

Substitute for HOUSE BILL No. 2318

By Committee on Corrections and Juvenile Justice

3-9

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to controlled substances; sentencing guidelines grid for drug crimes;
3 amending K.S.A. 22-2908, as amended by section 9 of chapter 101 of
4 the 2010 Session Laws of Kansas, and K.S.A. 2010 Supp. 21-36a01,
5 21-36a03, 21-36a05, 21-36a06, 21-36a09, 21-36a10, 21-36a13, 21-
6 36a14, 21-36a16, 21-36a17, 22-2802, 22-3412, 22-3604, 22-3717, 38-
7 2346, 38-2347, 38-2369, 38-2374, 38-2376 and 75-5291 and sections
8 244, 248, 251, 254, 286, 289, 291, 302 and 305 of chapter 136 of the
9 2010 Session Laws of Kansas and repealing the existing sections; also
10 repealing K.S.A. 2009 Supp. 21-4603d, as amended by section 7 of
11 chapter 101 of the 2010 Session Laws of Kansas, and K.S.A. 2010
12 Supp. 21-4603d, 21-4619, 21-4710 and 22-3717c.

13

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

15 Section 1. K.S.A. 2010 Supp. 21-36a01 is hereby amended to read as
16 follows: 21-36a01. As used in K.S.A. 2010 Supp. 21-36a01 through 21-
17 36a17, and amendments thereto:

18 (a) "Controlled substance" means any drug, substance or immediate
19 precursor included in any of the schedules designated in K.S.A. 65-4105,
20 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

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

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

27 (B) which has a stimulant, depressant or hallucinogenic effect on the
28 central nervous system substantially similar to the stimulant, depressant or
29 hallucinogenic effect on the central nervous system of a controlled
30 substance included in the schedules designated in K.S.A. 65-4105 or 65-
31 4107, and amendments thereto; or

32 (C) with respect to a particular individual, which the individual
33 represents or intends to have a stimulant, depressant or hallucinogenic
34 effect on the central nervous system substantially similar to the stimulant,

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

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

5 (A) A controlled substance;

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

7 or

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

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

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

22 (e) "Drug" means:

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

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

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

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

33 (f) "Drug paraphernalia" means all equipment and materials of any
34 kind which are used, or primarily intended or designed for use in planting,
35 propagating, cultivating, growing, harvesting, manufacturing,
36 compounding, converting, producing, processing, preparing, testing,
37 analyzing, packaging, repackaging, storing, containing, concealing,
38 injecting, ingesting, inhaling or otherwise introducing into the human body
39 a controlled substance and in violation of this act. "Drug paraphernalia"
40 shall include, but is not limited to:

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

- 1 (2) kits used or intended for use in manufacturing, compounding,
2 converting, producing, processing or preparing controlled substances;
- 3 (3) isomerization devices used or intended for use in increasing the
4 potency of any species of plant which is a controlled substance;
- 5 (4) testing equipment used or intended for use in identifying or in
6 analyzing the strength, effectiveness or purity of controlled substances;
- 7 (5) scales and balances used or intended for use in weighing or
8 measuring controlled substances;
- 9 (6) diluents and adulterants, including, but not limited to, quinine
10 hydrochloride, mannitol, mannite, dextrose and lactose, which are used or
11 intended for use in cutting controlled substances;
- 12 (7) separation gins and sifters used or intended for use in removing
13 twigs and seeds from or otherwise cleaning or refining marijuana;
- 14 (8) blenders, bowls, containers, spoons and mixing devices used or
15 intended for use in compounding controlled substances;
- 16 (9) capsules, balloons, envelopes, bags and other containers used or
17 intended for use in packaging small quantities of controlled substances;
- 18 (10) containers and other objects used or intended for use in storing
19 or concealing controlled substances;
- 20 (11) hypodermic syringes, needles and other objects used or intended
21 for use in parenterally injecting controlled substances into the human
22 body;
- 23 (12) objects used or primarily intended or designed for use in
24 ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish,
25 hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into
26 the human body, such as:
 - 27 (A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with
28 or without screens, permanent screens, hashish heads or punctured metal
29 bowls;
 - 30 (B) water pipes, bongs or smoking pipes designed to draw smoke
31 through water or another cooling device;
 - 32 (C) carburetion pipes, glass or other heat resistant tubes or any other
33 device used or intended to be used, designed to be used to cause
34 vaporization of a controlled substance for inhalation;
 - 35 (D) smoking and carburetion masks;
 - 36 (E) roach clips, objects used to hold burning material, such as a
37 marijuana cigarette, that has become too small or too short to be held in
38 the hand;
 - 39 (F) miniature cocaine spoons and cocaine vials;
 - 40 (G) chamber smoking pipes;
 - 41 (H) carburetor smoking pipes;
 - 42 (I) electric smoking pipes;
 - 43 (J) air-driven smoking pipes;

1 (K) chillums;

2 (L) bongos;

3 (M) ice pipes or chillers;

4 (N) any smoking pipe manufactured to disguise its intended purpose;

5 (O) wired cigarette papers; or

6 (P) cocaine freebase kits.

7 (g) "Immediate precursor" means a substance which the board of
8 pharmacy has found to be and by rules and regulations designates as being
9 the principal compound commonly used or produced primarily for use and
10 which is an immediate chemical intermediary used or likely to be used in
11 the manufacture of a controlled substance, the control of which is
12 necessary to prevent, curtail or limit manufacture.

13 (h) "Isomer" means all enantiomers and diastereomers.

14 (i) "Manufacture" means the production, preparation, propagation,
15 compounding, conversion or processing of a controlled substance either
16 directly or indirectly or by extraction from substances of natural origin or
17 independently by means of chemical synthesis or by a combination of
18 extraction and chemical synthesis ~~and includes any packaging or~~
19 ~~repackaging of the substance or labeling or relabeling of its container.~~
20 "Manufacture" does not include:

21 (1) The preparation or compounding of a controlled substance by an
22 individual for the individual's own lawful use or the preparation,
23 compounding, packaging or labeling of a controlled substance:

24 (1) (A) By a practitioner or the practitioner's agent pursuant to a
25 lawful order of a practitioner as an incident to the practitioner's
26 administering or dispensing of a controlled substance in the course of the
27 practitioner's professional practice; or

28 (2) (B) by a practitioner or by the practitioner's authorized agent
29 under such practitioner's supervision for the purpose of or as an incident to
30 research, teaching or chemical analysis or by a pharmacist or medical care
31 facility as an incident to dispensing of a controlled substance; ; or

32 (2) *the addition of dilutents or adulterants, including, but not limited*
33 *to, quinine hydrochloride, manitol, mannite, dextrose or lactose, which are*
34 *intended for use in cutting a controlled substance.*

35 (j) "Marijuana" means all parts of all varieties of the plant cannabis
36 whether growing or not, the seeds thereof, the resin extracted from any
37 part of the plant and every compound, manufacture, salt, derivative,
38 mixture or preparation of the plant, its seeds or resin. "Marijuana" does not
39 include the mature stalks of the plant, fiber produced from the stalks, oil or
40 cake made from the seeds of the plant, any other compound, manufacture,
41 salt, derivative, mixture or preparation of the mature stalks, except the
42 resin extracted therefrom, fiber, oil or cake or the sterilized seed of the
43 plant which is incapable of germination.

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

2 (l) "Narcotic drug" means any of the following whether produced
3 directly or indirectly by extraction from substances of vegetable origin or
4 independently by means of chemical synthesis or by a combination of
5 extraction and chemical synthesis:

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

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

12 (3) opium poppy and poppy straw;

13 (4) coca leaves and any salt, compound, derivative or preparation of
14 coca leaves and any salt, compound, isomer, derivative or preparation
15 thereof which is chemically equivalent or identical with any of these
16 substances, but not including decocainized coca leaves or extractions of
17 coca leaves which do not contain cocaine or ecgonine.

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

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

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

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

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

37 (r) "School property" means property upon which is located a
38 structure used by a unified school district or an accredited nonpublic
39 school for student instruction or attendance or extracurricular activities of
40 pupils enrolled in kindergarten or any of the grades one through 12. This
41 definition shall not be construed as requiring that school be in session or
42 that classes are actually being held at the time of the offense or that
43 children must be present within the structure or on the property during the

1 time of any alleged criminal act. If the structure or property meets the
2 above definition, the actual use of that structure or property at the time
3 alleged shall not be a defense to the crime charged or the sentence
4 imposed.

5 (s) "Simulated controlled substance" means any product which
6 identifies itself by a common name or slang term associated with a
7 controlled substance and which indicates on its label or accompanying
8 promotional material that the product simulates the effect of a controlled
9 substance.

10 Sec. 2. K.S.A. 2010 Supp. 21-36a03 is hereby amended to read as
11 follows: 21-36a03. (a) It shall be unlawful for any person to manufacture
12 any controlled substance or controlled substance analog.

13 (b) Violation or attempted violation of subsection (a) is a ~~drug~~-
14 ~~severity level 1 felony~~.

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

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

20 (3) *drug severity level 1 felony if the controlled substance is*
21 *methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-*
22 *4107, and amendments thereto, or an analog thereof.*

23 (c) The provisions of subsection (d) of ~~K.S.A. 21-3304~~ *section 33 of*
24 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto,
25 shall not apply to a violation of attempting to unlawfully manufacture any
26 controlled substance *or controlled substance analog* pursuant to this
27 section.

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

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

36 (e) (f) The sentence of a person who violates this section or K.S.A.
37 65-4159, prior to its repeal, shall not be reduced because these sections
38 prohibit conduct identical to that prohibited by K.S.A. 65-4161 or 65-
39 4163, prior to ~~such sections~~ *their* repeal, or K.S.A. 2010 Supp. 21-36a05,
40 and amendments thereto.

41 Sec. 3. K.S.A. 2010 Supp. 21-36a05 is hereby amended to read as
42 follows: 21-36a05. (a) It shall be unlawful for any person to ~~cultivate,~~
43 distribute or possess with the intent to distribute any of the following

1 controlled substances or controlled substance analogs thereof:

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

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

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

11 (4) any hallucinogenic drug designated in subsection (d) of K.S.A.
12 65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-
13 4109, and amendments thereto;

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

17 (6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
18 4109, and amendments thereto.

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

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

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

29 ~~(B) violation of subsection (a)(1) is a drug severity level 2 felony if~~
30 ~~that person has one prior conviction under subsection (a)(1), under K.S.A.~~
31 ~~65-4161 prior to its repeal, or under a substantially similar offense from~~
32 ~~another jurisdiction; and~~

33 ~~(C) violation of subsection (a)(1) is a drug severity level 1 felony if~~
34 ~~that person has two prior convictions under subsection (a)(1), under~~
35 ~~K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense~~
36 ~~from another jurisdiction.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (D) *drug severity level 1 felony if the quantity of the material was*
34 *100 grams or more.*

35 (4) *Violation of subsection (a) with respect to material containing*
36 *any quantity of a controlled substance designated in K.S.A. 65-4105, 65-*
37 *4107, 65-4109 or 65-4111, and amendments thereto, or an analog thereof,*
38 *distributed by dosage unit, is a:*

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

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

43 (C) *drug severity level 2 felony if the number of dosage units was at*

1 least 100 but less than 1,000; or

2 (D) drug severity level 1 felony if the number of dosage units was
3 1,000 or more.

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

8 (6) Violation of subsection (b) is a class A person misdemeanor;
9 except as provided in subsection (d)(7).

10 (7) Violation of subsection (b) is a severity level 7, person felony if
11 the substance was distributed to or possessed with the intent to distribute
12 to a minor:

13 (8) Violation of subsection (c) is a:

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

16 (B) drug severity level 2 felony if the number of plants cultivated was
17 at least 50 but fewer than 100; or

18 (C) drug severity level 1 felony if the number of plants cultivated was
19 100 or more.

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

24 (1) 450 grams or more of marijuana;

25 (2) 3.5 grams or more of heroin or methamphetamine;

26 (3) 100 dosage units or more containing a controlled substance; or

27 (4) 100 grams or more of any other controlled substance.

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

30 (1) Was acting in an agency relationship on behalf of any other party
31 in a transaction involving a controlled substance or controlled substance
32 analog;

33 (2) did not know the quantity of the controlled substance or
34 controlled substance analog; or

35 (3) did not know the specific controlled substance or controlled
36 substance analog contained in the material that was distributed or
37 possessed with the intent to distribute.

38 (g) As used in this section:

39 (1) "Material" means the total amount of any substance, including a
40 compound or a mixture, which contains any quantity of a controlled
41 substance or controlled substance analog.

42 (2) "Dosage unit" means a controlled substance or controlled
43 substance analog distributed or possessed with the intent to distribute as a

1 *discrete unit, including, but not limited to, one pill, one capsule or one*
2 *microdot, and not distributed by weight.*

3 *(A) For steroids, or controlled substances or controlled substance*
4 *analogs in liquid solution legally manufactured for prescription use,*
5 *“dosage unit” means the smallest medically-approved dosage unit, as*
6 *determined by the label, materials provided by the manufacturer, a*
7 *prescribing authority, licensed health care professional or other qualified*
8 *health authority.*

9 *(B) For illegally manufactured controlled substances or controlled*
10 *substance analogs in liquid solution, or controlled substances or*
11 *controlled substance analogs in liquid products not intended for ingestion*
12 *by human beings, “dosage unit” means 10 milligrams, including the liquid*
13 *carrier medium, except as provided in subsection (g)(2)(C).*

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

17 Sec. 4. K.S.A. 2010 Supp. 21-36a06 is hereby amended to read as
18 follows: 21-36a06. (a) It shall be unlawful for any person to possess any
19 opiates, opium or narcotic drugs, or any stimulant designated in subsection
20 (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or a
21 controlled substance analog thereof.

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

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

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

30 (3) any hallucinogenic drug designated in subsection (d) of K.S.A.
31 65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-
32 4109, and amendments thereto;

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

36 (5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
37 4109, and amendments thereto; or

38 (6) any substance designated in K.S.A. 65-4113, and amendments
39 thereto.

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

41 (2) violation of subsection (b) is a class A nonperson misdemeanor,
42 except that, violation of subsection (b)(1) through (b)(5) is a drug severity
43 level 4 5 felony if that person has a prior conviction under such subsection,

1 under K.S.A. 65-4162 prior to its repeal, under a substantially similar
2 offense from another jurisdiction, or under any city ordinance or county
3 resolution for a substantially similar offense if the substance involved was
4 3, 4-methylenedioxymethamphetamine (MDMA), marijuana or
5 tetrahydrocannabinol as designated in subsection (d) of K.S.A. 65-4105,
6 and amendments thereto, *or an analog thereof*.

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

11 Sec. 5. K.S.A. 2010 Supp. 21-36a09 is hereby amended to read as
12 follows: 21-36a09. ~~(a) It shall be unlawful for any person to possess~~
13 ~~ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal,~~
14 ~~iodine, anhydrous ammonia, pressurized ammonia or~~
15 ~~phenylpropanolamine, or their salts, isomers or salts of isomers with an~~
16 ~~intent to use the product to manufacture a controlled substance.~~

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

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

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

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

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

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

33 ~~(2) violation of subsection (b)(1) is a drug severity level 4 felony,~~
34 ~~except that violation of subsection (b)(1) is a class A nonperson~~
35 ~~misdemeanor if the drug paraphernalia was used to cultivate fewer than~~
36 ~~five marijuana plants;~~

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

39 ~~(4) violation of subsection (c) is a drug severity level 4 felony;~~

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

41 ~~(f) For persons arrested and charged under subsection (a) or (c), bail~~
42 ~~shall be at least \$50,000 cash or surety, unless the court determines, on the~~
43 ~~record, that the defendant is not likely to reoffend, the court imposes~~

1 ~~pretrial supervision or the defendant agrees to participate in a licensed or~~
2 ~~certified drug treatment program.~~

3 (a) *Possession of ephedrine, pseudoephedrine, red phosphorus,*
4 *lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized*
5 *ammonia or phenylpropanolamine, or their salts, isomers or salts of*
6 *isomers with intent to use the product to manufacture a controlled*
7 *substance or controlled substance analog is an attempted violation of*
8 *subsection (a) of K.S.A. 2010 Supp. 21-36a03, and amendments thereto.*

9 (b) *Possession of drug paraphernalia with the intent to manufacture*
10 *a controlled substance or controlled substance analog is an attempted*
11 *violation of subsection (a) of K.S.A. 2010 Supp. 21-36a03, and*
12 *amendments thereto.*

13 (c) *Possession of any drug paraphernalia with the intent to:*

14 (1) *Distribute or cultivate a controlled substance designated in*
15 *subsection (a) of K.S.A. 2010 Supp. 21-36a05, and amendments thereto, or*
16 *a controlled substance analog thereof, is an attempted violation of*
17 *subsection (a) of K.S.A. 2010 Supp. 21-36a05, and amendments thereto;*
18 *or*

19 (2) *distribute a controlled substance or controlled substance analog*
20 *designated in K.S.A. 65-4113, and amendments thereto, is an attempted*
21 *violation of subsection (b) of K.S.A. 2010 Supp. 21-36a05, and*
22 *amendments thereto.*

23 (d) *Possession of any drug paraphernalia with the intent to possess*
24 *or have under one's control, any controlled substance designated in:*

25 (1) *Subsection (a) of K.S.A. 2010 Supp. 21-36a06, and amendments*
26 *thereto, or a controlled substance analog thereof, is an attempted violation*
27 *of subsection (a) of K.S.A. 2010 Supp. 21-36a06, and amendments thereto;*
28 *or*

29 (2) *subsection (b) of K.S.A. 2010 Supp. 21-36a06, and amendments*
30 *thereto, or a controlled substance analog thereof, is an attempted violation*
31 *of subsection (b) of K.S.A. 2010 Supp. 21-36a06, and amendments thereto.*

32 (e) *This section does not preclude a person from being prosecuted for,*
33 *convicted of and punished for an attempted violation of K.S.A. 2010 Supp.*
34 *21-36a03, 21-36a05 or 21-36a06, and amendments thereto, based upon*
35 *overt acts other than those described in this section.*

36 Sec. 6. K.S.A. 2010 Supp. 21-36a10 is hereby amended to read as
37 follows: 21-36a10. (a) It shall be unlawful for any person to advertise,
38 market, label, distribute or possess with the intent to distribute:

39 (1) Any product containing ephedrine, pseudoephedrine, red
40 phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia,
41 pressurized ammonia or phenylpropanolamine or their salts, isomers or
42 salts of isomers if the person knows or reasonably should know that the
43 purchaser will use the product to manufacture a controlled substance *or*

1 *controlled substance analog*; or

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

8 (b) It shall be unlawful for any person to distribute, possess with the
9 intent to distribute or manufacture with intent to distribute any drug
10 paraphernalia, knowing or under circumstances where one reasonably
11 should know that it will be used to manufacture or distribute a controlled
12 substance *or controlled substance analog* in violation of K.S.A. 2010
13 Supp. 21-36a01 through 21-36a17, and amendments thereto.

14 (c) It shall be unlawful for any person to distribute, possess with
15 intent to distribute or manufacture with intent to distribute any drug
16 paraphernalia, knowing or under circumstances where one reasonably
17 should know, that it will be used as such in violation of K.S.A. 2010 Supp.
18 21-36a01 through 21-36a17, and amendments thereto, except subsection
19 (b) of K.S.A. 2010 Supp. 21-36a06, and amendments thereto.

20 (d) It shall be unlawful for any person to distribute, possess with
21 intent to distribute or manufacture with intent to distribute any drug
22 paraphernalia, knowing, or under circumstances where one reasonably
23 should know, that it will be used as such in violation of subsection (b) of
24 K.S.A. 2010 Supp. 21-36a06, and amendments thereto.

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

26 (2) Violation of subsection (b) is a drug severity level ~~4~~ 5 felony,
27 except ~~that as provided in subsection (e)(3)~~.

28 (3) Violation of subsection (b) is a drug severity level ~~3~~ 4 felony if the
29 trier of fact makes a finding that ~~the offender is 18 or more years of age~~
30 ~~and~~ the offender distributed or caused drug paraphernalia to be distributed
31 to a minor or on or within 1,000 feet of any school property; .

32 ~~(4)~~ (4) Violation of subsection (c) is a severity level 9, nonperson
33 felony, except ~~that as provided in subsection (e)(5)~~.

34 (5) Violation of subsection (c) is a drug severity level ~~4~~ 5 felony if the
35 trier of fact makes a finding that ~~the offender is 18 or more years of age~~
36 ~~and~~ the offender distributed or caused drug paraphernalia to be distributed
37 to a minor or on or within 1,000 feet of any school property; .

38 ~~(4)~~ (6) Violation of subsection (d) is a class A nonperson
39 misdemeanor, except ~~that as provided in subsection (e)(7)~~.

40 (7) Violation of subsection (d) is a *nondrug* severity level 9,
41 nonperson felony if the trier of fact makes a finding that ~~the offender is 18~~
42 ~~or more years of age and~~ the offender distributed or caused drug
43 paraphernalia to be distributed to a minor or on or within 1,000 feet of any

1 school property.

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

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

10 (1) Actual knowledge from prior experience or statements by
11 customers;

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

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

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

20 Sec. 7. K.S.A. 2010 Supp. 21-36a13 is hereby amended to read as
21 follows: 21-36a13. (a) It shall be unlawful for any person to distribute,
22 possess with the intent to distribute, or manufacture with the intent to
23 distribute any simulated controlled substance.

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

26 (c) (1) Violation of subsection (a) is a nondrug severity level 9,
27 nonperson felony, except ~~that~~ *as provided in subsection (c)(2)*.

28 (2) Violation of subsection (a) is a nondrug severity level 7,
29 nonperson felony, if the trier of fact makes a finding that ~~the offender is 18~~
30 ~~or more years of age and~~ the violation occurred on or within 1,000 feet of
31 any school property; ~~and~~.

32 ~~(2)~~ (3) Violation of subsection (b) is a class A nonperson
33 misdemeanor.

34 Sec. 8. K.S.A. 2010 Supp. 21-36a14 is hereby amended to read as
35 follows: 21-36a14. (a) It shall be unlawful for any person to distribute or
36 possess with the intent to distribute any substance which is not a controlled
37 substance:

38 (1) Upon an express representation that the substance is a controlled
39 substance or that the substance is of such nature or appearance that the
40 recipient will be able to distribute the substance as a controlled substance;
41 or

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

1 (b)(1) Violation of subsection (a) is a class A nonperson
2 misdemeanor, except ~~that~~ *as provided in subsection (b)(2)*.

3 (2) Violation of subsection (a) is a nondrug severity level 9,
4 nonperson felony, if the distributor is 18 or more years of age, distributing
5 to a ~~person under 18 years of age~~ *minor* and at least three years older than
6 the ~~person under 18 years of age~~ *minor* to whom the distribution is made.

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

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

13 (2) the distribution of the substance included an exchange of or
14 demand for money or other consideration for distribution of the substance
15 and the amount of the consideration was substantially in excess of the
16 reasonable value of the substance; or

17 (3) the physical appearance of the capsule or other material
18 containing the substance is substantially identical to a specific controlled
19 substance.

20 (d) *A person who commits a violation of subsection (a) also may be*
21 *prosecuted for, convicted of and punished for theft.*

22 Sec. 9. K.S.A. 2010 Supp. 21-36a16 is hereby amended to read as
23 follows: 21-36a16. (a) It shall be unlawful for any person to receive or
24 acquire proceeds or engage in transactions involving proceeds, known to
25 be derived from a violation of K.S.A. 2010 Supp. 21-36a01 through 21-
26 36a17, and amendments thereto, or any substantially similar offense from
27 another jurisdiction. The provisions of this subsection do not apply to any
28 transaction between an individual and that individual's counsel necessary
29 to preserve that individual's right to representation, as guaranteed by
30 section 10 of the bill of rights of the constitution of the state of Kansas and
31 by the sixth amendment to the United States constitution. This exception
32 does not create any presumption against or prohibition of the right of the
33 state to seek and obtain forfeiture of any proceeds derived from a violation
34 of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments
35 thereto.

36 (b) It shall be unlawful for any person to distribute, invest, conceal,
37 transport or maintain an interest in or otherwise make available anything
38 of value which that person knows is intended to be used for the purpose of
39 committing or furthering the commission of any crime in K.S.A. 2010
40 Supp. 21-36a01 through 21-36a17, and amendments thereto, or any
41 substantially similar offense from another jurisdiction.

42 (c) It shall be unlawful for any person to direct, plan, organize,
43 initiate, finance, manage, supervise or facilitate the transportation or

1 transfer of proceeds known to be derived from commission of any crime in
 2 K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto,
 3 or any substantially similar offense from another jurisdiction.

4 (d) It shall be unlawful for any person to conduct a financial
 5 transaction involving proceeds derived from commission of any crime in
 6 K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto,
 7 or any substantially similar offense from another jurisdiction, when the
 8 transaction is designed in whole or in part to conceal or disguise the
 9 nature, location, source, ownership or control of the proceeds known to be
 10 derived from commission of any crime in K.S.A. 2010 Supp. 21-36a01
 11 through 21-36a17, and amendments thereto, or any substantially similar
 12 offense from another jurisdiction, or to avoid a transaction reporting
 13 requirement under state or federal law.

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

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

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

19 (3) ~~violation of this section shall be a~~ drug severity level ~~2~~ 3 felony if
 20 the value of the proceeds is at least \$100,000 but less than ~~\$500,000-~~
 21 ~~\$250,000~~;

22 (4) *drug severity level 2 felony if the value of the proceeds is at least*
 23 *\$250,000 but less than \$500,000; and*

24 ~~(4) (5) violation of this section shall be a~~ drug severity level 1 felony
 25 if the value of the proceeds is \$500,000 or more.

26 Sec. 10. K.S.A. 2010 Supp. 21-36a17 is hereby amended to read as
 27 follows: 21-36a17. The statutes listed below shall be applicable and
 28 uniform throughout this state and in all cities and counties therein. No city
 29 or county shall enact or enforce any law, ordinance, rule, regulation or
 30 resolution in conflict with, in addition to, or supplemental to, the
 31 provisions listed below unless expressly authorized by law to do so:

32 (a) Subsection (c) of K.S.A. 21-2501a, and amendments thereto;

33 (b) subsections (k) and (l) of K.S.A. 65-1643, and amendments
 34 thereto;

35 (c) subsections (e), (f) and (g) of K.S.A. 65-4113, and amendments
 36 thereto;

37 (d) subsection (c) of K.S.A. 2010 Supp. 21-36a03, and amendments
 38 thereto;

39 ~~(e) subsection (f) of K.S.A. 2010 Supp. 21-36a09, and amendments~~
 40 ~~thereto;~~

41 ~~(f)~~ (e) subsection (f) of K.S.A. 2010 Supp. 21-36a10, and
 42 amendments thereto.

43 Sec. 11. K.S.A. 2010 Supp. 22-2802 is hereby amended to read as

1 follows: 22-2802. (1) Any person charged with a crime shall, at the
2 person's first appearance before a magistrate, be ordered released pending
3 preliminary examination or trial upon the execution of an appearance bond
4 in an amount specified by the magistrate and sufficient to assure the
5 appearance of such person before the magistrate when ordered and to
6 assure the public safety. If the person is being bound over for a felony, the
7 bond shall also be conditioned on the person's appearance in the district
8 court or by way of a two-way electronic audio-video communication as
9 provided in subsection (14) at the time required by the court to answer the
10 charge against such person and at any time thereafter that the court
11 requires. Unless the magistrate makes a specific finding otherwise, if the
12 person is being bonded out for a person felony or a person misdemeanor,
13 the bond shall be conditioned on the person being prohibited from having
14 any contact with the alleged victim of such offense for a period of at least
15 72 hours. The magistrate may impose such of the following additional
16 conditions of release as will reasonably assure the appearance of the
17 person for preliminary examination or trial:

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

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

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

25 (d) place the person under a house arrest program pursuant to ~~K.S.A.~~
26 ~~21-4603b~~ *section 249 of chapter 136 of the 2010 Session Laws of Kansas,*
27 *and amendments thereto; or*

28 (e) place the person under the supervision of a court services officer
29 responsible for monitoring the person's compliance with any conditions of
30 release ordered by the magistrate.

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

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

43 (4) A deposit of cash in the amount of the bond may be made in lieu

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

10 (5) Except as provided further, the amount of the appearance bond
11 shall be the same whether executed as described in subsection (3) or
12 posted with a deposit of cash as described in subsection (4). When the
13 appearance bond has been set at \$2,500 or less and the most serious charge
14 against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson
15 felony, a drug severity level 4 felony *committed prior to July 1, 2011, a*
16 *drug severity level 5 felony committed on or after July 1, 2011,* or a
17 violation of K.S.A. 8-1567, and amendments thereto, the magistrate may
18 allow the person to deposit cash with the clerk in the amount of 10% of the
19 bond, provided the person meets at least the following qualifications:

- 20 (A) Is a resident of the state of Kansas;
21 (B) has a criminal history score category of G, H or I;
22 (C) has no prior history of failure to appear for any court
23 appearances;
24 (D) has no detainer or hold from any other jurisdiction;
25 (E) has not been extradited from, and is not awaiting extradition to,
26 another state; and
27 (F) has not been detained for an alleged violation of probation.

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

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

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

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

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

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

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

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

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

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

39 (15) The magistrate may order the person to pay for any costs
40 associated with the supervision of the conditions of release of the
41 appearance bond in an amount not to exceed \$15 per week of such
42 supervision.

43 Sec. 12. K.S.A. 22-2908, as amended by section 9 of chapter 101 of

1 the 2010 Session Laws of Kansas, is hereby amended to read as follows:
2 22-2908. (a) In determining whether diversion of a defendant is in the
3 interests of justice and of benefit to the defendant and the community, the
4 county or district attorney shall consider at least the following factors
5 among all factors considered:

6 (1) The nature of the crime charged and the circumstances
7 surrounding it;

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

9 (3) whether the defendant is a first-time offender and if the defendant
10 has previously participated in diversion, according to the certification of
11 the Kansas bureau of investigation or the division of vehicles of the
12 department of revenue;

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

15 (5) whether the available diversion program is appropriate to the
16 needs of the defendant;

17 (6) the impact of the diversion of the defendant upon the community;

18 (7) recommendations, if any, of the involved law enforcement
19 agency;

20 (8) recommendations, if any, of the victim;

21 (9) provisions for restitution; and

22 (10) any mitigating circumstances.

23 (b) A county or district attorney shall not enter into a diversion
24 agreement in lieu of further criminal proceedings on a complaint if:

25 (1) The complaint alleges a violation of K.S.A. 8-1567 , and
26 amendments thereto , and the defendant: (A) Has previously participated
27 in diversion upon a complaint alleging a violation of that statute or an
28 ordinance of a city in this state which prohibits the acts prohibited by that
29 statute; (B) has previously been convicted of or pleaded nolo contendere to
30 a violation of that statute or a violation of a law of another state or of a
31 political subdivision of this or any other state, which law prohibits the acts
32 prohibited by that statute; or (C) during the time of the alleged violation
33 was involved in a motor vehicle accident or collision resulting in personal
34 injury or death;

35 (2) the complaint alleges that the defendant committed a class A or B
36 felony or for crimes committed on or after July 1, 1993, an off-grid crime,
37 a severity level 1, 2 or 3 felony for nondrug crimes ~~or~~ , a drug severity
38 level 1 or 2 felony for drug crimes *committed on or after July 1, 1993, but*
39 *prior to July 1, 2011, or a drug severity level 1, 2 or 3 felony committed on*
40 *or after July 1, 2011*; or

41 (3) the complaint alleges a domestic violence offense, as defined in
42 K.S.A. 21-3110, and amendments thereto, and the defendant has
43 participated in two or more diversions in the previous five year period

1 upon complaints alleging a domestic violence offense.

2 (c) A county or district attorney may enter into a diversion agreement
3 in lieu of further criminal proceedings on a complaint for violations of
4 article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments
5 thereto, if such diversion carries the same penalties as the conviction for
6 the corresponding violations. If the defendant has previously participated
7 in one or more diversions for violations of article 10 of chapter 32 of the
8 Kansas Statutes Annotated, and amendments thereto, then each subsequent
9 diversion shall carry the same penalties as the conviction for the
10 corresponding violations.

11 Sec. 13. K.S.A. 2010 Supp. 22-3412 is hereby amended to read as
12 follows: 22-3412. (a) (1) For crimes committed before July 1, 1993,
13 peremptory challenges shall be allowed as follows:

14 (A) Each defendant charged with a class A felony shall be allowed 12
15 peremptory challenges.

16 (B) Each defendant charged with a class B felony shall be allowed
17 eight peremptory challenges.

18 (C) Each defendant charged with a felony other than class A or class
19 B felony shall be allowed six peremptory challenges.

20 (D) Each defendant charged with a misdemeanor shall be allowed
21 three peremptory challenges.

22 (E) Additional peremptory challenges shall not be allowed on account
23 of separate counts charged in the complaint, information or indictment.

24 (F) The prosecution shall be allowed the same number of peremptory
25 challenges as all the defendants.

26 (2) For crimes committed on or after July 1, 1993, peremptory
27 challenges shall be allowed as follows:

28 (A) Each defendant charged with an off-grid felony ~~or~~, a nondrug ~~or~~
29 ~~drug~~ felony ranked at severity level 1, *or a drug felony ranked at severity*
30 *level 1 or 2* shall be allowed 12 peremptory challenges.

31 (B) Each defendant charged with a nondrug felony ranked at severity
32 level 2, 3, 4, 5 or 6, or a drug felony ranked at severity level ~~2~~ ~~or~~ ~~3~~ *or 4*,
33 shall be allowed 8 peremptory challenges.

34 (C) Each defendant charged with an unclassified felony, a nondrug
35 severity level 7, 8, 9 or 10, or a drug severity level ~~4~~ ~~5~~ felony shall be
36 allowed six peremptory challenges.

37 (D) Each defendant charged with a misdemeanor shall be allowed
38 three peremptory challenges.

39 (E) The prosecution shall be allowed the same number of peremptory
40 challenges as all defendants.

41 (F) The most serious penalty offense charged against each defendant
42 furnishes the criterion for determining the allowed number of peremptory
43 challenges for that defendant.

1 (G) Additional peremptory challenges shall not be allowed when
2 separate counts are charged in the complaint, information or indictment.

3 (H) Except as otherwise provided in this subsection, the provisions of
4 this section shall apply. In applying the provisions of this section, the trial
5 court may determine the number of peremptory challenges to allow by
6 reviewing the classification for the crime charged, or nearest comparable
7 felony, as it was classified under the criminal law in effect prior to July 1,
8 1993. If the severity level of the most serious crime charged raises the
9 potential penalty above that of another crime which was classified higher
10 under the criminal law in effect prior to July 1, 1993, the defendant shall
11 be allowed the number of peremptory challenges as for that higher
12 classified crime under the prior system.

13 (I) The trial court shall resolve any conflicts with a liberal
14 construction in favor of allowing the greater number of peremptory
15 challenges.

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

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

1 Sec. 14. K.S.A. 2010 Supp. 22-3604 is hereby amended to read as
2 follows: 22-3604. (1) Except as provided in subsection (3), a defendant
3 shall not be held in jail nor subject to an appearance bond during the
4 pendency of an appeal by the prosecution.

5 (2) The time during which an appeal by the prosecution is pending
6 shall not be counted for the purpose of determining whether a defendant is
7 entitled to discharge under K.S.A. 22-3402, and amendments thereto. For
8 purposes of this section, "an appeal by the prosecution" includes, but is not
9 limited to, appeals authorized by subsection (b) of K.S.A. 22-3602, and
10 amendments thereto, appeals authorized by K.S.A. 22-3603, and
11 amendments thereto, and any appeal by the prosecution which seeks
12 discretionary review in the supreme court of Kansas or the United States
13 supreme court. Such an appeal remains "pending" until final resolution by
14 the court of last resort.

15 (3) A defendant charged with a class A, B or C felony or, if the felony
16 was committed on or after July 1, 1993, an off-grid felony, a nondrug
17 severity level 1 through 5 felony or a drug severity level 1 through 3 4
18 felony crime shall not be released from jail or the conditions of such
19 person's appearance bond during the pendency of an appeal by the
20 prosecution. The time during which an appeal by the prosecution is
21 pending in a class A, B or C felony or, if the felony was committed on or
22 after July 1, 1993, an off-grid felony, a nondrug severity level 1 through 5
23 felony or a drug severity level 1 through 3 4 felony case shall not be
24 counted for the purpose of determining whether the defendant is entitled to
25 discharge under K.S.A. 22-3402, and amendments thereto.

26 Sec. 15. K.S.A. 2010 Supp. 22-3717 is hereby amended to read as
27 follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A.
28 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4635 through 21-4638,
29 *prior to their repeal; K.S.A. 21-4624, prior to its repeal; K.S.A. 21-4642,*
30 *prior to its repeal; sections 260, 263, 264 and 265 of chapter 136 of the*
31 *2010 Session Laws of Kansas, and amendments thereto; K.S.A. 8-1567,*
32 *and amendments thereto; ~~K.S.A. 21-4642 section 266 of chapter 136 of~~*
33 *the 2010 Session Laws of Kansas, and amendments thereto; and ~~K.S.A. 21-~~*
34 *4624 section 257 of chapter 136 of the 2010 Session Laws of Kansas, and*
35 *amendments thereto, an inmate, including an inmate sentenced pursuant to*
36 *K.S.A. 21-4618, prior to its repeal, or section 276 of chapter 136 of the*
37 *2010 Session Laws of Kansas, and amendments thereto, shall be eligible*
38 *for parole after serving the entire minimum sentence imposed by the court,*
39 *less good time credits.*

40 (b) (1) Except as provided by K.S.A. 21-4635 through 21-4638, *prior*
41 *to their repeal, and sections 260, 263, 264 and 265 of chapter 136 of the*
42 *2010 Session Laws of Kansas, and amendments thereto, an inmate*
43 *sentenced to imprisonment for the crime of capital murder, or an inmate*

1 sentenced for the crime of murder in the first degree based upon a finding
2 of premeditated murder, committed on or after July 1, 1994, shall be
3 eligible for parole after serving 25 years of confinement, without
4 deduction of any good time credits.

5 (2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993
6 Supp. 21-4628, prior to its repeal, ~~and~~ K.S.A. 21-4635 through 21-4638,
7 *prior to their repeal, and sections 260, 263, 264 and 265 of chapter 136 of*
8 *the 2010 Session Laws of Kansas*, and amendments thereto, an inmate
9 sentenced to imprisonment for an off-grid offense committed on or after
10 July 1, 1993, but prior to July 1, 1999, shall be eligible for parole after
11 serving 15 years of confinement, without deduction of any good time
12 credits and an inmate sentenced to imprisonment for an off-grid offense
13 committed on or after July 1, 1999, shall be eligible for parole after
14 serving 20 years of confinement without deduction of any good time
15 credits.

16 (3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its
17 repeal, an inmate sentenced for a class A felony committed before July 1,
18 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, *prior to*
19 *its repeal, or section 276 of chapter 136 of the 2010 Session Laws of*
20 *Kansas*, and amendments thereto, shall be eligible for parole after serving
21 15 years of confinement, without deduction of any good time credits.

22 (4) An inmate sentenced to imprisonment for a violation of
23 subsection (a) of K.S.A. 21-3402, *prior to its repeal, or subsection (a) of*
24 *section 38 of chapter 136 of the 2010 Session Laws of Kansas*, and
25 amendments thereto, committed on or after July 1, 1996, but prior to July
26 1, 1999, shall be eligible for parole after serving 10 years of confinement
27 without deduction of any good time credits.

28 (5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
29 4643, *prior to its repeal, or section 267 of chapter 136 of the 2010 Session*
30 *Laws of Kansas*, and amendments thereto, committed on or after July 1,
31 2006, shall be eligible for parole after serving the mandatory term of
32 imprisonment without deduction of any good time credits.

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

37 (A) The aggregate minimum sentences, as determined pursuant to
38 K.S.A. 21-4608, *prior to its repeal, or section 246 of chapter 136 of the*
39 *2010 Session Laws of Kansas*, and amendments thereto, less good time
40 credits for those crimes which are not class A felonies; and

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

43 (2) (A) If an inmate is sentenced to imprisonment pursuant to K.S.A.

1 21-4643, ~~and amendments thereto~~ prior to its repeal, for crimes committed
2 on or after July 1, 2006, but prior to July 1, 2011, the inmate shall be
3 eligible for parole after serving the mandatory term of imprisonment.

4 (B) If an inmate is sentenced to imprisonment pursuant to section 267
5 of chapter 136 of the 2010 Session Laws of Kansas, and amendments
6 thereto, for crimes committed on or after July 1, 2011, the inmate shall be
7 eligible for parole after serving the mandatory term of imprisonment.

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

13 (A) Except as provided in subparagraphs (D) and (E), persons
14 sentenced for nondrug severity level 1 through 4 crimes ~~and~~, drug severity
15 levels 1 and 2 crimes committed on or after July 1, 1993, but prior to July
16 1, 2011, and drug severity levels 1, 2 and 3 crimes committed on or after
17 July 1, 2011, must serve 36 months, plus the amount of good time and
18 program credit earned and retained pursuant to K.S.A. 21-4722, prior to
19 its repeal, or section 302 of chapter 136 of the 2010 Session Laws of
20 Kansas, and amendments thereto, on postrelease supervision.

21 (B) Except as provided in subparagraphs (D) and (E), persons
22 sentenced for nondrug severity levels 5 and 6 crimes ~~and~~, drug severity
23 level 3 crimes committed on or after July 1, 1993, but prior to July 1,
24 2011, and drug severity level 4 crimes committed on or after July 1, 2011,
25 must serve 24 months, plus the amount of good time and program credit
26 earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or
27 section 302 of chapter 136 of the 2010 Session Laws of Kansas, and
28 amendments thereto, on postrelease supervision.

29 (C) Except as provided in subparagraphs (D) and (E), persons
30 sentenced for nondrug severity level 7 through 10 crimes ~~and~~, drug
31 severity level 4 crimes committed on or after July 1, 1993, but prior to
32 July 1, 2011, and drug severity level 5 crimes committed on or after July
33 1, 2011, must serve 12 months, plus the amount of good time and program
34 credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal,
35 or section 302 of chapter 136 of the 2010 Session Laws of Kansas, and
36 amendments thereto, on postrelease supervision.

37 (D) (i) The sentencing judge shall impose the postrelease supervision
38 period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C), unless
39 the judge finds substantial and compelling reasons to impose a departure
40 based upon a finding that the current crime of conviction was sexually
41 motivated. In that event, departure may be imposed to extend the
42 postrelease supervision to a period of up to 60 months.

43 (ii) If the sentencing judge departs from the presumptive postrelease

1 supervision period, the judge shall state on the record at the time of
2 sentencing the substantial and compelling reasons for the departure.
3 Departures in this section are subject to appeal pursuant to K.S.A. 21-
4 4721, *prior to its repeal, or section 301 of chapter 136 of the 2010 Session*
5 *Laws of Kansas*, and amendments thereto.

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

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

10 (b) any evidence received during the proceeding;

11 (c) the presentence report, the victim's impact statement and any
12 psychological evaluation as ordered by the court pursuant to subsection (e)
13 of K.S.A. 21-4714, *prior to its repeal, or subsection (e) of section 294 of*
14 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;
15 and

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

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

21 (v) In carrying out the provisions of subparagraph (d)(1)(D), the court
22 shall refer to K.S.A. 21-4718, *prior to its repeal, or section 298 of chapter*
23 *136 of the 2010 Session Laws of Kansas*, and amendments thereto.

24 (vi) Upon petition, the parole board may provide for early discharge
25 from the postrelease supervision period upon completion of court ordered
26 programs and completion of the presumptive postrelease supervision
27 period, as determined by the crime of conviction, pursuant to subparagraph
28 (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from postrelease
29 supervision is at the discretion of the parole board.

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

33 (viii) Persons convicted of K.S.A. 21-3510 or 21-3511, *prior to their*
34 *repeal, or section 72 of chapter 136 of the 2010 Session Laws of Kansas*,
35 and amendments thereto, shall be required to participate in a treatment
36 program for sex offenders during the postrelease supervision period.

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

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

6 (G) Except as provided in subsection (u), persons convicted of a
7 sexually violent crime committed on or after July 1, 2006, and who are
8 released from prison, shall be released to a mandatory period of
9 postrelease supervision for the duration of the person's natural life.

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

11 (A) Rape, K.S.A. 21-3502, *prior to its repeal, or section 67 of*
12 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

13 (B) indecent liberties with a child, K.S.A. 21-3503, *prior to its*
14 *repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session*
15 *Laws of Kansas*, and amendments thereto;

16 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, *prior*
17 *to its repeal, or subsection (b) of section 70 of chapter 136 of the 2010*
18 *Session Laws of Kansas*, and amendments thereto;

19 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505,
20 *prior to its repeal, or subsection (a)(3) and (a)(4) of section 68 of chapter*
21 *136 of the 2010 Session Laws of Kansas*, and amendments thereto;

22 (E) aggravated criminal sodomy, K.S.A. 21-3506, *prior to its repeal,*
23 *or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of*
24 *Kansas*, and amendments thereto;

25 (F) indecent solicitation of a child, K.S.A. 21-3510, *prior to its*
26 *repeal, or subsection (a) of section 72 of chapter 136 of the 2010 Session*
27 *Laws of Kansas*, and amendments thereto;

28 (G) aggravated indecent solicitation of a child, K.S.A. 21-3511, *prior*
29 *to its repeal, or subsection (b) of section 72 of chapter 136 of the 2010*
30 *Session Laws of Kansas*, and amendments thereto;

31 (H) sexual exploitation of a child, K.S.A. 21-3516, *prior to its repeal,*
32 *or section 74 of chapter 136 of the 2010 Session Laws of Kansas*, and
33 amendments thereto;

34 (I) aggravated sexual battery, K.S.A. 21-3518, *prior to its repeal, or*
35 *subsection (b) of section 69 of chapter 136 of the 2010 Session Laws of*
36 *Kansas*, and amendments thereto;

37 (J) aggravated incest, K.S.A. 21-3603, *prior to its repeal, or*
38 *subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of*
39 *Kansas*, and amendments thereto; or

40 (K) an attempt, conspiracy or criminal solicitation, as defined in
41 K.S.A. 21-3301, 21-3302 or 21-3303, *prior to their repeal, or sections 33,*
42 *34 or 35 of chapter 136 of the 2010 Session Laws of Kansas*, and
43 amendments thereto, of a sexually violent crime as defined in this section.

1 "Sexually motivated" means that one of the purposes for which the
2 defendant committed the crime was for the purpose of the defendant's
3 sexual gratification.

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

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

32 (g) Subject to the provisions of this section, the Kansas parole board
33 may release on parole those persons confined in institutions who are
34 eligible for parole when: (1) The board believes that the inmate should be
35 released for hospitalization, for deportation or to answer the warrant or
36 other process of a court and is of the opinion that there is reasonable
37 probability that the inmate can be released without detriment to the
38 community or to the inmate; or (2) the secretary of corrections has
39 reported to the board in writing that the inmate has satisfactorily
40 completed the programs required by any agreement entered under K.S.A.
41 75-5210a, and amendments thereto, or any revision of such agreement, and
42 the board believes that the inmate is able and willing to fulfill the
43 obligations of a law abiding citizen and is of the opinion that there is

1 reasonable probability that the inmate can be released without detriment to
2 the community or to the inmate. Parole shall not be granted as an award of
3 clemency and shall not be considered a reduction of sentence or a pardon.

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

1 inmate has served to the sentence a person would receive under the Kansas
2 sentencing guidelines for the conduct that resulted in the inmate's
3 incarceration; and capacity of state correctional institutions.

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

14 (j) (1) Before ordering the parole of any inmate, the Kansas parole
15 board shall have the inmate appear either in person or via a video
16 conferencing format and shall interview the inmate unless impractical
17 because of the inmate's physical or mental condition or absence from the
18 institution. Every inmate while on parole shall remain in the legal custody
19 of the secretary of corrections and is subject to the orders of the secretary.
20 Whenever the Kansas parole board formally considers placing an inmate
21 on parole and no agreement has been entered into with the inmate under
22 K.S.A. 75-5210a, and amendments thereto, the board shall notify the
23 inmate in writing of the reasons for not granting parole. If an agreement
24 has been entered under K.S.A. 75-5210a, and amendments thereto, and the
25 inmate has not satisfactorily completed the programs specified in the
26 agreement, or any revision of such agreement, the board shall notify the
27 inmate in writing of the specific programs the inmate must satisfactorily
28 complete before parole will be granted. If parole is not granted only
29 because of a failure to satisfactorily complete such programs, the board
30 shall grant parole upon the secretary's certification that the inmate has
31 successfully completed such programs. If an agreement has been entered
32 under K.S.A. 75-5210a, and amendments thereto, and the secretary of
33 corrections has reported to the board in writing that the inmate has
34 satisfactorily completed the programs required by such agreement, or any
35 revision thereof, the board shall not require further program participation.
36 However, if the board determines that other pertinent information
37 regarding the inmate warrants the inmate's not being released on parole,
38 the board shall state in writing the reasons for not granting the parole. If
39 parole is denied for an inmate sentenced for a crime other than a class A or
40 class B felony or an off-grid felony, the board shall hold another parole
41 hearing for the inmate not later than one year after the denial unless the
42 parole board finds that it is not reasonable to expect that parole would be
43 granted at a hearing if held in the next three years or during the interim

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

12 (2) Inmates sentenced for a class A or class B felony who have not
13 had a parole board hearing in the five years prior to July 1, 2010, shall
14 have such inmates' cases reviewed by the parole board on or before July 1,
15 2012. Such review shall begin with the inmates with the oldest deferral
16 date and progress to the most recent. Such review shall be done utilizing
17 existing resources unless the parole board determines that such resources
18 are insufficient. If the parole board determines that such resources are
19 insufficient, then the provisions of this paragraph are subject to
20 appropriations therefor.

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

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

32 (m) Whenever the Kansas parole board orders the parole of an inmate
33 or establishes conditions for an inmate placed on postrelease supervision,
34 the board:

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

43 (2) to the extent practicable, shall order as a condition of parole or

1 postrelease supervision that the parolee or the person on postrelease
2 supervision make progress towards or successfully complete the
3 equivalent of a secondary education if the inmate has not previously
4 completed such educational equivalent and is capable of doing so;

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

9 (4) may order the parolee or person on postrelease supervision to pay
10 the administrative fee imposed pursuant to K.S.A. 22-4529, and
11 amendments thereto, unless the board finds compelling circumstances
12 which would render payment unworkable; and

13 (5) unless it finds compelling circumstances which would render a
14 plan of payment unworkable, shall order that the parolee or person on
15 postrelease supervision reimburse the state for all or part of the
16 expenditures by the state board of indigents' defense services to provide
17 counsel and other defense services to the person. In determining the
18 amount and method of payment of such sum, the parole board shall take
19 account of the financial resources of the person and the nature of the
20 burden that the payment of such sum will impose. Such amount shall not
21 exceed the amount claimed by appointed counsel on the payment voucher
22 for indigents' defense services or the amount prescribed by the board of
23 indigents' defense services reimbursement tables as provided in K.S.A. 22-
24 4522, and amendments thereto, whichever is less, minus any previous
25 payments for such services.

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

33 (o) Whenever the Kansas parole board grants the parole of an inmate,
34 the board, within ~~10~~ 14 days of the date of the decision to grant parole,
35 shall give written notice of the decision to the county or district attorney of
36 the county where the inmate was sentenced.

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

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

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

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

11 (t) For offenders sentenced prior to ~~the effective date of this act~~ *May*
12 *25, 2000*, who are eligible for modification of their postrelease supervision
13 obligation, the department of corrections shall modify the period of
14 postrelease supervision as provided for by this section for offenders
15 convicted of severity level 9 and 10 crimes on the sentencing guidelines
16 grid for nondrug crimes and severity level 4 crimes on the sentencing
17 guidelines grid for drug crimes on or before September 1, 2000; for
18 offenders convicted of severity level 7 and 8 crimes on the sentencing
19 guidelines grid for nondrug crimes on or before November 1, 2000; and
20 for offenders convicted of severity level 5 and 6 crimes on the sentencing
21 guidelines grid for nondrug crimes and severity level 3 crimes on the
22 sentencing guidelines grid for drug crimes on or before January 1, 2001.

23 (u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
24 4643, *prior to its repeal, or section 267 of chapter 136 of the 2010 Session*
25 *Laws of Kansas*, and amendments thereto, for crimes committed on or
26 after July 1, 2006, shall be placed on parole for life and shall not be
27 discharged from supervision by the Kansas parole board. When the board
28 orders the parole of an inmate pursuant to this subsection, the board shall
29 order as a condition of parole that the inmate be electronically monitored
30 for the duration of the inmate's natural life.

31 (v) Whenever the Kansas parole board or the court orders a person to
32 be electronically monitored, the board or court shall order the person to
33 reimburse the state for all or part of the cost of such monitoring. In
34 determining the amount and method of payment of such sum, the board or
35 court shall take account of the financial resources of the person and the
36 nature of the burden that the payment of such sum will impose.

37 Sec. 16. K.S.A. 2010 Supp. 38-2346 is hereby amended to read as
38 follows: 38-2346. (a) Except as provided in subsection (b), each county or
39 district attorney may adopt a policy and establish guidelines for an
40 immediate intervention program by which a juvenile may avoid
41 prosecution. In addition to the county or district attorney adopting policies
42 and guidelines for the immediate intervention programs, the court, the
43 county or district attorney and the director of the intake and assessment

1 center, pursuant to a written agreement, may develop local programs to:

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

6 (2) Allow intake and assessment workers to issue a summons, as
7 defined in subsection (e) or if the county or district attorney has adopted
8 appropriate policies and guidelines, allow law enforcement officers to
9 issue such a summons.

10 (3) Allow the intake and assessment centers to directly purchase
11 services for the juvenile and the juvenile's family.

12 (4) Allow intake and assessment workers to direct the release of a
13 juvenile prior to a detention hearing after the completion of the intake and
14 assessment process if the juvenile intake and assessment worker has
15 reason to believe that if released the juvenile will appear for further
16 proceedings and is not dangerous to self or others.

17 (b) An immediate intervention program shall provide that an alleged
18 juvenile offender is ineligible for such program if the juvenile faces
19 pending charges as a juvenile offender, for committing acts which, if
20 committed by an adult, would constitute:

21 (1) A violation of K.S.A. 8-1567, and amendments thereto, and the
22 juvenile: (A) Has previously participated in an immediate intervention
23 program instead of prosecution of a complaint alleging a violation of that
24 statute or an ordinance of a city in this state which prohibits the acts
25 prohibited by that statute; (B) has previously been adjudicated of a
26 violation of that statute or a violation of a law of another state or of a
27 political subdivision of this or any other state, which law prohibits the acts
28 prohibited by that statute; or (C) during the time of the alleged violation
29 was involved in a motor vehicle accident or collision resulting in personal
30 injury or death; or

31 (2) a violation of an off-grid crime, a severity level 1, 2 or 3 felony
32 for nondrug crimes ~~or~~, a drug severity level 1 or 2 felony for drug crimes
33 *committed prior to July 1, 2011, or a drug severity level 1, 2 or 3 felony*
34 *for drug crimes committed on or after July 1, 2011.*

35 (c) An immediate intervention program may include a stipulation,
36 agreed to by the juvenile, the juvenile's attorney and the attorney general
37 or county or district attorney, of the facts upon which the charge is based
38 and a provision that if the juvenile fails to fulfill the terms of the specific
39 immediate intervention agreement and the immediate intervention
40 proceedings are resumed, the proceedings, including any proceedings on
41 appeal, shall be conducted on the record of the stipulation of facts.

42 (d) The county or district attorney may require the parent of a
43 juvenile to be a part of the immediate intervention program.

1 (e) "Summons" means a written order issued by an intake and
2 assessment worker or a law enforcement officer directing that a juvenile
3 appear before a designated court at a stated time and place to answer a
4 pending charge.

5 (f) The provisions of this section shall not be applicable in judicial
6 districts that adopt district court rules pursuant to K.S.A. 20-342, and
7 amendments thereto, for the administration of immediate intervention
8 programs by the district court.

9 Sec. 17. K.S.A. 2010 Supp. 38-2347 is hereby amended to read as
10 follows: 38-2347. (a) (1) Except as otherwise provided in this section, at
11 any time after commencement of proceedings under this code against a
12 juvenile and prior to the beginning of an evidentiary hearing at which the
13 court may enter a sentence as provided in K.S.A. 2010 Supp. 38-2356, and
14 amendments thereto, the county or district attorney or the county or district
15 attorney's designee may file a motion requesting that the court authorize
16 prosecution of the juvenile as an adult under the applicable criminal
17 statute. The juvenile shall be presumed to be a juvenile unless good cause
18 is shown to prosecute the juvenile as an adult.

19 (2) The alleged juvenile offender shall be presumed to be an adult if
20 the alleged juvenile offender was: (A) 14, 15, 16 or 17 years of age at the
21 time of the offense or offenses alleged in the complaint, if any such
22 offense: (i) If committed by an adult, would constitute an off-grid crime, a
23 person felony, or a nondrug severity level 1 through 6 felony ~~or any~~; (ii)
24 *committed prior to July 1, 2011, if committed by an adult prior to July 1,*
25 *2011, would constitute a drug severity level 1, 2 or 3 felony*; (iii)
26 *committed on or after July 1, 2011, if committed by an adult on or after*
27 *July 1, 2011, would constitute a drug severity level 1, 2, 3 or 4 felony*; or
28 ~~(ii)~~ (iv) was committed while in possession of a firearm; or (B) charged
29 with a felony or with more than one offense, one or more of which
30 constitutes a felony, after having been adjudicated or convicted in a
31 separate juvenile proceeding as having committed an offense which would
32 constitute a felony if committed by an adult and the adjudications or
33 convictions occurred prior to the date of the commission of the new act
34 charged and prior to the beginning of an evidentiary hearing at which the
35 court may enter a sentence as provided in K.S.A. 2010 Supp. 38-2356, and
36 amendments thereto. If the juvenile is presumed to be an adult, the burden
37 is on the juvenile to rebut the presumption by a preponderance of the
38 evidence.

39 (3) At any time after commencement of proceedings under this code
40 against a juvenile offender and prior to the beginning of an evidentiary
41 hearing at which the court may enter a sentence as provided in K.S.A.
42 2010 Supp. 38-2356, and amendments thereto, the county or district
43 attorney or the county or district attorney's designee may file a motion

1 requesting that the court designate the proceedings as an extended
2 jurisdiction juvenile prosecution.

3 (4) If the county or district attorney or the county or district attorney's
4 designee files a motion to designate the proceedings as an extended
5 jurisdiction juvenile prosecution and the juvenile was 14, 15, 16 or 17
6 years of age at the time of the offense or offenses alleged in the complaint
7 and: (A) charged with an offense: (i) If committed by an adult, would
8 constitute an off-grid crime, a person felony; *or* a nondrug severity level 1
9 through 6 felony ~~or any~~; (ii) *committed prior to July 1, 2011, if committed*
10 *by an adult prior to July 1, 2011, would constitute a drug severity level 1, 2*
11 ~~or 3~~ *through 4 felony*; (iii) *committed on or after July 1, 2011, if*
12 *committed by an adult on or after July 1, 2011, would constitute a drug*
13 *severity level 1, 2, 3 or 4 felony*; or (ii) (iv) was committed while in
14 possession of a firearm; or (B) charged with a felony or with more than
15 one offense, one or more of which constitutes a felony, after having been
16 adjudicated or convicted in a separate juvenile proceeding as having
17 committed an act which would constitute a felony if committed by an adult
18 and the adjudications or convictions occurred prior to the date of the
19 commission of the new offense charged, the burden is on the juvenile to
20 rebut the designation of an extended jurisdiction juvenile prosecution by a
21 preponderance of the evidence. In all other motions requesting that the
22 court designate the proceedings as an extended jurisdiction juvenile
23 prosecution, the juvenile is presumed to be a juvenile. The burden of proof
24 is on the prosecutor to prove the juvenile should be designated as an
25 extended jurisdiction juvenile.

26 (b) The motion also may contain a statement that the prosecuting
27 attorney will introduce evidence of the offenses alleged in the complaint
28 and request that, on hearing the motion and authorizing prosecution as an
29 adult or designating the proceedings as an extended jurisdiction juvenile
30 prosecution under this code, the court may make the findings required in a
31 preliminary examination provided for in K.S.A. 22-2902, and amendments
32 thereto, and the finding that there is no necessity for further preliminary
33 examination.

34 (c) (1) Upon receiving the motion, the court shall set a time and place
35 for hearing. The court shall give notice of the hearing to the juvenile, each
36 parent, if service is possible, and the attorney representing the juvenile.
37 The motion shall be heard and determined prior to any further proceedings
38 on the complaint.

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

- 41 (A) The nature of the charges in the complaint;
- 42 (B) the right of the juvenile to be presumed innocent of each charge;
- 43 (C) the right to trial without unnecessary delay and to confront and

1 cross-examine witnesses appearing in support of the allegations of the
2 complaint;

3 (D) the right to subpoena witnesses;

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

5 (F) the sentencing alternatives the court may select as the result of the
6 juvenile being prosecuted under an extended jurisdiction juvenile
7 prosecution.

8 (d) If the juvenile fails to appear for hearing on the motion after
9 having been served with notice of the hearing, the court may hear and
10 determine the motion in the absence of the juvenile. If the court is unable
11 to obtain service of process and give notice of the hearing, the court may
12 hear and determine the motion in the absence of the alleged juvenile
13 offender after having given notice of the hearing at least once a week for
14 two consecutive weeks in the official county newspaper of the county
15 where the hearing will be held.

16 (e) In determining whether or not prosecution as an adult should be
17 authorized or designating the proceeding as an extended jurisdiction
18 juvenile prosecution, the court shall consider each of the following factors:

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

22 (2) whether the alleged offense was committed in an aggressive,
23 violent, premeditated or willful manner;

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

27 (4) the number of alleged offenses unadjudicated and pending against
28 the juvenile;

29 (5) the previous history of the juvenile, including whether the
30 juvenile had been adjudicated a juvenile offender under this code or the
31 Kansas juvenile justice code and, if so, whether the offenses were against
32 persons or property, and any other previous history of antisocial behavior
33 or patterns of physical violence;

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

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

40 (8) whether the interests of the juvenile or of the community would
41 be better served by criminal prosecution or extended jurisdiction juvenile
42 prosecution.

43 The insufficiency of evidence pertaining to any one or more of the

1 factors listed in this subsection, in and of itself, shall not be determinative
2 of the issue. Subject to the provisions of K.S.A. 2010 Supp. 38-2354, and
3 amendments thereto, written reports and other materials relating to the
4 juvenile's mental, physical, educational and social history may be
5 considered by the court.

6 (f) (1) The court may authorize prosecution as an adult upon
7 completion of the hearing if the court finds from a preponderance of the
8 evidence that the alleged juvenile offender should be prosecuted as an
9 adult for the offense charged. In that case, the court shall direct the alleged
10 juvenile offender be prosecuted under the applicable criminal statute and
11 that the proceedings filed under this code be dismissed.

12 (2) The court may designate the proceeding as an extended
13 jurisdiction juvenile prosecution upon completion of the hearing if the
14 juvenile has failed to rebut the presumption or the court finds from a
15 preponderance of the evidence that the juvenile should be prosecuted
16 under an extended jurisdiction juvenile prosecution.

17 (3) After a proceeding in which prosecution as an adult is requested
18 pursuant to subsection (a)(2), and prosecution as an adult is not authorized,
19 the court may designate the proceedings to be an extended jurisdiction
20 juvenile prosecution.

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

27 (g) If the juvenile is present in court and the court also finds from the
28 evidence that it appears a felony has been committed and that there is
29 probable cause to believe the felony has been committed by the juvenile,
30 the court may direct that there is no necessity for further preliminary
31 examination on the charges as provided for in K.S.A. 22-2902, and
32 amendments thereto. In that case, the court shall order the juvenile bound
33 over to the district judge having jurisdiction to try the case.

34 (h) If the juvenile is convicted, the authorization for prosecution as an
35 adult shall attach and apply to any future prosecutions of the juvenile
36 which are or would be cognizable under this code. If the juvenile is not
37 convicted, the authorization for prosecution as an adult shall not attach and
38 shall not apply to future prosecutions of the juvenile which are or would be
39 cognizable under this code.

40 (i) If the juvenile is prosecuted as an adult under subsection (a)(2)
41 and is not convicted in adult court of an offense listed in subsection (a)(2)
42 but is convicted or adjudicated of a lesser included offense, the juvenile
43 shall be a juvenile offender and receive a sentence pursuant to K.S.A. 2010

1 Supp. 38-2361, and amendments thereto.

2 Sec. 18. K.S.A. 2010 Supp. 38-2369 is hereby amended to read as
3 follows: 38-2369. (a) For the purpose of committing juvenile offenders to
4 a juvenile correctional facility, the following placements shall be applied
5 by the judge in felony or misdemeanor cases. If used, the court shall
6 establish a specific term of commitment as specified in this subsection,
7 unless the judge conducts a departure hearing and finds substantial and
8 compelling reasons to impose a departure sentence as provided in K.S.A.
9 2010 Supp. 38-2371, and amendments thereto.

10 (1) *Violent Offenders.* (A) The violent offender I is defined as an
11 offender adjudicated as a juvenile offender for an offense which, if
12 committed by an adult, would constitute an off-grid felony. Offenders in
13 this category may be committed to a juvenile correctional facility for a
14 minimum term of 60 months and up to a maximum term of the offender
15 reaching the age of 22 years, six months. The aftercare term for this
16 offender is set at a minimum term of six months and up to a maximum
17 term of the offender reaching the age of 23 years.

18 (B) The violent offender II is defined as an offender adjudicated as a
19 juvenile offender for an offense which, if committed by an adult, would
20 constitute a nondrug level 1, 2 or 3 felony. Offenders in this category may
21 be committed to a juvenile correctional facility for a minimum term of 24
22 months and up to a maximum term of the offender reaching the age 22
23 years, six months. The aftercare term for this offender is set at a minimum
24 term of six months and up to a maximum term of the offender reaching the
25 age of 23 years.

26 (2) *Serious Offenders.* (A) The serious offender I is defined as an
27 offender adjudicated as a juvenile offender for an offense:

28 (i) Which, if committed by an adult, would constitute a nondrug
29 severity level 4, 5 or 6 person felony ~~or a severity level 1 or 2 drug~~
30 ~~felony~~ ;

31 (ii) *committed prior to July 1, 2011, which, if committed by an adult*
32 *prior to July 1, 2011, would constitute a drug severity level 1 or 2 felony;*
33 *or*

34 (iii) *committed on or after July 1, 2011, which, if committed by an*
35 *adult on or after July 1, 2011, would constitute a drug severity level 1, 2*
36 *or 3 felony.*

37 Offenders in this category may be committed to a juvenile correctional
38 facility for a minimum term of 18 months and up to a maximum term of 36
39 months. The aftercare term for this offender is set at a minimum term of
40 six months and up to a maximum term of 24 months.

41 (B) The serious offender II is defined as an offender adjudicated as a
42 juvenile offender for an offense which, if committed by an adult, would
43 constitute a nondrug severity level 7, 8, 9 or 10 person felony with one

1 prior felony adjudication. Offenders in this category may be committed to
2 a juvenile correctional facility for a minimum term of nine months and up
3 to a maximum term of 18 months. The aftercare term for this offender is
4 set at a minimum term of six months and up to a maximum term of 24
5 months.

6 (3) *Chronic Offenders.* (A) The chronic offender I, chronic felon is
7 defined as an offender adjudicated as a juvenile offender for an offense
8 ~~which, if committed by an adult, would constitute:~~

9 (i) *Which, if committed by an adult, would constitute* one present
10 nonperson felony adjudication and two prior felony adjudications; ~~or~~

11 (ii) *committed prior to July 1, 2011, which, if committed by an adult*
12 *prior to July 1, 2011, would constitute* one present severity level 3 drug
13 felony adjudication and two prior felony adjudications; *or*

14 (iii) *committed on or after July 1, 2011, which, if committed by an adult*
15 *on or after July 1, 2011, would constitute one present severity level 4 drug*
16 *felony adjudication and two prior felony adjudications.*

17 Offenders in this category may be committed to a juvenile correctional
18 facility for a minimum term of six months and up to a maximum term of
19 18 months. The aftercare term for this offender is set at a minimum term of
20 six months and up to a maximum term of 12 months.

21 (B) The chronic offender II, escalating felon is defined as an offender
22 adjudicated as a juvenile offender for an offense ~~which, if committed by an~~
23 ~~adult, would constitute:~~

24 (i) *Which, if committed by an adult, would constitute* one present
25 felony adjudication and either two prior misdemeanor adjudications or one
26 prior person or nonperson felony adjudication;

27 (ii) *which, if committed by an adult, would constitute* one present
28 felony adjudication and two prior severity level 4 *or* 5 drug adjudications;

29 (iii) *committed prior to July 1, 2011, which, if committed by an adult*
30 *prior to July 1, 2011, would constitute* one present severity level 3 drug
31 felony adjudication and either two prior misdemeanor adjudications or one
32 prior person or nonperson felony adjudication; ~~or~~

33 (iv) *committed prior to July 1, 2011, which, if committed by an adult*
34 *prior to July 1, 2011, would constitute* one present severity level 3 drug
35 felony adjudication and two prior severity level 4 *or* 5 drug
36 adjudications; ;

37 (v) *committed on or after July 1, 2011, which, if committed by an*
38 *adult on or after July 1, 2011, would constitute one present severity level 4*
39 *drug felony adjudication and either two prior misdemeanor adjudications*
40 *or one prior person or nonperson felony adjudication; or*

41 (vi) *committed on or after July 1, 2011, which, if committed by an*
42 *adult on or after July 1, 2011, would constitute one present severity level 4*
43 *drug felony adjudication and two prior severity level 4 or 5 drug*

1 *adjudications.*

2 Offenders in this category may be committed to a juvenile correctional
3 facility for a minimum term of six months and up to a maximum term of
4 18 months. The aftercare term for this offender is set at a minimum term of
5 six months and up to a maximum term of 12 months.

6 (C) The chronic offender III, escalating misdemeanor is defined as
7 an offender adjudicated as a juvenile offender for an offense ~~which, if~~
8 ~~committed by an adult, would constitute:~~

9 (i) *Which, if committed by an adult, would constitute* one present
10 misdemeanor adjudication and either two prior misdemeanor adjudications
11 or one prior person or nonperson felony adjudication and two placement
12 failures;

13 (ii) *which, if committed by an adult, would constitute* one present
14 misdemeanor adjudication and two prior severity level 4 *or* 5 drug felony
15 adjudications and two placement failures;

16 (iii) *which, if committed by an adult, would constitute* one present
17 severity level 4 drug felony adjudication and either two prior misdemeanor
18 adjudications or one prior person or nonperson felony adjudication and
19 two placement failures; or

20 (iv) *which, if committed by an adult, would constitute* one present
21 severity level 4 drug felony adjudication and two prior severity level 4 *or*
22 5 drug felony adjudications and two placement failures. ;

23 (v) *committed on or after July 1, 2011, which, if committed by an*
24 *adult on or after July 1, 2011, would constitute one present severity level 5*
25 *drug felony adjudication and either two prior misdemeanor adjudications*
26 *or one prior person or nonperson felony adjudication and two placement*
27 *failures; or*

28 (vi) *committed on or after July 1, 2011, which, if committed by an*
29 *adult on or after July 1, 2011, would constitute one present severity level 5*
30 *drug felony adjudication and two prior severity level 4 or 5 drug felony*
31 *adjudications and two placement failures.*

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

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

38 (A) Subject to the limitations in subsection (a) of K.S.A. 2010 Supp.
39 38-2366, and amendments thereto, commit the offender directly to a
40 juvenile correctional facility for a minimum term of three months and up
41 to a maximum term of six months. The aftercare term for this offender
42 shall be a minimum of two months and a maximum of six months, or the
43 length of the aftercare originally ordered, which ever is longer.

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

2 (i) Recommend additional conditions be added to those of the
3 existing conditional release.

4 (ii) Order the offender to serve a period of sanctions pursuant to
5 subsection (f) of K.S.A. 2010 Supp. 38-2361, and amendments thereto.

6 (iii) Revoke or restrict the juvenile's driving privileges as described in
7 subsection (c) of K.S.A. 2010 Supp. 38-2361, and amendments thereto.

8 (C) Discharge the offender from the custody of the commissioner,
9 release the commissioner from further responsibilities in the case and enter
10 any other appropriate orders.

11 (b) As used in this section: (1) "Placement failure" means a juvenile
12 offender in the custody of the juvenile justice authority has significantly
13 failed the terms of conditional release or has been placed out-of-home in a
14 community placement accredited by the commissioner and has
15 significantly violated the terms of that placement or violated the terms of
16 probation.

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

29 (c) All appropriate community placement options shall have been
30 exhausted before a chronic offender III, escalating misdemeanant shall be
31 placed in a juvenile correctional facility. A court finding shall be made
32 acknowledging that appropriate community placement options have been
33 pursued and no such option is appropriate.

34 (d) The commissioner shall work with the community to provide on-
35 going support and incentives for the development of additional community
36 placements to ensure that the chronic offender III, escalating
37 misdemeanant sentencing category is not frequently utilized.

38 Sec. 19. K.S.A. 2010 Supp. 38-2374 is hereby amended to read as
39 follows: 38-2374. (a) When a juvenile offender has satisfactorily
40 completed the term of incarceration at the juvenile correctional facility to
41 which the juvenile offender was committed or placed, the person in charge
42 of the juvenile correctional facility shall have authority to release the
43 juvenile offender under appropriate conditions and for a specified period

1 of time. Prior to release from a juvenile correctional facility, the
2 commissioner shall consider any recommendations made by the juvenile
3 offender's community case management officer.

4 (b) At least 21 days prior to releasing a juvenile offender as provided
5 in subsection (a), the person in charge of the juvenile correctional facility
6 shall notify the committing court of the date and conditions upon which it
7 is proposed the juvenile offender is to be released. The person in charge of
8 the juvenile correctional facility shall notify the school district in which
9 the juvenile offender will be residing if the juvenile is still required to
10 attend a school. Such notification to the school shall include the name of
11 the juvenile offender, address upon release, contact person with whom the
12 juvenile offender will be residing upon release, anticipated date of release,
13 anticipated date of enrollment in school, name and phone number of case
14 worker, crime or crimes of adjudication if not confidential based upon
15 other statutes, conditions of release and any other information the
16 commissioner deems appropriate. To ensure the educational success of the
17 student, the community case manager or a representative from the
18 residential facility where the juvenile offender will reside shall contact the
19 principal of the receiving school in a timely manner to review the juvenile
20 offender's case. If such juvenile offender's offense would have constituted
21 an off-grid crime, nondrug felony crime ranked at severity level 1, 2, 3, 4
22 or 5, or drug felony crime ranked at severity level 1, 2 or 3, on or after July
23 1, 1993, *or drug felony crime ranked at severity level 4 on or after July 1,*
24 *2011*, if committed by an adult, the person in charge of the juvenile
25 correctional facility shall notify the county or district attorney of the
26 county where the offender was adjudicated a juvenile offender of the date
27 and conditions upon which it is proposed the juvenile offender is to be
28 released. The county or district attorney shall give written notice at least
29 seven days prior to the release of the juvenile offender to: (1) Any victim
30 of the juvenile offender's crime who is alive and whose address is known
31 to the court or, if the victim is deceased, to the victim's family if the
32 family's address is known to the court; and (2) the local law enforcement
33 agency. Failure to notify pursuant to this section shall not be a reason to
34 postpone a release. Nothing in this section shall create a cause of action
35 against the state or county or an employee of the state or county acting
36 within the scope of the employee's employment as a result of the failure to
37 notify pursuant to this section.

38 (c) Upon receipt of the notice required by subsection (b), the court
39 shall review the terms of the proposed conditional release and may
40 recommend modifications or additions to the terms.

41 (d) If, during the conditional release, the juvenile offender is not
42 returning to the county from which committed, the person in charge of the
43 juvenile correctional facility shall also give notice to the court of the

1 county in which the juvenile offender is to be residing.

2 (e) To assure compliance with conditional release from a juvenile
3 correctional facility, the commissioner shall have the authority to prescribe
4 the manner in which compliance with the conditions shall be supervised.
5 When requested by the commissioner, the appropriate court may assist in
6 supervising compliance with the conditions of release during the term of
7 the conditional release. The commissioner may require the parent of the
8 juvenile offender to cooperate and participate with the conditional release.

9 (f) For acts committed before July 1, 1999, the juvenile justice
10 authority shall notify at least 45 days prior to the discharge of the juvenile
11 offender the county or district attorney of the county where the offender
12 was adjudicated a juvenile offender of the release of such juvenile
13 offender, if such juvenile offender's offense would have constituted a class
14 A, B or C felony before July 1, 1993, or an off-grid crime, a nondrug
15 crime ranked at severity level 1, 2, 3, 4 or 5 or a drug crime ranked at
16 severity level 1, 2 or 3, on or after July 1, 1993, *or drug felony crime*
17 *ranked at severity level 4 on or after July 1, 2011*, if committed by an
18 adult. The county or district attorney shall give written notice at least 30
19 days prior to the release of the juvenile offender to: (1) Any victim of the
20 juvenile offender's crime who is alive and whose address is known to the
21 court or, if the victim is deceased, to the victim's family if the family's
22 address is known to the court; and (2) the local law enforcement agency.
23 Failure to notify pursuant to this section shall not be a reason to postpone a
24 release. Nothing in this section shall create a cause of action against the
25 state or county or an employee of the state or county acting within the
26 scope of the employee's employment as a result of the failure to notify
27 pursuant to this section.

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

30 Sec. 20. K.S.A. 2010 Supp. 38-2376 is hereby amended to read as
31 follows: 38-2376. (a) When a juvenile offender has reached the age of 23
32 years, has been convicted as an adult while serving a term of incarceration
33 at a juvenile correctional facility, or has completed the prescribed terms of
34 incarceration at a juvenile correctional facility, together with any
35 conditional release following the program, the juvenile shall be discharged
36 by the commissioner from any further obligation under the commitment
37 unless the juvenile was sentenced pursuant to an extended jurisdiction
38 juvenile prosecution upon court order and the commissioner transfers the
39 juvenile to the custody of the secretary of corrections. The discharge shall
40 operate as a full and complete release from any obligations imposed on the
41 juvenile offender arising from the offense for which the juvenile offender
42 was committed.

43 (b) At least 45 days prior to the discharge of the juvenile offender, the

1 juvenile justice authority shall notify the court and the county or district
2 attorney of the county where the offender was adjudicated a juvenile
3 offender of the pending discharge of such juvenile offender, the offense
4 would have constituted a class A, B or C felony before July 1, 1993, or an
5 off-grid crime, a nondrug crime ranked at severity level 1, 2, 3, 4 or 5 or a
6 drug crime ranked at severity level 1, 2 or 3, on or after July 1, 1993, *or*
7 *drug felony crime ranked at severity level 4 on or after July 1, 2011*, if
8 committed by an adult. The county or district attorney shall give written
9 notice at least 30 days prior to the discharge of the juvenile offender
10 pursuant to K.S.A. 2010 Supp. 38-2379, and amendments thereto.

11 Sec. 21. K.S.A. 2010 Supp. 75-5291 is hereby amended to read as
12 follows: 75-5291. (a) (1) The secretary of corrections may make grants to
13 counties for the development, implementation, operation and improvement
14 of community correctional services that address the criminogenic needs of
15 felony offenders including, but not limited to, adult intensive supervision,
16 substance abuse and mental health services, employment and residential
17 services, and facilities for the detention or confinement, care or treatment
18 of offenders as provided in this section except that no community
19 corrections funds shall be expended by the secretary for the purpose of
20 establishing or operating a conservation camp as provided by K.S.A. 75-
21 52,127, and amendments thereto.

22 (2) Except as otherwise provided, placement of offenders in
23 community correctional services programs by the court shall be limited to
24 placement of adult offenders, convicted of a felony offense:

25 (A) Whose offense is classified in grid blocks 5-H, 5-I or 6-G of the
26 sentencing guidelines grid for nondrug crimes ~~or~~, in grid blocks 3-E, 3-F,
27 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes *for*
28 *crimes committed prior to July 1, 2011, or in grid blocks 4-E, 4-F, 4-G, 4-*
29 *H or 4-I of the sentencing guidelines grid for drug crimes for crimes*
30 *committed on or after July 1, 2011*. In addition, the court may place in a
31 community correctional services program adult offenders, convicted of a
32 felony offense, whose offense is classified in grid blocks 6-H, 6-I, 7-C, 7-
33 D, 7-E, 7-F, 7-G, 7-H or 7-I of the sentencing guidelines grid for nondrug
34 crimes;

35 (B) whose severity level and criminal history score designate a
36 presumptive prison sentence on either sentencing guidelines grid but
37 receive a nonprison sentence as a result of departure;

38 (C) all offenders convicted of an offense which satisfies the definition
39 of offender pursuant to K.S.A. 22-4902, and amendments thereto, and
40 which is classified as a severity level 7 or higher offense and who receive a
41 nonprison sentence, regardless of the manner in which the sentence is
42 imposed;

43 (D) any offender for whom a violation of conditions of release or

1 assignment or a nonprison sanction has been established as provided in
2 K.S.A. 22-3716, and amendments thereto, prior to revocation resulting in
3 the offender being required to serve any time for the sentence imposed or
4 which might originally have been imposed in a state facility in the custody
5 of the secretary of corrections;

6 (E) on and after January 1, 2011, for offenders who are expected to be
7 subject to supervision in Kansas, who are determined to be "high risk or
8 needs, or both" by the use of a statewide, mandatory, standardized risk
9 assessment tool or instrument which shall be specified by the Kansas
10 sentencing commission;

11 (F) placed in community correctional services programs as a
12 condition of supervision following the successful completion of a
13 conservation camp program; or

14 (G) who has been sentenced to community corrections supervision
15 pursuant to K.S.A. 21-4729, *prior to its repeal, or section 305 of chapter*
16 *136 of the 2010 Session Laws of Kansas*, and amendments thereto.

17 (3) Notwithstanding any law to the contrary and subject to the
18 availability of funding therefor, adult offenders sentenced to community
19 supervision in Johnson county for felony crimes that occurred on or after
20 July 1, 2002, but before January 1, 2011, shall be placed under court
21 services or community corrections supervision based upon court rules
22 issued by the chief judge of the 10th judicial district. The provisions
23 contained in this subsection shall not apply to offenders transferred by the
24 assigned agency to an agency located outside of Johnson county. The
25 provisions of this paragraph shall expire on January 1, 2011.

26 (4) Nothing in this act shall prohibit a community correctional
27 services program from providing services to juvenile offenders upon
28 approval by the local community corrections advisory board. Grants from
29 community corrections funds administered by the secretary of corrections
30 shall not be expended for such services.

31 (5) The court may require an offender for whom a violation of
32 conditions of release or assignment or a nonprison sanction has been
33 established, as provided in K.S.A. 22-3716, and amendments thereto, to
34 serve any time for the sentence imposed or which might originally have
35 been imposed in a state facility in the custody of the secretary of
36 corrections without a prior assignment to a community correctional
37 services program if the court finds and sets forth with particularity the
38 reasons for finding that the safety of the members of the public will be
39 jeopardized or that the welfare of the inmate will not be served by such
40 assignment to a community correctional services program.

41 (b) (1) In order to establish a mechanism for community correctional
42 services to participate in the department of corrections annual budget
43 planning process, the secretary of corrections shall establish a community

1 corrections advisory committee to identify new or enhanced correctional
2 or treatment interventions designed to divert offenders from prison.

3 (2) The secretary shall appoint one member from the southeast
4 community corrections region, one member from the northeast community
5 corrections region, one member from the central community corrections
6 region and one member from the western community corrections region.
7 The deputy secretary of community and field services shall designate two
8 members from the state at large. The secretary shall have final
9 appointment approval of the members designated by the deputy secretary.
10 The committee shall reflect the diversity of community correctional
11 services with respect to geographical location and average daily population
12 of offenders under supervision.

13 (3) Each member shall be appointed for a term of three years and
14 such terms shall be staggered as determined by the secretary. Members
15 shall be eligible for reappointment.

16 (4) The committee, in collaboration with the deputy secretary of
17 community and field services or the deputy secretary's designee, shall
18 routinely examine and report to the secretary on the following issues:

- 19 (A) Efficiencies in the delivery of field supervision services;
- 20 (B) effectiveness and enhancement of existing interventions;
- 21 (C) identification of new interventions; and
- 22 (D) statewide performance indicators.

23 (5) The committee's report concerning enhanced or new interventions
24 shall address:

- 25 (A) Goals and measurable objectives;
- 26 (B) projected costs;
- 27 (C) the impact on public safety; and
- 28 (D) the evaluation process.

29 (6) The committee shall submit its report to the secretary annually on
30 or before July 15 in order for the enhanced or new interventions to be
31 considered for inclusion within the department of corrections budget
32 request for community correctional services or in the department's
33 enhanced services budget request for the subsequent fiscal year.

34 Sec. 22. Section 244 of chapter 136 of the 2010 Session Laws of
35 Kansas is hereby amended to read as follows: Sec. 244. (a) Whenever any
36 person has been found guilty of a crime, the court may adjudge any of the
37 following:

38 (1) Commit the defendant to the custody of the secretary of
39 corrections if the current crime of conviction is a felony and the sentence
40 presumes imprisonment, or the sentence imposed is a dispositional
41 departure to imprisonment; or, if confinement is for a misdemeanor, to jail
42 for the term provided by law;

- 43 (2) impose the fine applicable to the offense;

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

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

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

20 (6) assign the defendant to a house arrest program pursuant to section
21 249 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
22 thereto;

23 (7) order the defendant to attend and satisfactorily complete an
24 alcohol or drug education or training program as provided by subsection
25 (c) of section 242 of *chapter 136 of the 2010 Session Laws of Kansas*, and
26 amendments thereto;

27 (8) order the defendant to repay the amount of any reward paid by
28 any crime stoppers chapter, individual, corporation or public entity which
29 materially aided in the apprehension or conviction of the defendant; repay
30 the amount of any costs and expenses incurred by any law enforcement
31 agency in the apprehension of the defendant, if one of the current crimes
32 of conviction of the defendant includes *escape from custody* or *aggravated*
33 *escape from custody*, as defined in section 136 of *chapter 136 of the 2010*
34 *Session Laws of Kansas*, and amendments thereto; repay expenses incurred
35 by a fire district, fire department or fire company responding to a fire
36 which has been determined to be arson ~~under~~ or *aggravated arson as*
37 *defined in section 98 of chapter 136 of the 2010 Session Laws of Kansas*,
38 and amendments thereto, if the defendant is convicted of such crime; repay
39 the amount of any public funds utilized by a law enforcement agency to
40 purchase controlled substances from the defendant during the investigation
41 which leads to the defendant's conviction; or repay the amount of any
42 medical costs and expenses incurred by any law enforcement agency or
43 county. Such repayment of the amount of any such costs and expenses

1 incurred by a county, law enforcement agency, fire district, fire department
2 or fire company or any public funds utilized by a law enforcement agency
3 shall be deposited and credited to the same fund from which the public
4 funds were credited to prior to use by the county, law enforcement agency,
5 fire district, fire department or fire company;

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

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

10 (11) *if the defendant is convicted of a misdemeanor or convicted of a*
11 *felony specified in subsection (i) of section 285 of chapter 136 of the 2010*
12 *Session Laws of Kansas, and amendments thereto, assign the defendant to*
13 *a work release program, other than a program at a correctional institution*
14 *under the control of the secretary of corrections as defined in K.S.A. 75-*
15 *5202, and amendments thereto, provided such work release program*
16 *requires such defendant to return to confinement at the end of each day in*
17 *the work release program;*

18 ~~(11)~~ (12) impose any appropriate combination of (1), (2), (3), (4), (5),
19 (6), (7), (8), (9) ~~and~~, (10) *and* (11); or

20 ~~(12)~~ (13) suspend imposition of sentence in misdemeanor cases.

21 (b) (1) In addition to or in lieu of any of the above, the court shall
22 order the defendant to pay restitution, which shall include, but not be
23 limited to, damage or loss caused by the defendant's crime, unless the
24 court finds compelling circumstances which would render a plan of
25 restitution unworkable. In regard to a violation of section 177 of *chapter*
26 *136 of the 2010 Session Laws of Kansas*, and amendments thereto, such
27 damage or loss shall include, but not be limited to, attorney fees and costs
28 incurred to repair the credit history or rating of the person whose personal
29 identification documents were obtained and used in violation of such
30 section, and to satisfy a debt, lien or other obligation incurred by the
31 person whose personal identification documents were obtained and used in
32 violation of such section. If the court finds a plan of restitution
33 unworkable, the court shall state on the record in detail the reasons
34 therefor.

35 (2) If the court orders restitution, the restitution shall be a judgment
36 against the defendant which may be collected by the court by garnishment
37 or other execution as on judgments in civil cases. If, after 60 days from the
38 date restitution is ordered by the court, a defendant is found to be in
39 noncompliance with the plan established by the court for payment of
40 restitution, and the victim to whom restitution is ordered paid has not
41 initiated proceedings in accordance with K.S.A. 60-4301 et seq., and
42 amendments thereto, the court shall assign an agent procured by the
43 attorney general pursuant to K.S.A. 75-719, and amendments thereto, to

1 collect the restitution on behalf of the victim. The ~~administrative chief~~
2 judge of each judicial district may assign such cases to an appropriate
3 division of the court for the conduct of civil collection proceedings.

4 (c) In addition to or in lieu of any of the above, the court shall order
5 the defendant to submit to and complete an alcohol and drug evaluation,
6 and pay a fee therefor, when required by subsection (d) of section 242 *of*
7 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

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

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

31 (f) (1) When a new felony is committed while the offender is
32 incarcerated and serving a sentence for a felony, or while the offender is on
33 probation, assignment to a community correctional services program,
34 parole, conditional release or postrelease supervision for a felony, a new
35 sentence shall be imposed pursuant to the consecutive sentencing
36 requirements of section 246 *of chapter 136 of the 2010 Session Laws of*
37 *Kansas*, and amendments thereto, and the court may sentence the offender
38 to imprisonment for the new conviction, even when the new crime of
39 conviction otherwise presumes a nonprison sentence. In this event,
40 imposition of a prison sentence for the new crime does not constitute a
41 departure.

42 (2) When a new felony is committed while the offender is
43 incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671,

1 prior to its repeal, or K.S.A. ~~2009~~ 2010 Supp. 38-2373, and amendments
2 thereto, for an offense, which if committed by an adult would constitute
3 the commission of a felony, upon conviction, the court shall sentence the
4 offender to imprisonment for the new conviction, even when the new
5 crime of conviction otherwise presumes a nonprison sentence. In this
6 event, imposition of a prison sentence for the new crime does not
7 constitute a departure. The conviction shall operate as a full and complete
8 discharge from any obligations, except for an order of restitution, imposed
9 on the offender arising from the offense for which the offender was
10 committed to a juvenile correctional facility.

11 (3) When a new felony is committed while the offender is on release
12 for a felony pursuant to the provisions of article 28 of chapter 22 of the
13 Kansas Statutes Annotated, and amendments thereto, or similar provisions
14 of the laws of another jurisdiction, a new sentence may be imposed
15 pursuant to the consecutive sentencing requirements of section 246 of
16 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto,
17 and the court may sentence the offender to imprisonment for the new
18 conviction, even when the new crime of conviction otherwise presumes a
19 nonprison sentence. In this event, imposition of a prison sentence for the
20 new crime does not constitute a departure.

21 (g) Prior to imposing a dispositional departure for a defendant whose
22 offense is classified in the presumptive nonprison grid block of either
23 sentencing guideline grid, prior to sentencing a defendant to incarceration
24 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing
25 guidelines grid for nondrug crimes ~~or~~, in grid blocks 3-E, 3-F, 3-G, 3-H or
26 3-I of the sentencing guidelines grid for drug crimes *committed prior to*
27 *July 1, 2011, or in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing*
28 *guidelines grid for drug crimes committed on or after July 1, 2011*, prior to
29 sentencing a defendant to incarceration whose offense is classified in grid
30 blocks 4-E or 4-F of the sentencing ~~guideline~~ *guidelines* grid for drug
31 crimes *committed prior to July 1, 2011, or in grid blocks 5-E or 5-F of the*
32 *sentencing guidelines grid for drug crimes committed on or after July 1,*
33 *2011*, and whose offense does not meet the requirements of section 305 of
34 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto,
35 prior to revocation of a nonprison sanction of a defendant whose offense is
36 classified in grid blocks 4-E or 4-F of the sentencing ~~guideline~~ *guidelines*
37 grid for drug crimes *committed prior to July 1, 2011, or in grid blocks 5-E*
38 *or 5-F of the sentencing guidelines grid for drug crimes committed on or*
39 *after July 1, 2011*, and whose offense does not meet the requirements of
40 section 305 of *chapter 136 of the 2010 Session Laws of Kansas*, and
41 amendments thereto, or prior to revocation of a nonprison sanction of a
42 defendant whose offense is classified in the presumptive nonprison grid
43 block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of

1 the sentencing guidelines grid for nondrug crimes ~~or~~, in grid blocks 3-E,
2 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes
3 *committed prior to July 1, 2011, or in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I*
4 *of the sentencing guidelines grid for drug crimes committed on or after*
5 *July 1, 2011*, the court shall consider placement of the defendant in the
6 Labette correctional conservation camp, conservation camps established
7 by the secretary of corrections pursuant to K.S.A. 75-52,127, and
8 amendment thereto, or a community intermediate sanction center. Pursuant
9 to this paragraph the defendant shall not be sentenced to imprisonment if
10 space is available in a conservation camp or a community intermediate
11 sanction center and the defendant meets all of the conservation camp's or a
12 community intermediate sanction center's placement criteria unless the
13 court states on the record the reasons for not placing the defendant in a
14 conservation camp or a community intermediate sanction center.

15 (h) The court in committing a defendant to the custody of the
16 secretary of corrections shall fix a term of confinement within the limits
17 provided by law. In those cases where the law does not fix a term of
18 confinement for the crime for which the defendant was convicted, the
19 court shall fix the term of such confinement.

20 (i) In addition to any of the above, the court shall order the defendant
21 to reimburse the state general fund for all or a part of the expenditures by
22 the state board of indigents' defense services to provide counsel and other
23 defense services to the defendant. In determining the amount and method
24 of payment of such sum, the court shall take account of the financial
25 resources of the defendant and the nature of the burden that payment of
26 such sum will impose. A defendant who has been required to pay such sum
27 and who is not willfully in default in the payment thereof may at any time
28 petition the court which sentenced the defendant to waive payment of such
29 sum or any unpaid portion thereof. If it appears to the satisfaction of the
30 court that payment of the amount due will impose manifest hardship on the
31 defendant or the defendant's immediate family, the court may waive
32 payment of all or part of the amount due or modify the method of
33 payment. The amount of attorney fees to be included in the court order for
34 reimbursement shall be the amount claimed by appointed counsel on the
35 payment voucher for indigents' defense services or the amount prescribed
36 by the board of indigents' defense services reimbursement tables as
37 provided in K.S.A. 22-4522, and amendments thereto, whichever is less.

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

42 (k) An application for or acceptance of probation or assignment to a
43 community correctional services program shall not constitute an

1 acquiescence in the judgment for purpose of appeal, and any convicted
2 person may appeal from such conviction, as provided by law, without
3 regard to whether such person has applied for probation, suspended
4 sentence or assignment to a community correctional services program.

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

10 (1) Has been sentenced to the secretary for a probation revocation, as
11 a departure from the presumptive nonimprisonment grid block of either
12 sentencing grid, for an offense which is classified in grid blocks 5-H, 5-I,
13 or 6-G of the sentencing guidelines grid for nondrug crimes ~~or~~, in grid
14 blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug
15 crimes *committed prior to July 1, 2011, or in grid blocks 4-E, 4-F, 4-G, 4-*
16 *H or 4-I of the sentencing guidelines grid for drug crimes committed on or*
17 *after July 1, 2011, or for an offense which is classified in grid blocks 4-E*
18 *or 4-F of the sentencing guidelines grid for drug crimes committed prior to*
19 *July 1, 2011, or in grid blocks 5-E or 5-F of the sentencing guidelines grid*
20 *for drug crimes committed on or after July 1, 2011, and such offense does*
21 *not meet the requirements of section 305 of chapter 136 of the 2010*
22 *Session Laws of Kansas, and amendments thereto;* and

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

24 If the inmate successfully completes a conservation camp program, the
25 secretary of corrections shall report such completion to the sentencing
26 court and the county or district attorney. The inmate shall then be assigned
27 by the court to six months of follow-up supervision conducted by the
28 appropriate community corrections services program. The court may also
29 order that supervision continue thereafter for the length of time authorized
30 by section ~~305~~248 of chapter 136 of the 2010 Session Laws of Kansas, and
31 amendments thereto.

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

35 (n) Except as provided by subsection (f) of section 286 of chapter
36 136 of the 2010 Session Laws of Kansas, and amendments thereto, in
37 addition to any of the above, for felony violations of K.S.A. ~~2009~~ 2010
38 Supp. 21-36a06, and amendments thereto, the court shall require the
39 defendant who meets the requirements established in section 305 of
40 chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto,
41 to participate in a certified drug abuse treatment program, as provided in
42 K.S.A. ~~2009~~ 2010 Supp. 75-52,144, and amendments thereto, including,
43 but not limited to, an approved after-care plan. If the defendant fails to

1 participate in or has a pattern of intentional conduct that demonstrates the
2 offender's refusal to comply with or participate in the treatment program,
3 as established by judicial finding, the defendant shall be subject to
4 revocation of probation and the defendant shall serve the underlying prison
5 sentence as established in section ~~305~~ 286 of chapter 136 of the 2010
6 Session Laws of Kansas, and amendments thereto. For those offenders who
7 are convicted on or after ~~the effective date of this act~~ July 1, 2003, upon
8 completion of the underlying prison sentence, the defendant shall not be
9 subject to a period of postrelease supervision. The amount of time spent
10 participating in such program shall not be credited as service on the
11 underlying prison sentence.

12 (o) (1) Except as provided in paragraph (3), in addition to any other
13 penalty or disposition imposed by law, upon a conviction for unlawful
14 possession of a controlled substance or controlled substance analog in
15 violation of K.S.A. ~~2009~~ 2010 Supp. 21-36a06, and amendments thereto,
16 in which the trier of fact makes a finding that the unlawful possession
17 occurred while transporting the controlled substance or controlled
18 substance analog in any vehicle upon a highway or street, the offender's
19 driver's license or privilege to operate a motor vehicle on the streets and
20 highways of this state shall be suspended for one year.

21 (2) Upon suspension of a license pursuant to this subsection, the court
22 shall require the person to surrender the license to the court, which shall
23 transmit the license to the division of motor vehicles of the department of
24 revenue, to be retained until the period of suspension expires. At that time,
25 the licensee may apply to the division for return of the license. If the
26 license has expired, the person may apply for a new license, which shall be
27 issued promptly upon payment of the proper fee and satisfaction of other
28 conditions established by law for obtaining a license unless another
29 suspension or revocation of the person's privilege to operate a motor
30 vehicle is in effect.

31 (3) (A) In lieu of suspending the driver's license or privilege to
32 operate a motor vehicle on the highways of this state of any person as
33 provided in paragraph (1), the judge of the court in which such person was
34 convicted may enter an order which places conditions on such person's
35 privilege of operating a motor vehicle on the highways of this state, a
36 certified copy of which such person shall be required to carry any time
37 such person is operating a motor vehicle on the highways of this state. Any
38 such order shall prescribe the duration of the conditions imposed, which in
39 no event shall be for a period of more than one year.

40 (B) Upon entering an order restricting a person's license hereunder,
41 the judge shall require such person to surrender such person's driver's
42 license to the judge who shall cause it to be transmitted to the division of
43 vehicles, together with a copy of the order. Upon receipt thereof, the

1 division of vehicles shall issue without charge a driver's license which
2 shall indicate on its face that conditions have been imposed on such
3 person's privilege of operating a motor vehicle and that a certified copy of
4 the order imposing such conditions is required to be carried by the person
5 for whom the license was issued any time such person is operating a motor
6 vehicle on the highways of this state. If the person convicted is a
7 nonresident, the judge shall cause a copy of the order to be transmitted to
8 the division and the division shall forward a copy of it to the motor vehicle
9 administrator, of such person's state of residence. Such judge shall furnish
10 to any person whose driver's license has had conditions imposed on it
11 under this paragraph a copy of the order, which shall be recognized as a
12 valid Kansas driver's license until such time as the division shall issue the
13 restricted license provided for in this paragraph.

14 (C) Upon expiration of the period of time for which conditions are
15 imposed pursuant to this subsection, the licensee may apply to the division
16 for the return of the license previously surrendered by such licensee. In the
17 event such license has expired, such person may apply to the division for a
18 new license, which shall be issued immediately by the division upon
19 payment of the proper fee and satisfaction of the other conditions
20 established by law, unless such person's privilege to operate a motor
21 vehicle on the highways of this state has been suspended or revoked prior
22 thereto. If any person shall violate any of the conditions imposed under
23 this paragraph, such person's driver's license or privilege to operate a
24 motor vehicle on the highways of this state shall be revoked for a period of
25 not less than 60 days nor more than one year by the judge of the court in
26 which such person is convicted of violating such conditions.

27 (4) As used in this subsection, "highway" and "street" ~~have the~~
28 ~~meanings provided by~~ *means the same as in K.S.A. 8-1424 and 8-1473,*
29 and amendments thereto.

30 *(p) In addition to any of the above, for any criminal offense that*
31 *includes the domestic violence designation pursuant to section 1 of*
32 *chapter 101 of the 2010 Session Laws of Kansas, and amendments thereto,*
33 *the court shall require the defendant to undergo a domestic violence*
34 *offender assessment and follow all recommendations unless otherwise*
35 *ordered by the court or the department of corrections. The court may*
36 *order a domestic violence offender assessment and any other evaluation*
37 *prior to sentencing if the assessment or evaluation would assist the court*
38 *in determining an appropriate sentence. The entity completing the*
39 *assessment or evaluation shall provide the assessment or evaluation and*
40 *recommendations to the court and the court shall provide the domestic*
41 *violence assessment and any other evaluation to any entity responsible for*
42 *supervising such defendant. A defendant ordered to undergo a domestic*
43 *violence offender assessment shall be required to pay for the assessment*

1 *and, unless otherwise ordered by the court or the department of*
2 *corrections, for completion of all recommendations.*

3 Sec. 23. Section 248 of chapter 136 of the 2010 Session Laws of
4 Kansas is hereby amended to read as follows: Sec. 248. (a) The period of
5 suspension of sentence, probation or assignment to community corrections
6 fixed by the court shall not exceed two years in misdemeanor cases,
7 subject to renewal and extension for additional fixed periods of two years.
8 Probation, suspension of sentence or assignment to community corrections
9 may be terminated by the court at any time and upon such termination or
10 upon termination by expiration of the term of probation, suspension of
11 sentence or assignment to community corrections, an order to this effect
12 shall be entered by the court.

13 (b) The district court having jurisdiction of the offender may parole
14 any misdemeanant sentenced to confinement in the county jail. The period
15 of such parole shall be fixed by the court and shall not exceed two years
16 and shall be terminated in the manner provided for termination of
17 suspended sentence and probation.

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

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

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

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

25 (2) for drug crimes the recommended duration of probation is 36
26 months for crimes in crime severity levels 1 and 2: *committed prior to July*
27 *1, 2011, and crimes in crime severity levels 1, 2 and 3 committed on or*
28 *after July 1, 2011;*

29 (3) *except as provided further, in felony cases sentenced at severity*
30 *levels 9 and 10 on the sentencing guidelines grid for nondrug crimes and,*
31 *severity level 4 on the sentencing guidelines grid for drug crimes*
32 *committed prior to July 1, 2011, and severity level 5 of the sentencing*
33 *guidelines grid for drug crimes committed on or after July 1, 2011, if a*
34 *nonprison sanction is imposed, the court shall order the defendant to serve*
35 *a period of probation, or assignment to a community correctional services*
36 *program as provided under K.S.A. 75-5291 et seq., and amendments*
37 *thereto, of up to 12 months in length;*

38 (4) in felony cases sentenced at severity level 8 on the sentencing
39 guidelines grid for nondrug crimes ~~and~~, severity level 3 on the sentencing
40 guidelines grid for drug crimes *committed prior to July 1, 2011, severity*
41 *level 4 of the sentencing guidelines grid for drug crimes committed on or*
42 *after July 1, 2011, and felony cases sentenced pursuant to section 305 of*
43 *chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto,*

1 if a nonprison sanction is imposed, the court shall order the defendant to
2 serve a period of probation, or assignment to a community correctional
3 services program, as provided under K.S.A. 75-5291 et seq., and
4 amendments thereto, of up to 18 months in length;

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

11 (6) except as provided in subsections (c)(7) and (c)(8), the total
12 period in all cases shall not exceed 60 months, or the maximum period of
13 the prison sentence that could be imposed whichever is longer. Nonprison
14 sentences may be terminated by the court at any time;

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

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

25 Sec. 24. Section 251 of chapter 136 of the 2010 Session Laws of
26 Kansas is hereby amended to read as follows: Sec. 251. (a) A person who
27 has been convicted of a felony may, in addition to the sentence authorized
28 by law, be ordered to pay a fine which shall be fixed by the court as
29 follows:

30 (1) For any off-grid felony crime , or any felony ranked in severity
31 level 1 of the drug grid *committed prior to July 1, 2011, or severity levels*
32 *1 or 2 of the drug grid committed on or after July 1, 2011*, as provided in
33 section 286 of chapter 136 of the 2010 Session Laws of Kansas, and
34 amendments thereto, a sum not exceeding \$500,000;

35 (2) for any felony ranked in severity levels 1 through 5 of the
36 nondrug grid as provided in section 285 of chapter 136 of the 2010
37 Session Laws of Kansas, and amendments thereto, or in severity levels 2 or
38 3 of the drug grid *committed prior to July 1, 2011, or severity levels 3 or 4*
39 *of the drug grid committed on or after July 1, 2011*, as provided in section
40 286 of chapter 136 of the 2010 Session Laws of Kansas, and amendments
41 thereto, a sum not exceeding \$300,000; and

42 (3) for any felony ranked in severity levels 6 through 10 of the
43 nondrug grid as provided in section 285 of chapter 136 of the 2010

1 *Session Laws of Kansas*, and amendments thereto, or in severity level 4 of
2 the drug grid *committed prior to July 1, 2011, or in severity level 5 of the*
3 *drug grid committed on or after July 1, 2011*, as provided in section 286 of
4 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto,
5 a sum not exceeding \$100,000.

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

- 9 (1) For a class A misdemeanor, a sum not exceeding \$2,500;
10 (2) for a class B misdemeanor, a sum not exceeding \$1,000;
11 (3) for a class C misdemeanor, a sum not exceeding \$500; and
12 (4) for an unclassified misdemeanor, any sum authorized by the
13 statute that defines the crime. If no penalty is provided in such law, the fine
14 shall not exceed the fine provided herein for a class C misdemeanor.

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

18 (d) A person who has been convicted of a traffic infraction may be
19 sentenced to pay a fine which shall be fixed by the court, not exceeding
20 \$500.

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

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

25 Sec. 25. Section 254 of chapter 136 of the 2010 Session Laws of
26 Kansas is hereby amended to read as follows: Sec. 254. (a) (1) Except as
27 provided in subsections (b) and (c), any person convicted in this state of a
28 traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D
29 or E felony, or for crimes committed on or after July 1, 1993, nondrug
30 crimes ranked in severity levels 6 through 10, or *for crimes committed on*
31 *or after July 1, 1993, but prior to July 1, 2011*, any felony ranked in
32 severity level 4 of the drug grid, *or for crimes committed on or after July*
33 *1, 2011, any felony ranked in level 5 of the drug grid*, may petition the
34 convicting court for the expungement of such conviction or related arrest
35 records if three or more years have elapsed since the person: (A) Satisfied
36 the sentence imposed; or (B) was discharged from probation, a community
37 correctional services program, parole, postrelease supervision, conditional
38 release or a suspended sentence.

39 (2) Except as provided in subsections (b) and (c), any person who has
40 fulfilled the terms of a diversion agreement may petition the district court
41 for the expungement of such diversion agreement and related arrest
42 records if three or more years have elapsed since the terms of the diversion
43 agreement were fulfilled.

1 (b) Except as provided in subsection (c), no person may petition for
2 expungement until five or more years have elapsed since the person
3 satisfied the sentence imposed, the terms of a diversion agreement or was
4 discharged from probation, a community correctional services program,
5 parole, postrelease supervision, conditional release or a suspended
6 sentence, if such person was convicted of a class A, B or C felony, or for
7 crimes committed on or after July 1, 1993, if convicted of an off-grid
8 felony or any nondrug crime ranked in severity levels 1 through 5, or *for*
9 *crimes committed on or after July 1, 1993, but prior to July 1, 2011, any*
10 *felony ranked in severity levels 1 through 3 of the drug grid, or for crimes*
11 *committed on or after July 1, 2011, any felony ranked in severity levels 1*
12 *through 4 of the drug grid, or:*

13 (1) Vehicular homicide, as defined by ~~in~~ *K.S.A. 21-3405, prior to its*
14 *repeal, or section 41 of chapter 136 of the 2010 Session Laws of Kansas,*
15 and amendments thereto, or as prohibited by any law of another state
16 which is in substantial conformity with that statute;

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

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

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

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

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

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

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

38 (c) There shall be no expungement of convictions for the following
39 offenses or of convictions for an attempt to commit any of the following
40 offenses:

41 (1) Rape as defined in *K.S.A. 21-3502, prior to its repeal, or section*
42 *67 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments
43 thereto;

- 1 (2) indecent liberties with a child or aggravated indecent liberties
2 with a child as defined in *K.S.A. 21-3503 or 21-3504, prior to their repeal,*
3 *or section 70 of chapter 136 of the 2010 Session Laws of Kansas,* and
4 amendments thereto;
- 5 (3) criminal sodomy as defined in *subsection (a)(2) or (a)(3) of*
6 *K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of section*
7 *68 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments
8 thereto;
- 9 (4) aggravated criminal sodomy as defined in *K.S.A. 21-3506, prior*
10 *to its repeal, or section 68 of chapter 136 of the 2010 Session Laws of*
11 *Kansas,* and amendments thereto;
- 12 (5) indecent solicitation of a child or aggravated indecent solicitation
13 of a child as defined in *K.S.A. 21-3510 or 21-3511, prior to their repeal,*
14 *or section 72 of chapter 136 of the 2010 Session Laws of Kansas,* and
15 amendments thereto;
- 16 (6) sexual exploitation of a child as defined in *K.S.A. 21-3516, prior*
17 *to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of*
18 *Kansas,* and amendments thereto;
- 19 (7) aggravated incest as defined in *K.S.A. 21-3603, prior to its repeal,*
20 *or section 81 of chapter 136 of the 2010 Session Laws of Kansas,* and
21 amendments thereto;
- 22 (8) endangering a child or aggravated endangering a child as defined
23 in *K.S.A. 21-3608 or 21-3608a, prior to their repeal, or section 78 of*
24 *chapter 136 of the 2010 Session Laws of Kansas,* and amendments thereto;
- 25 (9) abuse of a child as defined in *K.S.A. 21-3609, prior to its repeal,*
26 *or section 79 of chapter 136 of the 2010 Session Laws of Kansas,* and
27 amendments thereto;
- 28 (10) capital murder as defined in *K.S.A. 21-3439, prior to its repeal,*
29 *or section 36 of chapter 136 of the 2010 Session Laws of Kansas,* and
30 amendments thereto;
- 31 (11) murder in the first degree as defined in *K.S.A. 21-3401, prior to*
32 *its repeal, or section 37 of chapter 136 of the 2010 Session Laws of*
33 *Kansas,* and amendments thereto;
- 34 (12) murder in the second degree as defined in *K.S.A. 21-3402, prior*
35 *to its repeal, or section 38 of chapter 136 of the 2010 Session Laws of*
36 *Kansas,* and amendments thereto;
- 37 (13) voluntary manslaughter as defined in *K.S.A. 21-3403, prior to its*
38 *repeal, or section 39 of chapter 136 of the 2010 Session Laws of Kansas,*
39 and amendments thereto;
- 40 (14) involuntary manslaughter as defined in *K.S.A. 21-3404, prior to*
41 *its repeal, or section 40 of chapter 136 of the 2010 Session Laws of*
42 *Kansas,* and amendments thereto;
- 43 (15) sexual battery as defined in *K.S.A. 21-3517, prior to its repeal,*

1 or section 69 of chapter 136 of the 2010 Session Laws of Kansas, and
2 amendments thereto, when the victim was less than 18 years of age at the
3 time the crime was committed;

4 (16) aggravated sexual battery as defined in *K.S.A. 21-3518, prior to*
5 *its repeal, or section 69 of chapter 136 of the 2010 Session Laws of*
6 *Kansas*, and amendments thereto;

7 (17) a violation of K.S.A. 8-1567, and amendments thereto, including
8 any diversion for such violation;

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

11 (19) any conviction for any offense in effect at any time prior to ~~the~~
12 ~~effective date of this act~~ *July 1, 2011*, that is comparable to any offense as
13 provided in this subsection.

14 (d) (1) When a petition for expungement is filed, the court shall set
15 a date for a hearing of such petition and shall cause notice of such hearing
16 to be given to the prosecutor and the arresting law enforcement agency.
17 The petition shall state the:

18 (A) Defendant's full name;

19 (B) full name of the defendant at the time of arrest, conviction or
20 diversion, if different than the defendant's current name;

21 (C) defendant's sex, race and date of birth;

22 (D) crime for which the defendant was arrested, convicted or
23 diverted;

24 (E) date of the defendant's arrest, conviction or diversion; and

25 (F) identity of the convicting court, arresting law enforcement
26 authority or diverting authority.

27 (2) Except as *otherwise* provided further, ~~there shall be no docket fee~~
28 ~~for filing a petition pursuant to this section by law, a petition for~~
29 ~~expungement shall be accompanied by a docket fee in the amount of \$100.~~
30 On and after ~~July 1, 2009 through June 30, 2010~~ *April 15, 2010 through*
31 *June 30, 2011*, the supreme court may impose a charge, not to exceed ~~\$10~~
32 *\$15* per case, to fund the costs of non-judicial personnel. The charge
33 established in this section shall be the only fee collected or moneys in the
34 nature of a fee collected for the case. Such charge shall only be established
35 by an act of the legislature and no other authority is established by law or
36 otherwise to collect a fee.

37 (3) All petitions for expungement shall be docketed in the original
38 criminal action. Any person who may have relevant information about the
39 petitioner may testify at the hearing. The court may inquire into the
40 background of the petitioner and shall have access to any reports or
41 records relating to the petitioner that are on file with the secretary of
42 corrections or the Kansas parole board.

43 (e) At the hearing on the petition, the court shall order the petitioner's

1 arrest record, conviction or diversion expunged if the court finds that:

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

5 (2) the circumstances and behavior of the petitioner warrant the
6 expungement;

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

8 (f) When the court has ordered an arrest record, conviction or
9 diversion expunged, the order of expungement shall state the information
10 required to be contained in the petition. The clerk of the court shall send a
11 certified copy of the order of expungement to the Kansas bureau of
12 investigation which shall notify the federal bureau of investigation, the
13 secretary of corrections and any other criminal justice agency which may
14 have a record of the arrest, conviction or diversion. After the order of
15 expungement is entered, the petitioner shall be treated as not having been
16 arrested, convicted or diverted of the crime, except that:

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

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

22 (A) In any application for licensure as a private detective, private
23 detective agency, certification as a firearms trainer pursuant to K.S.A.
24 ~~2009~~ 2010 Supp. 75-7b21, and amendments thereto, or employment as a
25 detective with a private detective agency, as defined by K.S.A. 75-7b01,
26 and amendments thereto; as security personnel with a private patrol
27 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
28 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
29 the department of social and rehabilitation services;

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

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

36 (D) to aid in determining the petitioner's qualifications for executive
37 director of the Kansas racing and gaming commission, for employment
38 with the commission or for work in sensitive areas in parimutuel racing as
39 deemed appropriate by the executive director of the commission, or to aid
40 in determining qualifications for licensure or renewal of licensure by the
41 commission;

42 (E) to aid in determining the petitioner's qualifications for the
43 following under the Kansas expanded lottery act: (i) Lottery gaming

1 facility manager or prospective manager, racetrack gaming facility
2 manager or prospective manager, licensee or certificate holder; or (ii) an
3 officer, director, employee, owner, agent or contractor thereof;

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

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

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

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

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

16 (K) for applications received on and after July 1, 2006, to aid in
17 determining the petitioner's qualifications for a license to carry a concealed
18 weapon pursuant to the personal and family protection act, K.S.A. ~~2009~~
19 ~~2010~~ Supp. 75-7c01 et seq., and amendments thereto;

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

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

25 (5) upon commitment to the custody of the secretary of corrections,
26 any previously expunged record in the possession of the secretary of
27 corrections may be reinstated and the expungement disregarded, and the
28 record continued for the purpose of the new commitment.

29 (g) Whenever a person is convicted of a crime, pleads guilty and pays
30 a fine for a crime, is placed on parole, postrelease supervision or
31 probation, is assigned to a community correctional services program, is
32 granted a suspended sentence or is released on conditional release, the
33 person shall be informed of the ability to expunge the arrest records or
34 conviction. Whenever a person enters into a diversion agreement, the
35 person shall be informed of the ability to expunge the diversion.

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

1 (i) Whenever the record of any arrest, conviction or diversion has
2 been expunged under the provisions of this section or under the provisions
3 of any other existing or former statute, the custodian of the records of
4 arrest, conviction, diversion and incarceration relating to that crime shall
5 not disclose the existence of such records, except when requested by:

6 (1) The person whose record was expunged;

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

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

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

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

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

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

29 (8) the Kansas lottery, and the request is accompanied by a statement
30 that the request is being made to aid in determining qualifications for
31 employment with the Kansas lottery or for work in sensitive areas within
32 the Kansas lottery as deemed appropriate by the executive director of the
33 Kansas lottery;

34 (9) the governor or the Kansas racing and gaming commission, or a
35 designee of the commission, and the request is accompanied by a
36 statement that the request is being made to aid in determining
37 qualifications for executive director of the commission, for employment
38 with the commission, for work in sensitive areas in parimutuel racing as
39 deemed appropriate by the executive director of the commission or for
40 licensure, renewal of licensure or continued licensure by the commission;

41 (10) the Kansas racing and gaming commission, or a designee of the
42 commission, and the request is accompanied by a statement that the
43 request is being made to aid in determining qualifications of the following

1 under the Kansas expanded lottery act: (A) Lottery gaming facility
2 managers and prospective managers, racetrack gaming facility managers
3 and prospective managers, licensees and certificate holders; and (B) their
4 officers, directors, employees, owners, agents and contractors;

5 (11) the Kansas sentencing commission;

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

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

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

21 (15) a law enforcement agency and the request is accompanied by a
22 statement that the request is being made to aid in determining eligibility
23 for employment as a law enforcement officer as defined by K.S.A. 22-
24 2202, and amendments thereto; or

25 (16) the attorney general and the request is accompanied by a
26 statement that the request is being made to aid in determining
27 qualifications for a license to carry a concealed weapon pursuant to the
28 personal and family protection act.

29 Sec. 26. Section 286 of chapter 136 of the 2010 Session Laws of
30 Kansas is hereby amended to read as follows: Sec. 286. (a) The provisions
31 of this section shall be applicable to the sentencing guidelines grid for drug
32 crimes. The following sentencing guidelines grid for drug crimes shall be
33 applicable to felony crimes under K.S.A. ~~2009~~ 2010 Supp. 21-36a01
34 through 21-36a17, and amendments thereto, except as otherwise provided
35 by law:

SENTENCING RANGE - DRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	144 136 130	137 130 122	130 123 117	124 117 111	116 111 105	113 108 101	110 104 99	108 100 96	103 98 92
IIII	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
IIIV	51 49 46	47 44 41	42 40 37	36 34 32	32 31 28	26 24 23	23 22 20	23 21 17	16 13 12
IVV	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
Presumptive Probation
Presumptive Imprisonment

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

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

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

13 (A) Prison sentence;

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

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

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

22 (d) Each grid block states the presumptive sentencing range for an
23 offender whose crime of conviction and criminal history place such
24 offender in that grid block. If an offense is classified in a grid block below
25 the dispositional line, the presumptive disposition shall be
26 nonimprisonment. If an offense is classified in a grid block above the
27 dispositional line, the presumptive disposition shall be imprisonment. If an
28 offense is classified in grid blocks ~~3-E, 3-F, 3-G, 3-H or 3-I~~ 4-E, 4-F, 4-G,
29 4-H or 4-I, the court may impose an optional nonprison sentence as
30 provided in subsection (q) of section 285 of chapter 136 of the 2010
31 Session Laws of Kansas, and amendments thereto.

32 (e) The sentence for a second or subsequent conviction of K.S.A. 65-
33 4159, prior to its repeal, or K.S.A. ~~2009~~ 2010 Supp. 21-36a03, and
34 amendments thereto, manufacture of any controlled substance or
35 controlled substance analog shall be a presumptive term of imprisonment
36 of two times the maximum duration of the presumptive term of
37 imprisonment. The court may impose an optional reduction in such
38 sentence of not to exceed 50% of the mandatory increase provided by this
39 subsection upon making a finding on the record that one or more of the
40 mitigating factors as specified in section 296 of chapter 136 of the 2010
41 Session Laws of Kansas, and amendments thereto, justify such a reduction
42 in sentence. Any decision made by the court regarding the reduction in
43 such sentence shall not be considered a departure and shall not be subject

1 to appeal.

2 (f) (1) The sentence for a third or subsequent felony conviction of
3 K.S.A. 65-4160 or 65-4162, prior to their repeal, or K.S.A. ~~2009~~ 2010
4 Supp. 21-36a06, and amendments thereto, shall be a presumptive term of
5 imprisonment and the defendant shall be sentenced to prison as provided
6 by this section. The defendant's term of imprisonment shall be served in
7 the custody of the secretary of corrections in a facility designated by the
8 secretary. Subject to appropriations therefore, the defendant shall
9 participate in an intensive substance abuse treatment program, of at least
10 four months duration, selected by the secretary of corrections. If the
11 secretary determines that substance abuse treatment resources are
12 otherwise available, such term of imprisonment may be served in a facility
13 designated by the secretary of corrections in the custody of the secretary of
14 corrections to participate in an intensive substance abuse treatment
15 program. The secretary's determination regarding the availability of
16 treatment resources shall not be subject to review. Upon the successful
17 completion of such intensive treatment program, the offender shall be
18 returned to the court and the court may modify the sentence by directing
19 that a less severe penalty be imposed in lieu of that originally adjudged. If
20 the offender's term of imprisonment expires, the offender shall be placed
21 under the applicable period of postrelease supervision.

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

24 (A) The defendant has previously completed a certified drug abuse
25 treatment program, as provided in K.S.A. ~~2009~~ 2010 Supp. 75-52,144, and
26 amendments thereto;

27 (B) has been discharged or refused to participate in a certified drug
28 abuse treatment program, as provided in K.S.A. ~~2009~~ 2010 Supp. 75-
29 52,144, and amendments thereto;

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

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

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

36 (g) (1) Except as provided further, if the trier of fact makes a finding
37 that an offender carried a firearm to commit a drug felony, or in
38 furtherance of a drug felony, possessed a firearm, in addition to the
39 sentence imposed pursuant to sections 282 through 305 of *chapter 136 of*
40 *the 2010 Session Laws of Kansas*, and amendments thereto, the offender
41 shall be sentenced to:

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

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

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

6 (3) The provisions of this subsection shall not apply to violations of
7 K.S.A. ~~2009~~ 2010 Supp. 21-36a06 or 21-36a13, and amendments thereto.

8 Sec. 27. Section 289 of chapter 136 of the 2010 Session Laws of
9 Kansas is hereby amended to read as follows: Sec. 289. (a) The crime
10 severity scale contained in the sentencing guidelines grid for drug offenses
11 as provided in section 286 of *chapter 136 of the 2010 Session Laws of*
12 *Kansas*, and amendments thereto, consists of 4 5 levels of crimes. Crimes
13 listed within each level are considered to be relatively equal in severity.
14 Level 1 crimes are the most severe crimes and level 4 5 crimes are the
15 least severe crimes.

16 (b) The provisions of this section shall also be applicable to the
17 presumptive sentences for anticipatory crimes as provided in sections 33,
18 34 and 35 of *chapter 136 of the 2010 Session Laws of Kansas*, and
19 amendments thereto.

20 Sec. 28. Section 291 of chapter 136 of the 2010 Session Laws of
21 Kansas is hereby amended to read as follows: Sec. 291. (a) Criminal
22 history categories contained in the sentencing guidelines grids are based
23 on the following types of prior convictions: Person felony adult
24 convictions, nonperson felony adult convictions, person felony juvenile
25 adjudications, nonperson felony juvenile adjudications, person
26 misdemeanor adult convictions, nonperson class A misdemeanor adult
27 convictions, person misdemeanor juvenile adjudications, nonperson class
28 A misdemeanor juvenile adjudications, select class B nonperson
29 misdemeanor adult convictions, select class B nonperson misdemeanor
30 juvenile adjudications and convictions and adjudications for violations of
31 municipal ordinances or county resolutions which are comparable to any
32 crime classified under the state law of Kansas as a person misdemeanor,
33 select nonperson class B misdemeanor or nonperson class A misdemeanor.
34 A prior conviction is any conviction, other than another count in the
35 current case which was brought in the same information or complaint or
36 which was joined for trial with other counts in the current case pursuant to
37 K.S.A. 22-3203, and amendments thereto, which occurred prior to
38 sentencing in the current case regardless of whether the offense that led to
39 the prior conviction occurred before or after the current offense or the
40 conviction in the current case.

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

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

4 (d) Except as provided in section 296 *of chapter 136 of the 2010*
5 *Session Laws of Kansas*, and amendments thereto, the following are
6 applicable to determining an offender's criminal history classification:

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

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

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

11 (A) Adult convictions;

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

14 (C) a juvenile adjudication for an offense committed before July 1,
15 1993, which would have been a class A, B or C felony, if committed by an
16 adult; or

17 (D) a juvenile adjudication for an offense committed on or after July
18 1, 1993, which would be an off-grid felony, a nondrug severity level 1, 2,
19 3, 4 or 5 felony, ~~or~~ a drug severity level 1, 2 or 3 felony *for an offense*
20 *committed on or after July 1, 1993, but prior to July 1, 2011, or a drug*
21 *severity level 1, 2, 3 or 4 felony for an offense committed on or after July*
22 *1, 2011, if committed by an adult.*

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

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

28 (B) committed on or after July 1, 1993, which would be a nondrug
29 level 6, 7, 8, 9 or 10, or drug level 4, nonperson felony *for an offense*
30 *committed on or after July 1, 1993, but prior to July 1, 2011, or a drug*
31 *level 5, nonperson felony for an offense committed on or after July 1,*
32 *2011, if committed by an adult; or*

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

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

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

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

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

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

9 Sec. 29. Section 302 of chapter 136 of the 2010 Session Laws of
10 Kansas is hereby amended to read as follows: Sec. 302. (a) The secretary
11 of corrections is hereby authorized to adopt rules and regulations
12 providing for a system of good time calculations. Such rules and
13 regulations shall provide circumstances upon which an inmate may earn
14 good time credits and for the forfeiture of earned credits. Such
15 circumstances may include factors related to program and work
16 participation and conduct and the inmate's willingness to examine and
17 confront past behavioral patterns that resulted in the commission of the
18 inmate's crimes.

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

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

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

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

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

30 (C) *for a drug severity level 3 or 4 crime committed on or after*
31 *January 1, 2008, but prior to July 1, 2011, or a drug severity level 4 or 5*
32 *crime committed on or after July 1, 2011, an amount equal to 20% of the*
33 *prison part of the sentence.*

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

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

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

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

1 (3) testified falsely or otherwise submitted false evidence or
2 information to the court;

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

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

6 (e) (1) For purposes of determining release of an inmate who is
7 serving only a sentence for a nondrug severity level 4 through 10 crime or
8 a drug severity level 3 or 4 crime committed on or after January 1, 2008,
9 *but prior to July 1, 2011, or an inmate who is serving only a sentence for a*
10 *nondrug severity level 4 through 10 crime or a drug severity level 4 or 5*
11 *crime committed on or after July 1, 2011, the secretary of corrections is*
12 *hereby authorized to adopt rules and regulations regarding program credit*
13 *calculations. Such rules and regulations shall provide circumstances upon*
14 *which an inmate may earn program credits and for the forfeiture of earned*
15 *credits and such circumstances may include factors substantially related to*
16 *program participation and conduct. In addition to any good time credits*
17 *earned and retained, the following shall apply with regard to program*
18 *credit calculations:*

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

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

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

31 (3) When separate sentences of imprisonment for different crimes are
32 imposed on a defendant on the same date, a defendant shall only be
33 eligible for program credits if such crimes are a nondrug severity level 4
34 through 10 ~~or~~ , a drug severity level 3 or 4 *committed prior to July 1,*
35 *2011, or a drug severity level 4 or 5 committed on or after July 1, 2011.*

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

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

41 Sec. 30. Section 305 of chapter 136 of the 2010 Session Laws of
42 Kansas is hereby amended to read as follows: Sec. 305. (a) There is hereby
43 established a nonprison sanction of certified drug abuse treatment

1 programs for certain offenders who are sentenced on or after November 1,
2 2003. Placement of offenders in certified drug abuse treatment programs
3 by the court shall be limited to placement of adult offenders, convicted of a
4 felony violation of K.S.A. 65-4160 or 65-4162, prior to their repeal or
5 K.S.A. ~~2009~~ 2010 Supp. 21-36a06, and amendments thereto:

6 (1) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or 4-
7 I of the sentencing guidelines grid for drug crimes and such offender has
8 no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or
9 65-4164, prior to their repeal or K.S.A. ~~2009~~ 2010 Supp. 21-36a03, 21-
10 36a05 or 21-36a16, and amendments thereto, or any substantially similar
11 offense from another jurisdiction; or

12 (2) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of
13 the sentencing guidelines grid for drug crimes, such offender has no felony
14 conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164,
15 prior to their repeal, or K.S.A. ~~2009~~ 2010 Supp. 21-36a03, 21-36a05 or
16 21-36a16, and amendments thereto, or any substantially similar offense
17 from another jurisdiction, if the person felonies in the offender's criminal
18 history were severity level 8, 9 or 10 or nongrid offenses of the sentencing
19 guidelines grid for nondrug crimes, and the court finds and sets forth with
20 particularity the reasons for finding that the safety of the members of the
21 public will not be jeopardized by such placement in a drug abuse treatment
22 program.

23 (b) As a part of the presentence investigation pursuant to section 294
24 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
25 thereto, offenders who meet the requirements of subsection (a) shall be
26 subject to:

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

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

33 (c) The sentencing court shall commit the offender to treatment in a
34 drug abuse treatment program until the court determines the offender is
35 suitable for discharge by the court. The term of treatment shall not exceed
36 18 months. The court may extend the term of probation, pursuant to
37 subsection (c)(3) of section 248 of *chapter 136 of the 2010 Session Laws*
38 *of Kansas*, and amendments thereto. The term of treatment may not exceed
39 the term of probation.

40 (d) Offenders shall be supervised by community correctional
41 services.

42 (e) Placement of offenders under subsection (a)(2) shall be subject to
43 the departure sentencing statutes of the revised Kansas sentencing

1 guidelines act.

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

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

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

8 (2) Offenders who are discharged from such program shall be subject
9 to the revocation provisions of subsection (n) of section 244 *of chapter*
10 *136 of the 2010 Session Laws of Kansas*, and amendments thereto.

11 (g) As used in this section, "mental health professional" includes
12 licensed social workers, licensed psychiatrists, licensed psychologists,
13 licensed professional counselors or registered alcohol and other drug abuse
14 counselors licensed or certified as addiction counselors who have been
15 certified by the secretary of corrections to treat offenders pursuant to
16 K.S.A. ~~2009~~ 2010 Supp. 75-52,144, and amendments thereto.

17 (h) (1) The following offenders who meet the requirements of
18 subsection (a) shall not be subject to the provisions of this section and
19 shall be sentenced as otherwise provided by law:

20 (A) Offenders who are residents of another state and are returning to
21 such state pursuant to the interstate corrections compact or the interstate
22 compact for adult offender supervision; or

23 (B) offenders who are not lawfully present in the United States and
24 being detained for deportation.

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

27 Sec. 31. K.S.A. 22-2908, as amended by section 9 of chapter 101 of
28 the 2010 Session Laws of Kansas, and K.S.A. 2009 Supp. 21-4603d, as
29 amended by section 7 of chapter 101 of the 2010 Session Laws of Kansas,
30 and K.S.A. 2010 Supp. 21-36a01, 21-36a03, 21-36a05, 21-36a06, 21-
31 36a09, 21-36a10, 21-36a13, 21-36a14, 21-36a16, 21-36a17, 21-4603d, 21-
32 4619, 21-4710, 22-2802, 22-3412, 22-3604, 22-3717, 22-3717c, 38-2346,
33 38-2347, 38-2369, 38-2374, 38-2376 and 75-5291 and sections 244, 248,
34 251, 254, 286, 289, 291, 302 and 305 of chapter 136 of the 2010 Session
35 Laws of Kansas are hereby repealed.

36 Sec. 32. This act shall take effect and be in force from and after its
37 publication in the statute book.

38