a drug severity level 5 felony; and

(5) violation of subsection (d) is a class A nonperson misdemeanor.

(f) For persons arrested and charged under subsection (a) or (c), bail shall be at least \$50,000 cash or surety, and such person shall not be released upon the person's own recognizance pursuant to K.S.A. 22-2802, and amendments thereto, unless the court determines, on the record, that the defendant is not likely to reoffend, the court imposes pretrial supervision or the defendant agrees to participate in a licensed or certified drug treatment program.

Sec. 4. K.S.A. 2016 Supp. 21-5807 is hereby amended to read as follows: 21-5807. (a) Burglary is, without authority, entering into or remaining within any:

(1) Dwelling, with intent to commit a felony, theft or sexually motivated crime therein;

(2) building, manufactured home, mobile home, tent or other structure which is not a dwelling, with intent to commit a felony, theft or sexually motivated crime therein; or

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

(b) Aggravated burglary is, without authority, entering into or remaining within any:

(1) Dwelling in which there is a human being, with intent to commit a felony, theft or sexually motivated crime therein;

(2) building, manufactured home, mobile home, tent or other structure which is not a dwelling in which there is a human being, with intent to commit a felony, theft or sexually motivated crime therein; or

(3) vehicle, aircraft, watercraft, railroad car or other means of con-

veyance of persons or property in which there is a human being, with intent to commit a felony, theft or sexually motivated crime therein.

(c) (1) Burglary as defined in:

(A) (i) Subsection (a)(1) ~~is~~ *is a severity level 7, person felony, except as provided in subsection (c)(1)(B);*

(ii) *subsection (a)(2) is a severity level 7, nonperson felony, except as provided in subsection (c)(1)(B); and*

~~(iii)~~ (iii) *subsection (a)(3) is a severity level 9, nonperson felony, except as provided in subsection (c)(1)(B); and*

(B) (i) subsection (a)(1), with intent to commit the theft of a firearm, is a severity level 5, person felony; and

(ii) subsection (a)(2) or (a)(3), with intent to commit the theft of a firearm, is a severity level 5, nonperson felony.

(2) Aggravated burglary as defined in:

(A) Subsection (b)(1) is a severity level 4, person felony; and

(B) subsection (b)(2) or (b)(3) is a severity level 5, person felony.

(d) As used in this section, “sexually motivated” means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant’s sexual gratification.

(e) This section shall not apply to any person entering into or remaining in a retail or commercial premises at any time that it is open to the public after having received a personal communication from the owner or manager of such premises not to enter such premises pursuant to K.S.A. 2016 Supp. 21-5808, and amendments thereto, except when such person is entering into or remaining in such premises with the intent to commit a person felony or sexually motivated crime therein.

Sec. 5. On and after July 1, 2017, K.S.A. 2016 Supp. 21-6412 is hereby amended to read as follows: 21-6412. (a) Cruelty to animals is:

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

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

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

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

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

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

(b) Cruelty to animals as defined in:

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

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

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

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

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

(1) Normal or accepted veterinary practices;

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

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

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

(5) the humane killing of an animal ~~which that~~ is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for population control, by the owner thereof or the agent of such owner residing outside of a city or the owner thereof within a city if no animal shelter, ~~pound~~ or licensed veterinarian is within the city, or by a licensed veterinarian at the request of the owner thereof, or by any officer or agent of ~~an incorporated humane society, the operator of an animal shelter or pound,~~ a local or state health officer or a licensed veterinarian three business days following the receipt of any such animal at such ~~society, shelter or pound;~~

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

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

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

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

(10) normal or accepted practices of pest control, as defined in ~~sub-section (x) of K.S.A. 2-2438a(x),~~ and amendments thereto; or

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

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

(e) Any public health officer, law enforcement officer, licensed veterinarian or officer or agent of any ~~incorporated humane society,~~ animal shelter or other appropriate facility may take into custody any animal, upon either private or public property, ~~which that~~ clearly shows evidence of cruelty to animals. Such officer, agent or veterinarian may inspect, care for or treat such animal or place such animal in the care of ~~a duly incorporated humane society~~ *an animal shelter* or licensed veterinarian for treatment, boarding or other care or, if an officer of such ~~humane society~~ *animal shelter* or such veterinarian determines that the animal appears to be diseased or disabled beyond recovery for any useful purpose, for humane killing. ~~If the animal is placed in the care of an animal shelter, the animal shelter shall notify~~ The owner or custodian, if known or reasonably ascertainable, *shall be notified in writing*. If the owner or custodian is charged with a violation of this section, ~~the board of county commissioners in the county where the animal was taken into custody shall establish and approve procedures whereby~~ *the law enforcement agency, district attorney's office, county prosecutor, veterinarian or animal shelter* may petition the district court ~~to be allowed in the county in which the animal was taken into custody to place the animal for adoption or euthanize~~ *transfer ownership* of the animal at any time after 21 days after the owner or custodian is notified or, if the owner or custodian is not known or reasonably ascertainable after 21 days after the animal is taken into custody, unless the owner or custodian of the animal files a renewable cash or performance bond with the county clerk of the county where the animal is being held, in an amount equal to not less than the cost of care and treatment of the animal for 30 days. Upon receiving such petition, the court shall determine whether the animal may be ~~placed for adoption or euthanized.~~ *The board of county commissioners in the county where the animal was taken into custody shall review the cost of care and treat-*

ment being charged by the animal shelter maintaining the animal transferred.

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

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

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

(i) As used in this section:

(1) “Animal shelter” means the same as such term is defined in K.S.A. 47-1701, and amendments thereto;

(2) “equine” means a horse, pony, mule, jenny, donkey or hinny; and

~~(2)~~(3) “maliciously” means a state of mind characterized by actual evil-mindedness or specific intent to do a harmful act without a reasonable justification or excuse.

Sec. 6. On and after July 1, 2017, K.S.A. 2016 Supp. 21-6414 is hereby amended to read as follows: 21-6414. (a) Unlawful conduct of dog fighting is:

(1) Causing, for amusement or gain, any dog to fight with or injure another dog, with no requirement of culpable mental state;

(2) knowingly permitting such fighting or injuring on premises under one’s ownership, charge or control; or

(3) training, owning, keeping, transporting or selling any dog with the intent of having it fight with or injure another dog.

(b) Unlawful possession of dog fighting paraphernalia is possession, with the intent to use in the unlawful conduct of dog fighting, any breaking stick, treadmill, wheel, hot walker, cat mill, cat walker, jenni, or other paraphernalia.

(c) Unlawful attendance of dog fighting is, entering or remaining on the premises where the unlawful conduct of dog fighting is occurring, whether the person knows or has reason to know that dog fighting is occurring on the premises.

(d) (1) Unlawful conduct of dog fighting is a severity level 10, non-person felony.

(2) Unlawful possession of dog fighting paraphernalia is a class A non-person misdemeanor.

(3) Unlawful attendance of dog fighting is a class B nonperson misdemeanor.

(e) When a person is arrested under this section, a law enforcement agency may take into custody any dog on the premises where the dog fight is alleged to have occurred and any dog owned or kept on the premises of any person arrested for unlawful conduct of dog fighting, unlawful attendance of dog fighting, or unlawful possession of dog fighting paraphernalia.

(f) When a law enforcement agency takes custody of a dog under this section, such agency may place the dog in the care of a duly incorporated humane society or an animal shelter or licensed veterinarian for boarding, treatment or other care. If it appears to a licensed veterinarian that the dog is diseased or disabled beyond recovery for any useful purpose, such dog may be humanely killed. The dog may be sedated, isolated or restrained if such officer, agent or veterinarian determines it to be in the best interest of the dog, other animals at the animal shelter or personnel of the animal shelter. ~~If the dog is placed in the care of an animal shelter, the board of county commissioners in the county where the animal was taken into custody shall establish and approve procedures whereby~~ The law enforcement agency, district attorney’s office, county prosecutor, veterinarian or animal shelter may petition the district court in the county in which the animal was taken into custody to be allowed to place the

~~dog for adoption or euthanize~~ *transfer ownership* of the dog at any time after 21 days after the dog is taken into custody, unless the owner or custodian of the dog files a renewable cash or performance bond with the county clerk of the county where the dog is being held, in an amount equal to not less than the cost of care and treatment of the dog for 30 days. Upon receiving such petition, the court shall determine whether the dog may be ~~placed for adoption or euthanized~~. ~~The board of county commissioners in the county where the animal was taken into custody shall review the cost of care and treatment being charged by the animal shelter maintaining the animal~~ *transferred*. Except as provided in subsection (g), if it appears to the licensed veterinarian by physical examination that the dog has not been trained for aggressive conduct or is a type of dog that is not commonly bred or trained for aggressive conduct, the district or county attorney shall order that the dog be returned to its owner when the dog is not needed as evidence in a case filed under this section or K.S.A. 2016 Supp. 21-6412, and amendments thereto. The owner or keeper of a dog ~~placed for adoption or humanely killed~~ *transferred* under this subsection shall not be entitled to damages unless the owner or keeper proves that such ~~placement or killing~~ *transfer* was unwarranted.

(g) If a person is convicted of unlawful conduct of dog fighting, unlawful attendance of dog fighting or unlawful possession of dog fighting paraphernalia, a dog taken into custody pursuant to subsection (e) shall not be returned to such person and the court shall order the owner or keeper to pay to the animal shelter or *licensed veterinarian* all expenses incurred for the care, treatment and boarding of such dog, including any damages caused by such dog, prior to conviction of the owner or keeper. Disposition of such dog shall be in accordance with K.S.A. 2016 Supp. 21-6412, and amendments thereto. If no such conviction results, the dog shall be returned to the owner or keeper and the court shall order the county where the dog was taken into custody to pay to the *law enforcement agency, veterinarian or animal shelter* all expenses incurred ~~by the shelter~~ for the care, treatment and boarding of such dog, including any damages caused by such dog, prior to its return.

(h) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for cruelty to animals.

(i) *As used in this section, "animal shelter" means the same as such term is defined in K.S.A. 47-1701, and amendments thereto.*

Sec. 7. On and after July 1, 2017, K.S.A. 2016 Supp. 21-6804 is hereby amended to read as follows: 21-6804. (a) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. The following sentencing guidelines grid shall be applicable to nondrug felony crimes:

SENTENCING RANGE - NONDRUG OFFENSES

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

LEGEND
Presumptive Probation
Presumptive Imprisonment

- (b) Sentences expressed in the sentencing guidelines grid for non-drug crimes represent months of imprisonment.
- (c) The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool. The grid's vertical axis is the crime severity scale which classifies current crimes of conviction. The grid's horizontal axis is the criminal history scale which classifies criminal histories.
- (d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions, subject to the sentencing court's discretion to enter a departure sentence. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to all other crimes and the offender's criminal history.
- (e) (1) The sentencing court has discretion to sentence at any place within the sentencing range. In the usual case it is recommended that the sentencing judge select the center of the range and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.
- (2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the:
 - (A) Prison sentence;

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

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

(3) In presumptive nonprison cases, the sentencing court shall pronounce the:

(A) Prison sentence; and

(B) duration of the nonprison sanction at the sentencing hearing.

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence as provided in subsection (q).

(g) The sentence for a violation of K.S.A. 21-3415, prior to its repeal, aggravated battery against a law enforcement officer committed prior to July 1, 2006, or a violation of K.S.A. 2016 Supp. 21-5412(d), and amendments thereto, aggravated assault against a law enforcement officer, which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(h) When a firearm is used to commit any person felony, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(i) (1) The sentence for the violation of the felony provision of K.S.A. 2016 Supp. 8-1025, K.S.A. 8-2,144, K.S.A. 8-1567, K.S.A. 2016 Supp. 21-5414(b)(3), K.S.A. 2016 Supp. 21-5823(b)(3) and (b)(4), K.S.A. 2016 Supp. 21-6412 and K.S.A. 2016 Supp. 21-6416, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or K.S.A. 2016 Supp. 21-6807, and amendments thereto.

(2) If because of the offender's criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the offender is subject to imprisonment, the provisions of this section and K.S.A. 2016 Supp. 21-6807, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in K.S.A. 2016 Supp. 21-5823, and amendments thereto.

(3) Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of K.S.A. 2016 Supp. 8-1025, K.S.A. 8-2,144, K.S.A. 8-1567, K.S.A. 2016 Supp. 21-5414(b)(3), K.S.A. 2016 Supp. 21-5823(b)(3) and (b)(4), K.S.A. 2016 Supp. 21-6412 and K.S.A. 2016 Supp. 21-6416, and amendments thereto, shall not be served in a state facility in the custody of the secretary of corrections, except that the term of imprisonment for felony violations of K.S.A. 2016 Supp. 8-1025 or K.S.A. 8-2,144 or K.S.A. 8-1567, and amendments thereto, may be served in a state correctional facility designated by the secretary of corrections if the secretary determines that substance abuse treatment resources and facility capacity is available. The secretary's determination regarding the availability of treatment resources and facility capacity shall not be subject to review. Prior to imposing any sentence pursuant to this subsection, the court may consider assigning the defendant to a house arrest program pursuant to K.S.A. 2016 Supp. 21-6609, and amendments thereto.

(j) (1) The sentence for any persistent sex offender whose current convicted crime carries a presumptive term of imprisonment shall be double the maximum duration of the presumptive imprisonment term. The sentence for any persistent sex offender whose current conviction carries a presumptive nonprison term shall be presumed imprisonment and shall be double the maximum duration of the presumptive imprisonment term.

(2) Except as otherwise provided in this subsection, as used in this subsection, "persistent sex offender" means a person who:

(A) (i) Has been convicted in this state of a sexually violent crime, as defined in K.S.A. 22-3717, and amendments thereto; and

(ii) at the time of the conviction under subsection (j)(2)(A)(i) has at least one conviction for a sexually violent crime, as defined in K.S.A. 22-3717, and amendments thereto, in this state or comparable felony under the laws of another state, the federal government or a foreign government; or

(B) (i) has been convicted of rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2016 Supp. 21-5503, and amendments thereto; and

(ii) at the time of the conviction under subsection (j)(2)(B)(i) has at least one conviction for rape in this state or comparable felony under the laws of another state, the federal government or a foreign government.

(3) Except as provided in subsection (j)(2)(B), the provisions of this subsection shall not apply to any person whose current convicted crime is a severity level 1 or 2 felony.

(k) (1) If it is shown at sentencing that the offender committed any felony violation for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(2) As used in this subsection, "criminal street gang" means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities:

(A) The commission of one or more person felonies; or

(B) the commission of felony violations of article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, or any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009; and

(C) its members have a common name or common identifying sign or symbol; and

(D) its members, individually or collectively, engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009, or any substantially similar offense from another jurisdiction.

(l) Except as provided in subsection (o), the sentence for a violation of K.S.A. 2016 Supp. 21-5807(a)(1), and amendments thereto, or any attempt or conspiracy, as defined in K.S.A. 2016 Supp. 21-5301 and 21-5302, and amendments thereto, to commit such offense, when such person being sentenced has a prior conviction for a violation of K.S.A. 21-3715(a) or (b), prior to its repeal, 21-3716, prior to its repeal, K.S.A. 2016 Supp. 21-5807(a)(1) or (a)(2), or K.S.A. 2016 Supp. 21-5807(b), and amendments thereto, or any attempt or conspiracy to commit such offense, shall be presumptive imprisonment.

(m) The sentence for a violation of K.S.A. 22-4903 or K.S.A. 2016 Supp. 21-5913(a)(2), and amendments thereto, shall be presumptive imprisonment. If an offense under such sections is classified in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison sentence as provided in subsection (q).

(n) The sentence for a violation of criminal deprivation of property, as defined in K.S.A. 2016 Supp. 21-5803, and amendments thereto, when such property is a motor vehicle, and when such person being sentenced has any combination of two or more prior convictions of K.S.A. 21-3705(b), prior to its repeal, or of criminal deprivation of property, as defined in K.S.A. 2016 Supp. 21-5803, and amendments thereto, when such property is a motor vehicle, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(o) The sentence for a felony violation of theft of property as defined in K.S.A. 2016 Supp. 21-5801, and amendments thereto, or burglary as defined in K.S.A. 2016 Supp. 21-5807(a), and amendments thereto, when such person being sentenced has no prior convictions for a violation of K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of property as defined in K.S.A. 2016 Supp. 21-5801, and amendments thereto, or bur-

glary as defined in K.S.A. 2016 Supp. 21-5807(a), and amendments thereto; or the sentence for a felony violation of theft of property as defined in K.S.A. 2016 Supp. 21-5801, and amendments thereto, when such person being sentenced has one or two prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in K.S.A. 2016 Supp. 21-5801, and amendments thereto, or burglary or aggravated burglary as defined in K.S.A. 2016 Supp. 21-5807, and amendments thereto; or the sentence for a felony violation of burglary as defined in K.S.A. 2016 Supp. 21-5807(a), and amendments thereto, when such person being sentenced has one prior felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in K.S.A. 2016 Supp. 21-5801, and amendments thereto, or burglary or aggravated burglary as defined in K.S.A. 2016 Supp. 21-5807, and amendments thereto, shall be the sentence as provided by this section, except that the court may order an optional nonprison sentence for a defendant to participate in a drug treatment program, including, but not limited to, an approved after-care plan, if the court makes the following findings on the record:

- (1) Substance abuse was an underlying factor in the commission of the crime;
- (2) substance abuse treatment in the community is likely to be more effective than a prison term in reducing the risk of offender recidivism; and
- (3) participation in an intensive substance abuse treatment program will serve community safety interests.

A defendant sentenced to an optional nonprison sentence under this subsection shall be supervised by community correctional services. The provisions of K.S.A. 2016 Supp. 21-6824(f)(1), and amendments thereto, shall apply to a defendant sentenced under this subsection. The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(p) The sentence for a felony violation of theft of property as defined in K.S.A. 2016 Supp. 21-5801, and amendments thereto, when such person being sentenced has any combination of three or more prior felony convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in K.S.A. 2016 Supp. 21-5801, and amendments thereto, or burglary or aggravated burglary as defined in K.S.A. 2016 Supp. 21-5807, and amendments thereto; or the sentence for a violation of burglary as defined in K.S.A. 2016 Supp. 21-5807(a), and amendments thereto, when such person being sentenced has any combination of two or more prior convictions for violations of K.S.A. 21-3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as defined in K.S.A. 2016 Supp. 21-5801, and amendments thereto, or burglary or aggravated burglary as defined in K.S.A. 2016 Supp. 21-5807, and amendments thereto, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section, except that the court may recommend that an offender be placed in the custody of the secretary of corrections, in a facility designated by the secretary to participate in an intensive substance abuse treatment program, upon making the following findings on the record:

- (1) Substance abuse was an underlying factor in the commission of the crime;
- (2) substance abuse treatment with a possibility of an early release from imprisonment is likely to be more effective than a prison term in reducing the risk of offender recidivism; and
- (3) participation in an intensive substance abuse treatment program with the possibility of an early release from imprisonment will serve community safety interests by promoting offender reformation.

The intensive substance abuse treatment program shall be determined by the secretary of corrections, but shall be for a period of at least four months. Upon the successful completion of such intensive treatment program, the offender shall be returned to the court and the court may modify the sentence by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits. If the offender's term of imprisonment expires, the offender shall be placed under the applicable period of postrelease supervision. The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(q) As used in this section, an “optional nonprison sentence” is a sentence which the court may impose, in lieu of the presumptive sentence, upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

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

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

(r) The sentence for a violation of K.S.A. 2016 Supp. 21-5413(c)(2), and amendments thereto, shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

(s) The sentence for a violation of K.S.A. 2016 Supp. 21-5512, and amendments thereto, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(t) (1) If the trier of fact makes a finding *beyond a reasonable doubt* that an offender wore or used ballistic resistant material in the commission of, or attempt to commit, or flight from any felony, in addition to the sentence imposed pursuant to the Kansas sentencing guidelines act, the offender shall be sentenced to an additional 30 months’ imprisonment.

(2) The sentence imposed pursuant to subsection (t)(1) shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

(3) As used in this subsection, “ballistic resistant material” means: (A) Any commercially produced material designed with the purpose of providing ballistic and trauma protection, including, but not limited to, bulletproof vests and kevlar vests; and (B) any homemade or fabricated substance or item designed with the purpose of providing ballistic and trauma protection.

(u) The sentence for a violation of K.S.A. 2016 Supp. 21-6107, and amendments thereto, or any attempt or conspiracy, as defined in K.S.A. 2016 Supp. 21-5301 and 21-5302, and amendments thereto, to commit such offense, when such person being sentenced has a prior conviction for a violation of K.S.A. 21-4018, prior to its repeal, or K.S.A. 2016 Supp. 21-6107, and amendments thereto, or any attempt or conspiracy to commit such offense, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(v) The sentence for a third or subsequent violation of K.S.A. 8-1568, and amendments thereto, shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

(w) The sentence for aggravated criminal damage to property as defined in K.S.A. 2016 Supp. 21-5813(b), and amendments thereto, when such person being sentenced has a prior conviction for any nonperson felony shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(x) The sentence for a violation of K.S.A. 2016 Supp. 21-5807(a)(1), and amendments thereto, shall be presumptive imprisonment if the offense under such paragraph is classified in grid blocks 7-C, 7-D or 7-E. Such sentence shall not be considered a departure and shall not be subject to appeal.

(y) (1) *Except as provided in subsection (y)(3), if the trier of fact makes a finding beyond a reasonable doubt that an offender committed a nondrug felony offense, or any attempt or conspiracy, as defined in K.S.A. 2016 Supp. 21-5301 and 21-5302, and amendments thereto, to commit a nondrug felony offense, against a law enforcement officer, as defined in K.S.A. 2016 Supp. 21-5111(p)(1) and (3), and amendments thereto, while such officer was engaged in the performance of such officer’s duty, or in*

whole or in any part because of such officer's status as a law enforcement officer, the sentence for such offense shall be:

(A) *If such offense is classified in severity level 2 through 10, one severity level above the appropriate level for such offense; and*

(B) (i) *if such offense is classified in severity level 1, except as otherwise provided in subsection (y)(1)(B)(ii), imprisonment for life, and such offender shall not be eligible for probation or suspension, modification or reduction of sentence. In addition, such offender shall not be eligible for parole prior to serving 25 years' imprisonment, and such 25 years' imprisonment shall not be reduced by the application of good time credits. No other sentence shall be permitted.*

(ii) *The provisions of subsection (y)(1)(B)(i) requiring the court to impose a mandatory minimum term of imprisonment of 25 years shall not apply if the court finds the offender, because of the offender's criminal history classification, is subject to presumptive imprisonment and the sentencing range exceeds 300 months. In such case, the offender is required to serve a mandatory minimum term equal to the sentence established pursuant to the sentencing range.*

(2) *The sentence imposed pursuant to subsection (y)(1) shall not be considered a departure and shall not be subject to appeal.*

(3) *The provisions of this subsection shall not apply to an offense described in subsection (y)(1) if the factual aspect concerning a law enforcement officer is a statutory element of such offense.*

Sec. 8. On and after July 1, 2017, K.S.A. 2016 Supp. 22-2410 is hereby amended to read as follows: 22-2410. (a) (1) Any person who has been arrested in this state may petition the district court for the expungement of such arrest record.

(2) (A) *If a person has been arrested in this state as a result of mistaken identity or as a result of another person using the identifying information of the named person, and the charge against the named person is dismissed or not prosecuted, the prosecuting attorney or other judicial officer who ordered the dismissal or declined to prosecute shall provide notice to the court of such action and petition the district court for the expungement of such arrest record, and the court shall order the arrest record and subsequent court proceedings, if any, expunged and purged from all applicable state and federal systems pursuant to subsection (d).*

(B) *For purposes of this section, the term "mistaken identity" means the erroneous arrest of a person for a crime as a result of misidentification by a witness or law enforcement, confusion on the part of a witness or law enforcement as to the identity of the person who committed the crime, misinformation provided to law enforcement as to the identity of the person who committed the crime or some other mistake on the part of a witness or law enforcement as to the identity of the person who committed the crime. "Mistaken identity" shall not include any situation in which an arrestee intentionally provides false information to law enforcement officials in an attempt to conceal such person's identity.*

(b) (1) When a petition for expungement is filed pursuant to subsection (a)(1), the court shall set a date for hearing on such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(2) When a petition for expungement is filed pursuant to subsection (a)(1) or (a)(2), the official court file shall be separated from the other records of the court, and shall be disclosed only to a judge of the court and members of the staff of the court designated by a judge of the district court, the prosecuting attorney, the arresting law enforcement agency, or any other person when authorized by a court order, subject to any conditions imposed by the order.

(3) (A) Except as otherwise provided by law, a petition for expungement pursuant to subsection (a)(1) shall be accompanied by a docket fee in the amount of \$176. Except as provided further, the docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after July 1, 2015, through June 30, 2017, the supreme court may impose an additional charge, not to

exceed \$19 per docket fee, to fund the costs of non-judicial personnel.
~~The petition shall state:~~

- ~~(1) The petitioner's full name;~~
- ~~(2) the full name of the petitioner at the time of arrest, if different than the petitioner's current name;~~
- ~~(3) the petitioner's sex, race and date of birth;~~
- ~~(4) the crime for which the petitioner was arrested;~~
- ~~(5) the date of the petitioner's arrest; and~~
- ~~(6) the identity of the arresting law enforcement agency.~~

~~(B) No surcharge or fee shall be imposed to any person filing a petition pursuant to this section subsection (a)(1), who was arrested as a result of being a victim of identity theft under K.S.A. 21-4018, prior to its repeal, or K.S.A. 2016 Supp. 21-6107(a), and amendments thereto, or who has had criminal charges dismissed because a court has found that there was no probable cause for the arrest, the petitioner was found not guilty in court proceedings or the charges have been dismissed. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.~~

- ~~(4) The petition filed pursuant to subsection (a)(1) or (a)(2) shall state:~~
 - ~~(A) The petitioner's full name;~~
 - ~~(B) the full name of the petitioner at the time of arrest, if different than the petitioner's current name;~~
 - ~~(C) the petitioner's sex, race and date of birth;~~
 - ~~(D) the crime for which the petitioner was arrested;~~
 - ~~(E) the date of the petitioner's arrest; and~~
 - ~~(F) the identity of the arresting law enforcement agency.~~

~~(c) At the hearing on a petition for expungement pursuant to subsection (a)(1), the court shall order the arrest record and subsequent court proceedings, if any, expunged upon finding: (1) The arrest occurred because of mistaken identity;~~

- ~~(2) a court has found that there was no probable cause for the arrest;~~
- ~~(3) the petitioner was found not guilty in court proceedings; or~~
- ~~(4) the expungement would be in the best interests of justice and:~~
 - ~~(A) Charges have been dismissed; or~~
 - ~~(B) no charges have been or are likely to be filed.~~

~~(d) (1) When the court has ordered expungement of an arrest record and subsequent court proceedings, if any, on a petition for expungement pursuant to subsection (a)(1), the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (c). The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest. If the case was appealed from municipal court, the clerk of the district court shall send a certified copy of the order of expungement to the municipal court. The municipal court shall order the case expunged once the certified copy of the order of expungement is received. If an order of expungement is entered, the petitioner pursuant to subsection (a)(1) shall be treated as not having been arrested.~~

~~(2) When the court has ordered expungement of arrest records on a petition for expungement pursuant to subsection (a)(2), the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (a)(2). The order shall also direct the Kansas bureau of investigation to purge the arrest information from the criminal justice information system central repository and all applicable state and federal databases. The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation, which shall carry out the order and shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency that may have a record of the arrest. If an order of expungement is entered, the person eligible for mandatory expungement pursuant to subsection (a)(2) shall be treated as not having been arrested.~~

~~(e) If the ground for expungement is as provided in subsection (c)(4), the court shall determine whether, in the interests of public welfare, the records should be available for any of the following purposes:~~

- ~~(1) In any application for employment as a detective with a private detective agency, as defined in K.S.A. 75-7b01, and amendments thereto;~~

as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services;

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

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

(4) to aid in determining the petitioner's qualifications for executive director of the Kansas racing commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(5) in any application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

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

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

(8) in any other circumstances which the court deems appropriate.

(f) The court shall make all expunged records and related information in such court's possession, created prior to, on and after July 1, 2011, available to the Kansas bureau of investigation for the purposes of:

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

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

(g) Subject to any disclosures required under subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records have been expunged as provided in this section may state that such person has never been arrested.

(h) Whenever a ~~petitioner's~~ *person's* arrest records have been expunged as provided in this section, the custodian of the records of arrest, incarceration due to arrest or court proceedings related to the arrest, shall not disclose the arrest or any information related to the arrest, except as directed by the order of expungement or when requested by the person whose arrest record was expunged.

(i) The docket fee collected at the time the petition for expungement is filed *pursuant to subsection (a)(1)* shall be disbursed in accordance with K.S.A. 20-362, and amendments thereto.

Sec. 9. K.S.A. 22-3504 is hereby amended to read as follows: 22-3504.

(1) The court may correct an illegal sentence at any time. The defendant shall receive full credit for time spent in custody under the sentence prior to correction. *Unless the motion and the files and records of the case conclusively show that the defendant is entitled to no relief*, the defendant shall have a right to a hearing, after reasonable notice to be fixed by the court, to be personally present and to have the assistance of counsel in any proceeding for the correction of an illegal sentence.

(2) Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

(3) *"Illegal sentence" means a sentence: Imposed by a court without jurisdiction; that does not conform to the applicable statutory provision, either in character or punishment; or that is ambiguous with respect to the time and manner in which it is to be served at the time it is pronounced. A sentence is not an "illegal sentence" because of a change in the law that occurs after the sentence is pronounced.*

Sec. 10. K.S.A. 2016 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A.

1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4624, 21-4635 through 21-4638 and 21-4642, prior to their repeal; K.S.A. 2016 Supp. 21-6617, 21-6620, 21-6623, 21-6624, 21-6625 and 21-6626, and amendments thereto; and K.S.A. 8-1567, and amendments thereto; an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2016 Supp. 21-6707, and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) An inmate sentenced to imprisonment for life without the possibility of parole pursuant to K.S.A. 2016 Supp. 21-6617, and amendments thereto, shall not be eligible for parole.

(2) Except as provided by K.S.A. 21-4635 through 21-4638, prior to their repeal, and K.S.A. 2016 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments thereto, an inmate sentenced to imprisonment for the crime of: (A) Capital murder committed on or after July 1, 1994, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits; (B) murder in the first degree based upon a finding of premeditated murder committed on or after July 1, 1994, but prior to July 1, 2014, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits; and (C) murder in the first degree as described in K.S.A. 2016 Supp. 21-5402(a)(2), and amendments thereto, committed on or after July 1, 2014, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(3) Except as provided by subsections (b)(1), (b)(2) and (b)(5), K.S.A. 1993 Supp. 21-4628, prior to its repeal, K.S.A. 21-4635 through 21-4638, prior to their repeal, and K.S.A. 2016 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments thereto, an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1993, but prior to July 1, 1999, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits and an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1999, shall be eligible for parole after serving 20 years of confinement without deduction of any good time credits.

(4) Except as provided by K.S.A. 1993 Supp. 21-4628, prior to its repeal, an inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2016 Supp. 21-6707, and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

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

(6) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2016 Supp. 21-6627, and amendments thereto, committed on or after July 1, 2006, shall be eligible for parole after serving the mandatory term of imprisonment without deduction of any good time credits.

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

(A) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608, prior to its repeal, or K.S.A. 2016 Supp. 21-6606, and amendments thereto, less good time credits for those crimes which are not class A felonies; and

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

(2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2016 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, the inmate shall be eligible for parole after serving the mandatory term of imprisonment.

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

(A) Except as provided in subparagraphs (D) and (E), persons sen-

tenced for nondrug severity levels 1 through 4 crimes, drug severity levels 1 and 2 crimes committed on or after July 1, 1993, but prior to July 1, 2012, and drug severity levels 1, 2 and 3 crimes committed on or after July 1, 2012, must serve 36 months on postrelease supervision.

(B) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity levels 5 and 6 crimes, drug severity level 3 crimes committed on or after July 1, 1993, but prior to July 1, 2012, and drug severity level 4 crimes committed on or after July 1, 2012, must serve 24 months on postrelease supervision.

(C) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity levels 7 through 10 crimes, drug severity level 4 crimes committed on or after July 1, 1993, but prior to July 1, 2012, and drug severity level 5 crimes committed on or after July 1, 2012, must serve 12 months on postrelease supervision.

(D) Persons sentenced to a term of imprisonment that includes a sentence for a sexually violent crime as defined in K.S.A. 22-3717, and amendments thereto, *committed on or after July 1, 1993, but prior to July 1, 2006*, a sexually motivated crime in which the offender has been ordered to register pursuant to K.S.A. 22-3717(d)(1)(D)(vii), and amendments thereto, electronic solicitation, K.S.A. 21-3523, prior to its repeal, or K.S.A. 2016 Supp. 21-5509, and amendments thereto, or unlawful sexual relations, K.S.A. 21-3520, prior to its repeal, or K.S.A. 2016 Supp. 21-5512, and amendments thereto, shall serve the period of postrelease supervision as provided in subsections (d)(1)(A), (d)(1)(B) or (d)(1)(C), plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2016 Supp. 21-6821, and amendments thereto, on postrelease supervision.

(i) If the sentencing judge finds substantial and compelling reasons to impose a departure based upon a finding that the current crime of conviction was sexually motivated, departure may be imposed to extend the postrelease supervision to a period of up to 60 months.

(ii) If the sentencing judge departs from the presumptive postrelease supervision period, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. Departures in this section are subject to appeal pursuant to K.S.A. 21-4721, prior to its repeal, or K.S.A. 2016 Supp. 21-6820, and amendments thereto.

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

(a) Written briefs or oral arguments submitted by either the defendant or the state;

(b) any evidence received during the proceeding;

(c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant to K.S.A. 21-4714(e), prior to its repeal, or K.S.A. 2016 Supp. 21-6813(e), and amendments thereto; and

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

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

(v) In carrying out the provisions of subsection (d)(1)(D), the court shall refer to K.S.A. 21-4718, prior to its repeal, or K.S.A. 2016 Supp. 21-6817, and amendments thereto.

(vi) Upon petition and payment of any restitution ordered pursuant to K.S.A. 2016 Supp. 21-6604, and amendments thereto, the prisoner review board may provide for early discharge from the postrelease supervision period imposed pursuant to subsection (d)(1)(D)(i) upon completion of court ordered programs and completion of the presumptive postrelease supervision period, as determined by the crime of conviction, pursuant to subsection (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from postrelease supervision is at the discretion of the board.

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

(viii) Persons convicted of K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2016 Supp. 21-5508, and amendments thereto, shall be

required to participate in a treatment program for sex offenders during the postrelease supervision period.

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

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

(G) (i) Except as provided in subsection (u), persons ~~convicted of sentenced to imprisonment for a sexually violent crime committed on or after July 1, 2006, when the offender was 18 years of age or older,~~ and who are released from prison, shall be released to a mandatory period of postrelease supervision for the duration of the person's natural life.

(ii) *Persons sentenced to imprisonment for a sexually violent crime committed on or after the effective date of this act, when the offender was under 18 years of age, and who are released from prison, shall be released to a mandatory period of postrelease supervision for 60 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2016 Supp. 21-6821, and amendments thereto.*

(2) Persons serving a period of postrelease supervision pursuant to subsections (d)(1)(A), (d)(1)(B) or (d)(1)(C) may petition the prisoner review board for early discharge. Upon payment of restitution, the prisoner review board may provide for early discharge.

(3) Persons serving a period of incarceration for a supervision violation shall not have the period of postrelease supervision modified until such person is released and returned to postrelease supervision.

(4) Offenders whose crime of conviction was committed on or after July 1, 2013, and whose probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction is revoked pursuant to K.S.A. 22-3716(c), and amendments thereto, or whose underlying prison term expires while serving a sanction pursuant to K.S.A. 22-3716(c)(1)(C) or (c)(1)(D), and amendments thereto, shall serve a period of postrelease supervision upon the completion of the underlying prison term.

(5) As used in this subsection, "sexually violent crime" means:

(A) Rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 2016 Supp. 21-5503, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, prior to its repeal, or K.S.A. 2016 Supp. 21-5506(a), and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, prior to its repeal, or K.S.A. 2016 Supp. 21-5506(b), and amendments thereto;

(D) criminal sodomy, K.S.A. 21-3505(a)(2) and (a)(3), prior to its repeal, or K.S.A. 2016 Supp. 21-5504(a)(3) and (a)(4), and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, prior to its repeal, or K.S.A. 2016 Supp. 21-5504(b), and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, prior to its repeal, or K.S.A. 2016 Supp. 21-5508(a), and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, prior to its repeal, or K.S.A. 2016 Supp. 21-5508(b), and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, prior to its repeal, or K.S.A. 2016 Supp. 21-5510, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, prior to its repeal, or K.S.A. 2016 Supp. 21-5505(b), and amendments thereto;

(J) aggravated incest, K.S.A. 21-3603, prior to its repeal, or K.S.A. 2016 Supp. 21-5604(b), and amendments thereto;

(K) aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2016 Supp. 21-5426(b), and amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another;

(L) commercial sexual exploitation of a child, as defined in K.S.A. 2016 Supp. 21-6422, and amendments thereto; or

(M) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2016 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a sexually violent crime as defined in this section.

(6) As used in this subsection, “sexually motivated” means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant’s sexual gratification.

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

(f) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while on probation, parole, conditional release or in a community corrections program, for a crime committed prior to July 1, 1993, and the person is not eligible for retroactive application of the sentencing guidelines and amendments thereto pursuant to K.S.A. 21-4724, prior to its repeal, the new sentence shall not be aggregated with the old sentence, but shall begin when the person is paroled or reaches the conditional release date on the old sentence. If the offender was past the offender’s conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the prisoner review board or reaches the maximum sentence expiration date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of postrelease supervision shall be based on the new sentence, except that those offenders whose old sentence is a term of imprisonment for life, imposed pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, or an indeterminate sentence with a maximum term of life imprisonment, for which there is no conditional release or maximum sentence expiration date, shall remain on postrelease supervision for life or until discharged from supervision by the prisoner review board.

(g) Subject to the provisions of this section, the prisoner review board may release on parole those persons confined in institutions who are eligible for parole when: (1) The board believes that the inmate should be released for hospitalization, deportation or to answer the warrant or other process of a court and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate; or (2) the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a, and amendments thereto, or any revision of such agreement, and the board believes that the inmate is able and willing to fulfill the obligations of a law abiding citizen and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate. Parole shall not be granted as an award of clemency and shall not be considered a reduction of sentence or a pardon.

(h) The prisoner review board shall hold a parole hearing at least the month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (c). At least one month preceding the parole hearing, the county or district attorney of the county where the inmate was convicted shall give written notice of the time and place of the public comment sessions for the inmate to any victim of the inmate’s crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim’s family if the family’s address is known to the county or district attorney. Except as otherwise provided, failure to notify pursuant to this section shall not be a reason to postpone a parole hearing. In the case of any inmate convicted of an off-grid felony or a class A felony, the secretary of corrections shall give written notice of the time and place of the public comment session for such inmate at least one month preceding the public comment session to any victim of such inmate’s crime or the victim’s family pursuant to K.S.A. 74-7338, and amendments thereto. If notification is not given to such victim or

such victim's family in the case of any inmate convicted of an off-grid felony or a class A felony, the board shall postpone a decision on parole of the inmate to a time at least 30 days after notification is given as provided in this section. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section. If granted parole, the inmate may be released on parole on the date specified by the board, but not earlier than the date the inmate is eligible for parole under subsections (a), (b) and (c). At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the board shall consider: (1) Whether the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a, and amendments thereto, or any revision of such agreement; and (2) all pertinent information regarding such inmate, including, but not limited to, the circumstances of the offense of the inmate; the presentence report; the previous social history and criminal record of the inmate; the conduct, employment, and attitude of the inmate in prison; the reports of such physical and mental examinations as have been made, including, but not limited to, risk factors revealed by any risk assessment of the inmate; comments of the victim and the victim's family including in person comments, contemporaneous comments and prerecorded comments made by any technological means; comments of the public; official comments; any recommendation by the staff of the facility where the inmate is incarcerated; proportionality of the time the inmate has served to the sentence a person would receive under the Kansas sentencing guidelines for the conduct that resulted in the inmate's incarceration; and capacity of state correctional institutions.

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

(j) (1) Before ordering the parole of any inmate, the prisoner review board shall have the inmate appear either in person or via a video conferencing format and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the board formally considers placing an inmate on parole and no agreement has been entered into with the inmate under K.S.A. 75-5210a, and amendments thereto, the board shall notify the inmate in writing of the reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If parole is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in writing the reasons for not granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than one year after the denial unless the board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next three years or during the interim period of a deferral. In such case, the board may defer subsequent parole hearings

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

(2) Inmates sentenced for a class A or class B felony who have not had a board hearing in the five years prior to July 1, 2010, shall have such inmates' cases reviewed by the board on or before July 1, 2012. Such review shall begin with the inmates with the oldest deferral date and progress to the most recent. Such review shall be done utilizing existing resources unless the board determines that such resources are insufficient. If the board determines that such resources are insufficient, then the provisions of this paragraph are subject to appropriations therefor.

(k) (1) Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(2) Parolees and persons on postrelease supervision are, and shall agree in writing to be, subject to searches of the person and the person's effects, vehicle, residence and property by a parole officer or a department of corrections enforcement, apprehension and investigation officer, at any time of the day or night, with or without a search warrant and with or without cause. Nothing in this subsection shall be construed to authorize such officers to conduct arbitrary or capricious searches or searches for the sole purpose of harassment.

(3) Parolees and persons on postrelease supervision are, and shall agree in writing to be, subject to searches of the person and the person's effects, vehicle, residence and property by any law enforcement officer based on reasonable suspicion of the person violating conditions of parole or postrelease supervision or reasonable suspicion of criminal activity. Any law enforcement officer who conducts such a search shall submit a written report to the appropriate parole officer no later than the close of the next business day after such search. The written report shall include the facts leading to such search, the scope of such search and any findings resulting from such search.

(l) (1) The prisoner review board shall promulgate rules and regulations in accordance with K.S.A. 77-415 et seq., and amendments thereto, not inconsistent with the law and as it may deem proper or necessary, with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution, reimbursement of expenditures by the state board of indigents' defense services and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.

(m) Whenever the prisoner review board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision;

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

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

(4) may order the parolee or person on postrelease supervision to pay the administrative fee imposed pursuant to K.S.A. 22-4529, and amend-

ments thereto, unless the board finds compelling circumstances which would render payment unworkable;

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

(6) shall order that the parolee or person on postrelease supervision agree in writing to be subject to searches of the person and the person's effects, vehicle, residence and property by a parole officer or a department of corrections enforcement, apprehension and investigation officer, at any time of the day or night, with or without a search warrant and with or without cause. Nothing in this subsection shall be construed to authorize such officers to conduct arbitrary or capricious searches or searches for the sole purpose of harassment; and

(7) shall order that the parolee or person on postrelease supervision agree in writing to be subject to searches of the person and the person's effects, vehicle, residence and property by any law enforcement officer based on reasonable suspicion of the person violating conditions of parole or postrelease supervision or reasonable suspicion of criminal activity.

(n) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the prisoner review board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable.

(o) Whenever the prisoner review board grants the parole of an inmate, the board, within 14 days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

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

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

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

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

(t) For offenders sentenced prior to July 1, 2014, who are eligible for modification of their postrelease supervision obligation, the department of corrections shall modify the period of postrelease supervision as provided for by this section:

- (1) On or before September 1, 2013, for offenders convicted of:
 - (A) Severity levels 9 and 10 crimes on the sentencing guidelines grid for nondrug crimes;
 - (B) severity level 4 crimes on the sentencing guidelines grid for drug crimes committed prior to July 1, 2012; and
 - (C) severity level 5 crimes on the sentencing guidelines grid for drug crimes committed on and after July 1, 2012;
- (2) on or before November 1, 2013, for offenders convicted of:

(A) Severity levels 6, 7 and 8 crimes on the sentencing guidelines grid for nondrug crimes;

(B) level 3 crimes on the sentencing guidelines grid for drug crimes committed prior to July 1, 2012; and

(C) level 4 crimes on the sentencing guidelines grid for drug crimes committed on or after July 1, 2012; and

(3) on or before January 1, 2014, for offenders convicted of:

(A) Severity levels 1, 2, 3, 4 and 5 crimes on the sentencing guidelines grid for nondrug crimes;

(B) severity levels 1 and 2 crimes on the sentencing guidelines grid for drug crimes committed at any time; and

(C) severity level 3 crimes on the sentencing guidelines grid for drug crimes committed on or after July 1, 2012.

(u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2016 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, shall be placed on parole for life and shall not be discharged from supervision by the prisoner review board. When the board orders the parole of an inmate pursuant to this subsection, the board shall order as a condition of parole that the inmate be electronically monitored for the duration of the inmate's natural life.

(v) Whenever the prisoner review board orders a person to be electronically monitored pursuant to this section, or the court orders a person to be electronically monitored pursuant to K.S.A. 2016 Supp. 21-6604(r), and amendments thereto, the board shall order the person to reimburse the state for all or part of the cost of such monitoring. In determining the amount and method of payment of such sum, the board shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose.

(w) (1) On and after July 1, 2012, for any inmate who is a sex offender, as defined in K.S.A. 22-4902, and amendments thereto, whenever the prisoner review board orders the parole of such inmate or establishes conditions for such inmate placed on postrelease supervision, such inmate shall agree in writing to not possess pornographic materials.

(A) As used in this subsection, "pornographic materials" means any obscene material or performance depicting sexual conduct, sexual contact or a sexual performance; and any visual depiction of sexually explicit conduct.

(B) As used in this subsection, all other terms have the meanings provided by K.S.A. 2016 Supp. 21-5510, and amendments thereto.

(2) The provisions of this subsection shall be applied retroactively to every sex offender, as defined in K.S.A. 22-4902, and amendments thereto, who is on parole or postrelease supervision on July 1, 2012. The prisoner review board shall obtain the written agreement required by this subsection from such offenders as soon as practicable.

Sec. 11. K.S.A. 22-3504 and K.S.A. 2016 Supp. 21-5807 and 22-3717 are hereby repealed.

Sec. 12. On and after July 1, 2017, K.S.A. 2016 Supp. 21-5414, 21-5709, 21-6412, 21-6414, 21-6804 and 22-2410 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.