

**SENATE BILL No. 239**

By Committee on Ways and Means

3-17

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1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to abolition of the death penalty; creating the crime of aggravated  
3 murder; sentences of imprisonment for life without the possibility of  
4 parole; amending K.S.A. 22-3405, 22-3705 and 22-4210 and K.S.A.  
5 2010 Supp. 22-3717, 22-3728, 22-4902, 38-2255, 38-2271, 38-2312,  
6 38-2365, 39-970, 65-5117, 72-1397 and 75-52,148 and sections 54,  
7 254, 258, 260, 262, 266, 268, 269 and 287 of chapter 136 of the 2010  
8 Session Laws of Kansas and repealing the existing sections; also  
9 repealing K.S.A. 2010 Supp. 21-4619, 21-4623, 21-4624, 21-4634, 21-  
10 4642, 22-3717c and 38-2255a and sections 36, 257 and 259 of chapter  
11 136 of the 2010 Session Laws of Kansas.

12  
13 WHEREAS, Kansas reenacted the death penalty in 1994; and  
14 WHEREAS, Inmates in Kansas are currently under sentence of death;  
15 and  
16 WHEREAS, Kansas has not carried out an execution since 1965: Now,  
17 therefore,

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

20 New Section 1. (a) No person shall be sentenced to death for a crime  
21 committed on or after July 1, 2011.

22 (b) Any person who is sentenced to death for a crime committed  
23 prior to July 1, 2011, may be put to death pursuant to the provisions of  
24 article 40 of chapter 22 of the Kansas Statutes Annotated, and amendments  
25 thereto.

26 (c) This section shall be part of and supplemental to the Kansas  
27 criminal code.

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

29 (1) Intentional and premeditated killing of any person in the  
30 commission of kidnapping, as defined in subsection (a) of section 43 of  
31 chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto,  
32 or aggravated kidnapping, as defined in subsection (b) of section 43 of  
33 chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto,  
34 when the kidnapping or aggravated kidnapping was committed with the  
35 intent to hold such person for ransom;

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

4 (3) intentional and premeditated killing of any person by an inmate  
5 or prisoner confined in a state correctional institution, community  
6 correctional institution or jail or while in the custody of an officer or  
7 employee of a state correctional institution, community correctional  
8 institution or jail;

9 (4) intentional and premeditated killing of the victim of one of the  
10 following crimes in the commission of, or subsequent to, such crime:  
11 Rape, as defined in section 67 of chapter 136 of the 2010 Session Laws of  
12 Kansas, and amendments thereto, criminal sodomy, as defined in  
13 subsections (a)(3) or (a)(4) of section 68 of chapter 136 of the 2010  
14 Session Laws of Kansas, and amendments thereto, or aggravated criminal  
15 sodomy, as defined in subsection (b) of section 68 of chapter 136 of the  
16 2010 Session Laws of Kansas, and amendments thereto, or any attempt  
17 thereof, as defined in section 33 of chapter 136 of the 2010 Session Laws  
18 of Kansas, and amendments thereto;

19 (5) intentional and premeditated killing of a law enforcement officer;

20 (6) intentional and premeditated killing of more than one person as a  
21 part of the same act or transaction or in two or more acts or transactions  
22 connected together or constituting parts of a common scheme or course of  
23 conduct; or

24 (7) intentional and premeditated killing of a child under the age of 14  
25 in the commission of kidnapping, as defined in subsection (a) of section 43  
26 of chapter 136 of the 2010 Session Laws of Kansas, and amendments  
27 thereto, or aggravated kidnapping, as defined in subsection (b) of section  
28 43 of chapter 136 of the 2010 Session Laws of Kansas, and amendments  
29 thereto, when the kidnapping or aggravated kidnapping was committed  
30 with intent to commit a sex offense upon or with the child or with intent  
31 that the child commit or submit to a sex offense.

32 (b) For purposes of this section, "sex offense" means rape, as defined  
33 in section 67 of chapter 136 of the 2010 Session Laws of Kansas, and  
34 amendments thereto, aggravated indecent liberties with a child, as defined  
35 in subsection (b) of section 70 of chapter 136 of the 2010 Session Laws of  
36 Kansas, and amendments thereto, aggravated criminal sodomy, as defined  
37 in subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of  
38 Kansas, and amendments thereto, prostitution, as defined in section 229 of  
39 chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto,  
40 promoting prostitution, as defined in section 230 of chapter 136 of the  
41 2010 Session Laws of Kansas, and amendments thereto, or sexual  
42 exploitation of a child, as defined in section 74 of chapter 136 of the 2010  
43 Session Laws of Kansas, and amendments thereto.

1 (c) Notwithstanding subsections (b)(1) or (b)(2) of section 9 of  
2 chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto,  
3 when the same conduct of a defendant may establish the commission of  
4 aggravated murder and the commission of another crime under the laws of  
5 this state, the defendant may be prosecuted and sentenced for each of such  
6 crimes.

7 (d) Aggravated murder is an off-grid person felony.

8 (e) This section shall be part of and supplemental to the Kansas  
9 criminal code.

10 New Sec. 3. (a) When it is provided by law that a person shall be  
11 sentenced pursuant to this section, such person shall be sentenced to  
12 imprisonment for life without the possibility of parole. A defendant who is  
13 sentenced to imprisonment for life without the possibility of parole shall  
14 spend the remainder of the defendant's natural life incarcerated and in the  
15 custody of the secretary of corrections. A defendant who is sentenced to  
16 imprisonment for life without the possibility of parole shall not be eligible  
17 for commutation of sentence, parole, probation, assignment to a  
18 community correctional services program, conditional release, postrelease  
19 supervision, functional incapacitation release pursuant to K.S.A. 22-3728,  
20 and amendments thereto, or suspension, modification or reduction of  
21 sentence. Upon sentencing a defendant to imprisonment for life without  
22 the possibility of parole, the court shall commit the defendant to the  
23 custody of the secretary of corrections and the court shall state in the  
24 sentencing order of the judgment form or journal entry, whichever is  
25 delivered with the defendant to the correctional institution, that the  
26 defendant has been sentenced to imprisonment for life without the  
27 possibility of parole.

28 (b) This section shall be part of and supplemental to the Kansas  
29 criminal code.

30 Sec. 4. Section 54 of chapter 136 of the 2010 Session Laws of  
31 Kansas is hereby amended to read as follows: Sec. 54. (a) As used in  
32 this section:

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

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

37 (b) This section shall not apply to:

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

39 (2) any medical procedure, including abortion, performed by a  
40 physician or other licensed medical professional at the request of the  
41 pregnant woman or her legal guardian; or

42 (3) the lawful dispensation or administration of lawfully prescribed  
43 medication.

1 (c) As used in sections 36, 37, 38, 39, 40, 41; *and* subsections (a) and  
2 (b) of section 48, and amendments thereto, "person" and "human being"  
3 also mean an unborn child.

4 (d) This section shall be known as Alexa's law.

5 Sec. 5. Section 254 of chapter 136 of the 2010 Session Laws of  
6 Kansas is hereby amended to read as follows: Sec. 254. (a) (1) Except as  
7 provided in subsections (b) and (c), any person convicted in this state of a  
8 traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D  
9 or E felony, or for crimes committed on or after July 1, 1993, nondrug  
10 crimes ranked in severity levels 6 through 10 or any felony ranked in  
11 severity level 4 of the drug grid, may petition the convicting court for the  
12 expungement of such conviction or related arrest records if three or more  
13 years have elapsed since the person: (A) Satisfied the sentence imposed; or  
14 (B) was discharged from probation, a community correctional services  
15 program, parole, postrelease supervision, conditional release or a  
16 suspended sentence.

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

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

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

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

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

43 (4) violating the provisions of the fifth clause of K.S.A. 8-142, and

1 amendments thereto, relating to fraudulent applications or violating the  
2 provisions of a law of another state which is in substantial conformity with  
3 that statute;

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

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

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

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

13 (c) There shall be no expungement of convictions for the following  
14 offenses or of convictions for an attempt to commit any of the following  
15 offenses:

16 (1) Rape as defined in *K.S.A. 21-3502, prior to its repeal, or section*  
17 *67 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments  
18 thereto;

19 (2) indecent liberties with a child or aggravated indecent liberties  
20 with a child as defined in *K.S.A. 21-3503 or 21-3504, prior to their repeal,*  
21 *or section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and  
22 amendments thereto;

23 (3) criminal sodomy as defined in *subsection (a)(2) or (a)(3) of*  
24 *K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of section*  
25 *68 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments  
26 thereto;

27 (4) aggravated criminal sodomy as defined in *K.S.A. 21-3506, prior*  
28 *to its repeal, or section 68 of chapter 136 of the 2010 Session Laws of*  
29 *Kansas*, and amendments thereto;

30 (5) indecent solicitation of a child or aggravated indecent solicitation  
31 of a child as defined in *K.S.A. 21-3510 or 21-3511, prior to their repeal,*  
32 *or section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and  
33 amendments thereto;

34 (6) sexual exploitation of a child as defined in *K.S.A. 21-3516, prior*  
35 *to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of*  
36 *Kansas*, and amendments thereto;

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

40 (8) endangering a child or aggravated endangering a child as defined  
41 in *K.S.A. 21-3608 or 21-3608a, prior to their repeal, or section 78 of*  
42 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

43 (9) abuse of a child as defined in *K.S.A. 21-3609, prior to its repeal,*

1 or section 79 of chapter 136 of the 2010 Session Laws of Kansas, and  
2 amendments thereto;

3 (10) capital murder as defined in ~~section 36, and amendments thereto~~  
4 *K.S.A. 21-3439, prior to its repeal;*

5 (11) *aggravated murder as defined in section 2, and amendments*  
6 *thereto;*

7 ~~(11)~~(12) murder in the first degree as defined in *K.S.A. 21-3401,*  
8 *prior to its repeal, or section 37 of chapter 136 of the 2010 Session Laws*  
9 *of Kansas, and amendments thereto;*

10 ~~(12)~~(13) murder in the second degree as defined in *K.S.A. 21-3402,*  
11 *prior to its repeal, or section 38 of chapter 136 of the 2010 Session Laws*  
12 *of Kansas, and amendments thereto;*

13 ~~(13)~~(14) voluntary manslaughter as defined in *K.S.A. 21-3403, prior*  
14 *to its repeal, or section 39 of chapter 136 of the 2010 Session Laws of*  
15 *Kansas, and amendments thereto;*

16 ~~(14)~~(15) involuntary manslaughter as defined in *K.S.A. 21-3404,*  
17 *prior to its repeal, or section 40 of chapter 136 of the 2010 Session Laws*  
18 *of Kansas, and amendments thereto;*

19 ~~(15)~~(16) sexual battery as defined in *K.S.A. 21-3517, prior to its*  
20 *repeal, or section 69 of chapter 136 of the 2010 Session Laws of Kansas,*  
21 *and amendments thereto, when the victim was less than 18 years of age at*  
22 *the time the crime was committed;*

23 ~~(16)~~(17) aggravated sexual battery as defined in *K.S.A. 21-3518,*  
24 *prior to its repeal, or section 69 of chapter 136 of the 2010 Session Laws*  
25 *of Kansas, and amendments thereto;*

26 ~~(17)~~(18) a violation of *K.S.A. 8-1567, and amendments thereto,*  
27 *including any diversion for such violation;*

28 ~~(18)~~(19) a violation of *K.S.A. 8-2,144, and amendments thereto,*  
29 *including any diversion for such violation; or*

30 ~~(19)~~(20) any conviction for any offense in effect at any time prior to  
31 ~~the effective date of this act~~ *July 1, 2011, that is comparable to any offense*  
32 *as provided in this subsection.*

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

37 (A) Defendant's full name;

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

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

41 (D) crime for which the defendant was arrested, convicted or  
42 diverted;

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

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

3 (2) Except as *otherwise* provided further, ~~there shall be no docket fee~~  
4 ~~for filing a petition pursuant to this section by law, a petition for~~  
5 ~~expungement shall be accompanied by a docket fee in the amount of \$100.~~  
6 On and after July 1, 2009 through June 30, 2010 April 15, 2010 through  
7 June 30, 2011, the supreme court may impose a charge, not to exceed \$10  
8 \$15 per case, to fund the costs of non-judicial personnel. The charge  
9 established in this section shall be the only fee collected or moneys in the  
10 nature of a fee collected for the case. Such charge shall only be established  
11 by an act of the legislature and no other authority is established by law or  
12 otherwise to collect a fee.

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

19 (e) At the hearing on the petition, the court shall order the petitioner's  
20 arrest record, conviction or diversion expunged if the court finds that:

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

24 (2) the circumstances and behavior of the petitioner warrant the  
25 expungement;

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

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

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

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

41 (A) In any application for licensure as a private detective, private  
42 detective agency, certification as a firearms trainer pursuant to K.S.A.  
43 2009 2010 Supp. 75-7b21, and amendments thereto, or employment as a

1 detective with a private detective agency, as defined by K.S.A. 75-7b01,  
2 and amendments thereto; as security personnel with a private patrol  
3 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with  
4 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of  
5 the department of social and rehabilitation services;

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

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

12 (D) to aid in determining the petitioner's qualifications for executive  
13 director of the Kansas racing and gaming commission, for employment  
14 with the commission or for work in sensitive areas in parimutuel racing as  
15 deemed appropriate by the executive director of the commission, or to aid  
16 in determining qualifications for licensure or renewal of licensure by the  
17 commission;

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

23 (F) upon application of a commercial driver's license under K.S.A.  
24 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

35 (K) for applications received on and after July 1, 2006, to aid in  
36 determining the petitioner's qualifications for a license to carry a concealed  
37 weapon pursuant to the personal and family protection act, K.S.A. ~~2009~~  
38 ~~2010~~ Supp. 75-7c01 et seq., and amendments thereto;

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

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



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

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

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

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

25 (1) The person whose record was expunged;

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

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

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

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

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

42 (7) the supreme court, the clerk or disciplinary administrator thereof,  
43 the state board for admission of attorneys or the state board for discipline

1 of attorneys, and the request is accompanied by a statement that the  
2 request is being made in conjunction with an application for admission, or  
3 for an order of reinstatement, to the practice of law in this state by the  
4 person whose record has been expunged;

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

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

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

24 (11) the Kansas sentencing commission;

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

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

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

40 (15) a law enforcement agency and the request is accompanied by a  
41 statement that the request is being made to aid in determining eligibility  
42 for employment as a law enforcement officer as defined by K.S.A. 22-  
43 2202, and amendments thereto; or

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

5 Sec. 6. Section 258 of chapter 136 of the 2010 Session Laws of  
6 Kansas is hereby amended to read as follows: Sec. 258. Upon conviction  
7 of a defendant of ~~capital~~ *aggravated* murder and a finding that the  
8 defendant was less than 18 years of age at the time of the commission  
9 thereof, the court shall sentence the defendant as otherwise provided by  
10 law, and no sentence of ~~death~~ or life without the possibility of parole shall  
11 be imposed ~~hereunder~~.

12 Sec. 7. Section 260 of chapter 136 of the 2010 Session Laws of  
13 Kansas is hereby amended to read as follows: Sec. 260. (a) Except as  
14 provided in ~~section~~ *sections 258 and 262 of chapter 136 of the 2010*  
15 *Session Laws of Kansas*, and amendments thereto, if a defendant is  
16 convicted of the crime of ~~capital murder and a sentence of death is not~~  
17 ~~imposed pursuant to subsection (c) of section 257, and amendments~~  
18 ~~thereto, or requested pursuant to subsection (a) or (b) of section 257, and~~  
19 ~~amendments thereto, aggravated murder~~, the defendant shall be sentenced  
20 to life without the possibility of parole *pursuant to section 3, and*  
21 *amendments thereto*.

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

28 (c) In order to make such determination, the court may be presented  
29 evidence concerning any matter that the court deems relevant to the  
30 question of sentence and shall include matters relating to any of the  
31 aggravating circumstances enumerated in section 264 *of chapter 136 of the*  
32 *2010 Session Laws of Kansas*, and amendments thereto, and any  
33 mitigating circumstances. Any such evidence which the court deems to  
34 have probative value may be received regardless of its admissibility under  
35 the rules of evidence, provided that the defendant is accorded a fair  
36 opportunity to rebut any hearsay statements. Only such evidence of  
37 aggravating circumstances as the state has made known to the defendant  
38 prior to the sentencing shall be admissible and no evidence secured in  
39 violation of the constitution of the United States or of the state of Kansas  
40 shall be admissible. No testimony by the defendant at the time of  
41 sentencing shall be admissible against the defendant at any subsequent  
42 criminal proceeding. At the conclusion of the evidentiary presentation, the  
43 court shall allow the parties a reasonable period of time in which to present

1 oral argument.

2 (d) If the court finds that one or more of the aggravating  
3 circumstances enumerated in section 264 of chapter 136 of the 2010  
4 Session Laws of Kansas, and amendments thereto, exist and, further, that  
5 the existence of such aggravating circumstances is not outweighed by any  
6 mitigating circumstances which are found to exist, the defendant shall be  
7 sentenced pursuant to section 263 of chapter 136 of the 2010 Session Laws  
8 of Kansas, and amendments thereto; otherwise, the defendant shall be  
9 sentenced as provided by law. The court shall designate, in writing, the  
10 statutory aggravating circumstances which it found. ~~The court may make  
11 the findings required by this subsection for the purpose of determining  
12 whether to sentence a defendant pursuant to section 263, and amendments  
13 thereto, notwithstanding contrary findings made by the jury or court  
14 pursuant to subsection (c) of section 257, and amendments thereto, for the  
15 purpose of determining whether to sentence such defendant to death.~~

16 Sec. 8. Section 262 of chapter 136 of the 2010 Session Laws of  
17 Kansas is hereby amended to read as follows: Sec. 262. ~~(a) If, under  
18 section 257, and amendments thereto, the county or district attorney has  
19 filed a notice of intent to request a separate sentencing proceeding to  
20 determine whether the defendant should be sentenced to death and the  
21 defendant is convicted of the crime of capital murder, the defendant's  
22 counsel or the warden of the correctional institution or sheriff having  
23 custody of the defendant may request a determination by the court of  
24 whether the defendant is mentally retarded. If the court determines that  
25 there is not sufficient reason to believe that the defendant is mentally  
26 retarded, the court shall so find and the defendant shall be sentenced in  
27 accordance with sections 257, 259, 264, 265, 268 and 269, and  
28 amendments thereto. If the court determines that there is sufficient reason  
29 to believe that the defendant is mentally retarded, the court shall conduct a  
30 hearing to determine whether the defendant is mentally retarded.~~

31 ~~(b) (a)~~ If a defendant is convicted of the crime of capital murder and  
32 a sentence of death is not imposed *aggravated murder*, or if a defendant is  
33 convicted of the crime of murder in the first degree based upon the finding  
34 of premeditated murder, the defendant's counsel or the warden of the  
35 correctional institution or sheriff having custody of the defendant may  
36 request a determination by the court of whether the defendant is mentally  
37 retarded. If the court determines that there is not sufficient reason to  
38 believe that the defendant is mentally retarded, the court shall so find and  
39 the defendant shall be sentenced in accordance with sections 260, 263, 264  
40 and 265 of chapter 136 of the 2010 Session Laws of Kansas, and  
41 amendments thereto. If the court determines that there is sufficient reason  
42 to believe that the defendant is mentally retarded, the court shall conduct a  
43 hearing to determine whether the defendant is mentally retarded.

1       (ⓔ)(b) At the hearing, the court shall determine whether the defendant  
2 is mentally retarded. The court shall order a psychiatric or psychological  
3 examination of the defendant. For that purpose, the court shall appoint two  
4 licensed physicians or licensed psychologists, or one of each, qualified by  
5 training and practice to make such examination, to examine the defendant  
6 and report their findings in writing to the judge within ~~10~~14 days after the  
7 order of examination is issued. The defendant shall have the right to  
8 present evidence and cross-examine any witnesses at the hearing. No  
9 statement made by the defendant in the course of any examination  
10 provided for by this section, whether or not the defendant consents to the  
11 examination, shall be admitted in evidence against the defendant in any  
12 criminal proceeding.

13       (ⓓ)(c) If, at the conclusion of a hearing pursuant to subsection (a),  
14 the court determines that the defendant is not mentally retarded, the  
15 defendant shall be sentenced in accordance with sections ~~257, 259~~, 264,  
16 265, 268 and 269 of *chapter 136 of the 2010 Session Laws of Kansas*, and  
17 amendments thereto.

18       (ⓔ)(d) If, at the conclusion of a hearing pursuant to subsection (b),  
19 the court determines that the defendant is not mentally retarded, the  
20 defendant shall be sentenced in accordance with sections 260, 263, 264  
21 and 265 of *chapter 136 of the 2010 Session Laws of Kansas*, and  
22 amendments thereto.

23       (ⓕ)(e) If, at the conclusion of a hearing pursuant to this section, the  
24 court determines that the defendant is mentally retarded, the court shall  
25 sentence the defendant as otherwise provided by law, and no sentence of  
26 death, life without the possibility of parole, or mandatory term of  
27 imprisonment shall be imposed hereunder.

28       (ⓖ)(f) Unless otherwise ordered by the court for good cause shown,  
29 the provisions of subsection (b) shall not apply if it has been determined,  
30 pursuant to a hearing granted under the provisions of subsection (a), that  
31 the defendant is not mentally retarded.

32       (ⓗ)(g) As used in this section, "mentally retarded" means having  
33 significantly subaverage general intellectual functioning, as defined by  
34 K.S.A. 76-12b01, and amendments thereto, to an extent which  
35 substantially impairs one's capacity to appreciate the criminality of one's  
36 conduct or to conform one's conduct to the requirements of law.

37       Sec. 9. Section 266 of chapter 136 of the 2010 Session Laws of  
38 Kansas is hereby amended to read as follows: Sec. 266. (a) An aggravated  
39 habitual sex offender shall be sentenced to imprisonment for life without  
40 the possibility of parole. Such offender shall spend the remainder of the  
41 offender's natural life incarcerated and in the custody of the secretary of  
42 corrections. An offender who is sentenced to imprisonment for life without  
43 the possibility of parole shall not be eligible for *commutation of sentence*,

1 parole, probation, assignment to a community correctional services  
2 program, conditional release, postrelease supervision, *functional*  
3 *incapacitation release pursuant to K.S.A. 22-3728, and amendments*  
4 *thereto*, or suspension, modification or reduction of sentence.

5 (b) Upon sentencing a defendant to imprisonment for life without the  
6 possibility of parole, the court shall commit the defendant to the custody of  
7 the secretary of corrections and the court shall state in the sentencing order  
8 of the judgment form or journal entry, whichever is delivered with the  
9 defendant to the correctional institution, that the defendant has been  
10 sentenced to imprisonment for life without the possibility of parole.

11 (c) As used in this section:

12 (1) "Aggravated habitual sex offender" means a person who, on and  
13 after July 1, 2006: (A) Has been convicted in this state of a sexually  
14 violent crime, as described in subsection (c)(3)(A) through (c)(3)(~~F~~)(H) or  
15 (c)(3)(~~F~~)(J); and (B) prior to the conviction of the felony under  
16 subparagraph (A), has been convicted ~~on at least two prior conviction~~  
17 ~~events of any sexually violent crime of two or more sexually violent~~  
18 ~~crimes;~~

19 (2) ~~"prior conviction event" means one or more felony convictions of~~  
20 ~~a sexually violent crime occurring on the same day and within a single~~  
21 ~~court. These convictions may result from multiple counts within an~~  
22 ~~information or from more than one information. If a person crosses a~~  
23 ~~county line and commits a felony as part of the same criminal act or acts,~~  
24 ~~such felony, if such person is convicted, shall be considered part of the~~  
25 ~~prior conviction event.~~

26 (~~3~~) "Sexually violent crime" means:

27 (A) Rape, as defined in *K.S.A. 21-3502, prior to its repeal, or section*  
28 *67 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments  
29 thereto;

30 (B) indecent liberties with a child or aggravated indecent liberties  
31 with a child, as defined in *K.S.A. 21-3503 or 21-3504, prior to their*  
32 *repeal, or section 70 of chapter 136 of the 2010 Session Laws of Kansas*,  
33 and amendments thereto;

34 (C) criminal sodomy, as defined in *subsection (a)(2) or (a)(3) of*  
35 *K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) and/or (a)(4) of*  
36 *section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and  
37 amendments thereto;

38 (D) aggravated criminal sodomy, as defined in *K.S.A. 21-3506, prior*  
39 *to its repeal, or section 68 of chapter 136 of the 2010 Session Laws of*  
40 *Kansas*, and amendments thereto;

41 (E) indecent solicitation of a child or aggravated indecent solicitation  
42 of a child, as defined in *K.S.A. 21-3510 or 21-3511, prior to their repeal,*  
43 *or section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and

1 amendments thereto;

2 (F) sexual exploitation of a child, as defined in *K.S.A. 21-3516, prior*  
3 *to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of*  
4 *Kansas*, and amendments thereto;

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

8 (H) aggravated incest, as defined in *K.S.A. 21-3603, prior to its*  
9 *repeal, or section 81 of chapter 136 of the 2010 Session Laws of Kansas,*  
10 and amendments thereto;

11 (I) any federal or other state conviction for a felony offense that  
12 under the laws of this state would be a sexually violent crime as defined in  
13 this section;

14 (J) an attempt, conspiracy or criminal solicitation, as defined in  
15 *K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or section 33,*  
16 *34 or 35 of chapter 136 of the 2010 Session Laws of Kansas*, and  
17 amendments thereto, of a sexually violent crime as defined in this section;  
18 or

19 (K) any act which at the time of sentencing for the offense has been  
20 determined beyond a reasonable doubt to have been sexually motivated.  
21 As used in this subparagraph, "sexually motivated" means that one of the  
22 purposes for which the defendant committed the crime was for the purpose  
23 of the defendant's sexual gratification.

24 Sec. 10. Section 268 of chapter 136 of the 2010 Session Laws of  
25 Kansas is hereby amended to read as follows: Sec. 268. (a) In the event the  
26 term of imprisonment for life without the possibility of parole or any  
27 provision of section 266 or 267 of chapter 136 of the 2010 Session Laws of  
28 *Kansas*, and amendments thereto, authorizing such term is held to be  
29 unconstitutional by the supreme court of Kansas or the United States  
30 supreme court, the court having jurisdiction over a person previously  
31 sentenced shall cause such person to be brought before the court and shall  
32 modify the sentence to require no term of imprisonment for life without  
33 the possibility of parole and shall sentence the defendant to the maximum  
34 term of imprisonment otherwise provided by law.

35 ~~(b) In the event a sentence of death or any provision of this act~~  
36 ~~authorizing such sentence is held to be unconstitutional by the supreme~~  
37 ~~court of Kansas or the United States supreme court, the court having~~  
38 ~~jurisdiction over a person previously sentenced shall cause such person to~~  
39 ~~be brought before the court and shall modify the sentence and resentence~~  
40 ~~the defendant as otherwise provided by law.~~

41 ~~(e)~~ (b) In the event the mandatory term of imprisonment or any  
42 provision of chapter 341 of the 1994 Session Laws of Kansas authorizing  
43 such mandatory term is held to be unconstitutional by the supreme court of

1 Kansas or the United States supreme court, the court having jurisdiction  
2 over a person previously sentenced shall cause such person to be brought  
3 before the court and shall modify the sentence to require no mandatory  
4 term of imprisonment and shall sentence the defendant as otherwise  
5 provided by law.

6 Sec. 11. Section 269 of chapter 136 of the 2010 Session Laws of  
7 Kansas is hereby amended to read as follows: Sec. 269. (a) The provisions  
8 of K.S.A. 21-4622 through 21-4630, as they existed immediately prior to  
9 July 1, 1994, shall be applicable only to persons convicted of crimes  
10 committed on or after July 1, 1990, and before July 1, 1994.

11 (b) The provisions of K.S.A. 21-4622 through 21-4627 and 21-4629  
12 and 21-4630, as amended on July 1, 1994, *and prior to their repeal, and*  
13 *sections 258, 262, 264, 265 and subsection (b) of section 268 of chapter*  
14 *136 of the 2010 Session Laws of Kansas, and amendments thereto,* shall be  
15 applicable only to persons convicted of crimes committed on or after July  
16 1, 1994.

17 (c) K.S.A. 21-4633 through 21-4640, *prior to their repeal, and*  
18 *sections 260, 261, 262, 263, 264, 265 and subsection (c) of section 268 of*  
19 *chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto,*  
20 shall be applicable only to persons convicted of crimes committed on or  
21 after July 1, 1994.

22 Sec. 12. Section 287 of chapter 136 of the 2010 Session Laws of  
23 Kansas is hereby amended to read as follows: Sec. 287. (a) Sentences of  
24 imprisonment shall represent the time a person shall actually serve, subject  
25 to a reduction of the primary sentence for good time as authorized by  
26 section 302 *of chapter 136 of the 2010 Session Laws of Kansas,* and  
27 amendments thereto.

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

29 (c) Violations of sections ~~36~~, 37, 56, 57 and 126 *of chapter 136 of the*  
30 *2010 Session Laws of Kansas,* and amendments thereto, are off-grid crimes  
31 for the purpose of sentencing. Except as otherwise provided by sections  
32 ~~257~~, 258, ~~259~~, 262, 264, 265, 268 and 269 *of chapter 136 of the 2010*  
33 *Session Laws of Kansas,* and amendments thereto, the sentence shall be  
34 imprisonment for life and shall not be subject to statutory provisions for  
35 suspended sentence, community service or probation.

36 (d) As identified in sections 61, 67, 68, 70, 74 and 230 *of chapter*  
37 *136 of the 2010 Session Laws of Kansas,* and amendments thereto, if the  
38 offender is 18 years of age or older and the victim is under 14 years of age,  
39 such violations are off-grid crimes for the purposes of sentencing. Except  
40 as provided in section 266 *of chapter 136 of the 2010 Session Laws of*  
41 *Kansas,* and amendments thereto, the sentence shall be imprisonment for  
42 life pursuant to section 267 *of chapter 136 of the 2010 Session Laws of*  
43 *Kansas,* and amendments thereto.



1       (e) *Violation of section 2, and amendments thereto, is an off-grid crime*  
 2 *for the purposes of sentencing. Except as provided in sections 258 and 262*  
 3 *of chapter 136 of the 2010 Session Laws of Kansas, and amendments*  
 4 *thereto, the sentence shall be imprisonment for life without the possibility*  
 5 *of parole pursuant to section 3, and amendments thereto.*

6       Sec. 13. K.S.A. 22-3405 is hereby amended to read as follows: 22-  
 7 3405. (1) The defendant in a felony case shall be present at the  
 8 arraignment, at every stage of the trial including the impaneling of the jury  
 9 and the return of the verdict, and at the imposition of sentence, except as  
 10 otherwise provided by law. In prosecutions for crimes not punishable by  
 11 death *or life without the possibility of parole*, the defendant's voluntary  
 12 absence after the trial has been commenced in such person's presence shall  
 13 not prevent continuing the trial to and including the return of the verdict. A  
 14 corporation may appear by counsel for all purposes.

15       (2) The defendant must be present, either personally or by counsel, at  
 16 every stage of the trial of traffic infraction, cigarette or tobacco infraction  
 17 and misdemeanor cases.

18       Sec. 14. K.S.A. 22-3705 is hereby amended to read as follows: 22-  
 19 3705. (a) The governor may, when ~~he~~ *the governor* deems it proper or  
 20 advisable, commute a sentence in any criminal case by reducing the  
 21 penalty as follows:

22       ~~(a)~~ (1) If the sentence is death, to imprisonment for life ~~or for any~~  
 23 ~~term not less than ten years~~ *without the possibility of parole and not to any*  
 24 *lesser sentence;*

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

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

28       ~~(d)~~ (4) if the sentence is both imprisonment and fine, by reducing  
 29 either or both.

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

32       Sec. 15. K.S.A. 2010 Supp. 22-3717 is hereby amended to read as  
 33 follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A.  
 34 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4635 through 21-4638,  
 35 *prior to their repeal; K.S.A. 21-4624, prior to its repeal; K.S.A. 21-4642,*  
 36 *prior to its repeal; sections 260, 263, 264, 265 and 266 of chapter 136 of*  
 37 *the 2010 Session Laws of Kansas, and amendments thereto; section 3, and*  
 38 *amendments thereto; and K.S.A. 8-1567, and amendments thereto; ~~K.S.A.~~*  
 39 ~~21-4642, and amendments thereto; and K.S.A. 21-4624, and amendments~~  
 40 ~~thereto~~, an inmate, including an inmate sentenced pursuant to K.S.A. 21-  
 41 4618, *prior to its repeal, or section 276 of chapter 136 of the 2010 Session*  
 42 *Laws of Kansas, and amendments thereto, shall be eligible for parole after*  
 43 *serving the entire minimum sentence imposed by the court, less good time*

1 credits.

2 (b) (1) Except as provided by K.S.A. 21-4635 through 21-4638,  
3 *prior to their repeal, and sections 260, 263, 264 and 265 of chapter 136 of*  
4 *the 2010 Session Laws of Kansas*, and amendments thereto, an inmate  
5 sentenced to imprisonment for the crime of capital murder, or an inmate  
6 sentenced for the crime of murder in the first degree based upon a finding  
7 of premeditated murder, committed on or after July 1, 1994, shall be  
8 eligible for parole after serving 25 years of confinement, without  
9 deduction of any good time credits.

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

21 (3) Except as provided by K.S.A. 1993 Supp. 21-4628, prior to its  
22 repeal, an inmate sentenced for a class A felony committed before July 1,  
23 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, *prior to*  
24 *its repeal, or section 276 of chapter 136 of the 2010 Session Laws of*  
25 *Kansas*, and amendments thereto, shall be eligible for parole after serving  
26 15 years of confinement, without deduction of any good time credits.

27 (4) An inmate sentenced to imprisonment for a violation of  
28 subsection (a) of K.S.A. 21-3402, *prior to its repeal, or subsection (a)*  
29 *section 38 of chapter 136 of the 2010 Session Laws of Kansas*, and  
30 amendments thereto, committed on or after July 1, 1996, but prior to July  
31 1, 1999, shall be eligible for parole after serving 10 years of confinement  
32 without deduction of any good time credits.

33 (5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-  
34 4643, *prior to its repeal, or section 267 of chapter 136 of the 2010 Session*  
35 *Laws of Kansas*, and amendments thereto, committed on or after July 1,  
36 2006, shall be eligible for parole after serving the mandatory term of  
37 imprisonment without deduction of any good time credits.

38 (6) *An inmate sentenced to imprisonment for life without the*  
39 *possibility of parole pursuant to section 3, and amendments thereto, shall*  
40 *not be eligible for parole.*

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

1 of:

2 (A) The aggregate minimum sentences, as determined pursuant to  
3 K.S.A. 21-4608, *prior to its repeal, or section 246 of chapter 136 of the*  
4 *2010 Session Laws of Kansas*, and amendments thereto, less good time  
5 credits for those crimes which are not class A felonies; and

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

8 (2) (A) If an inmate is sentenced to imprisonment pursuant to K.S.A.  
9 21-4643, ~~and amendments thereto~~ *prior to its repeal*, for crimes committed  
10 on or after July 1, 2006, *but prior to July 1, 2011*, the inmate shall be  
11 eligible for parole after serving the mandatory term of imprisonment.

12 (B) *If an inmate is sentenced to imprisonment pursuant to section*  
13 *267 of chapter 136 of the 2010 Session Laws of Kansas, and amendments*  
14 *thereto, for crimes committed on or after July 1, 2011, the inmate shall be*  
15 *eligible for parole after serving the mandatory term of imprisonment.*

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

21 (A) Except as provided in subparagraphs (D) and (E), persons  
22 sentenced for nondrug severity level 1 through 4 crimes and drug severity  
23 levels 1 and 2 crimes must serve 36 months, plus the amount of good time  
24 and program credit earned and retained pursuant to K.S.A. 21-4722, *prior to*  
25 *its repeal, or section 302 of chapter 136 of the 2010 Session Laws of*  
26 *Kansas*, and amendments thereto, on postrelease supervision.

27 (B) Except as provided in subparagraphs (D) and (E), persons  
28 sentenced for nondrug severity levels 5 and 6 crimes and drug severity  
29 level 3 crimes must serve 24 months, plus the amount of good time and  
30 program credit earned and retained pursuant to K.S.A. 21-4722, *prior to*  
31 *its repeal, or section 302 of chapter 136 of the 2010 Session Laws of*  
32 *Kansas*, and amendments thereto, on postrelease supervision.

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

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

1 postrelease supervision to a period of up to 60 months.

2 (ii) If the sentencing judge departs from the presumptive postrelease  
3 supervision period, the judge shall state on the record at the time of  
4 sentencing the substantial and compelling reasons for the departure.  
5 Departures in this section are subject to appeal pursuant to K.S.A. 21-  
6 4721, *prior to its repeal, or section 301 of chapter 136 of the 2010 Session*  
7 *Laws of Kansas*, and amendments thereto.

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

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

12 (b) any evidence received during the proceeding;

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

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

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

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

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

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

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

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

1 reduction in the supervision period shall be on an earned basis pursuant to  
2 rules and regulations adopted by the secretary of corrections.

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

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

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

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

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

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

21 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505,  
22 *prior to its repeal, or subsection (a)(3) and (a)(4) of section 68 of chapter*  
23 *136 of the 2010 Session Laws of Kansas*, and amendments thereto;

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

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

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

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

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

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

42 (K) an attempt, conspiracy or criminal solicitation, as defined in  
43 K.S.A. 21-3301, 21-3302 or 21-3303, *prior to their repeal, or sections 33,*

1 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas, and  
2 amendments thereto, of a sexually violent crime as defined in this section.

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

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

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

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

1 the board believes that the inmate is able and willing to fulfill the  
2 obligations of a law abiding citizen and is of the opinion that there is  
3 reasonable probability that the inmate can be released without detriment to  
4 the community or to the inmate. Parole shall not be granted as an award of  
5 clemency and shall not be considered a reduction of sentence or a pardon.

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

1 the public; official comments; any recommendation by the staff of the  
2 facility where the inmate is incarcerated; proportionality of the time the  
3 inmate has served to the sentence a person would receive under the Kansas  
4 sentencing guidelines for the conduct that resulted in the inmate's  
5 incarceration; and capacity of state correctional institutions.

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

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



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

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

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

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

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

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

1 conditional release or postrelease supervision;

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

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

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

15 (5) unless it finds compelling circumstances which would render a  
16 plan of payment unworkable, shall order that the parolee or person on  
17 postrelease supervision reimburse the state for all or part of the  
18 expenditures by the state board of indigents' defense services to provide  
19 counsel and other defense services to the person. In determining the  
20 amount and method of payment of such sum, the parole board shall take  
21 account of the financial resources of the person and the nature of the  
22 burden that the payment of such sum will impose. Such amount shall not  
23 exceed the amount claimed by appointed counsel on the payment voucher  
24 for indigents' defense services or the amount prescribed by the board of  
25 indigents' defense services reimbursement tables as provided in K.S.A. 22-  
26 4522, and amendments thereto, whichever is less, minus any previous  
27 payments for such services.

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

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

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

43 (q) Inmates shall be released on postrelease supervision upon the

1 termination of the prison portion of their sentence. Time served while on  
2 postrelease supervision will vest.

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

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

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

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

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

39 Sec. 16. K.S.A. 2010 Supp. 22-3728 is hereby amended to read as  
40 follows: 22-3728. (a) (1) Upon application of the secretary of corrections,  
41 the Kansas parole board may grant release to any person deemed to be  
42 functionally incapacitated, upon such terms and conditions as prescribed in  
43 the order granting such release.

1 (2) The Kansas parole board shall adopt rules and regulations  
2 governing the procedure for initiating, processing, reviewing and  
3 establishing criteria for review of applications filed on behalf of persons  
4 deemed to be functionally incapacitated. Such rules and regulations shall  
5 include criteria and guidelines for determining whether the functional  
6 incapacitation precludes the person from posing a threat to the public.

7 (3) Subject to the provisions of subsections (a)(4) and (a)(5), a  
8 functional incapacitation release shall not be granted until at least 30 days  
9 after written notice of the application has been given to: (A) The  
10 prosecuting attorney and the judge of the court in which the person was  
11 convicted; and (B) any victim of the person's crime or the victim's family.  
12 Notice of such application shall be given by the secretary of corrections to  
13 the victim who is alive and whose address is known to the secretary, or if  
14 the victim is deceased, to the victim's family if the family's address is  
15 known to the secretary. Subject to the provisions of subsection (a)(4), if  
16 there is no known address for the victim, if alive, or the victim's family, if  
17 deceased, the board shall not grant or deny such application until at least  
18 30 days after notification is given by publication in the county of  
19 conviction. Publication costs shall be paid by the department of  
20 corrections.

21 (4) All applications for functional incapacitation release shall be  
22 referred to the board. The board shall examine each case and may approve  
23 such application and grant a release. An application for release shall not be  
24 approved unless the board determines that the person is functionally  
25 incapacitated and does not represent a future risk to public safety. The  
26 board shall determine whether a hearing is necessary on the application.  
27 The board may request additional information or evidence it deems  
28 necessary from a medical or mental health practitioner.

29 (5) The board shall establish any conditions related to the release of  
30 the person. The release shall be conditional, and be subject to revocation  
31 pursuant to K.S.A. 75-5217, and amendments thereto, if the person's  
32 functional incapacity significantly diminishes, if the person fails to comply  
33 with any condition of release, or if the board otherwise concludes that the  
34 person presents a threat or risk to public safety. The person shall remain on  
35 release supervision until the release is revoked, expiration of the maximum  
36 sentence, or discharged by the board. Subject to the provisions of  
37 subsection (f) of K.S.A. 75-5217, and amendments thereto, the person  
38 shall receive credit for the time during which the person is on functional  
39 incapacitation release supervision towards service of the prison and  
40 postrelease supervision obligations of determinate sentences or  
41 indeterminate sentences.

42 (6) The secretary of corrections shall cause the person to be  
43 supervised upon release, and shall have the authority to initiate revocation

1 of the person at any time for the reasons indicated in subsection (a)(5).

2 (7) The decision of the board on the application or any revocation  
3 shall be final and not subject to review by any administrative agency or  
4 court.

5 (8) In determining whether a person is functionally incapacitated, the  
6 board shall consider the following: (A) The person's current condition as  
7 confirmed by medical or mental health care providers, including whether  
8 the condition is terminal;

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

10 (C) the person's criminal history;

11 (D) the person's length of sentence and time the person has served;

12 (E) the nature and circumstances of the current offense;

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

14 (G) whether an appropriate release plan has been established; and

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

16 (b) Nothing in this section shall be construed to limit or preclude  
17 submission of an application for pardon or commutation of sentence  
18 pursuant to K.S.A. 22-3701, and amendments thereto.

19 (c) Nothing in this section shall apply to the release of people with  
20 terminal medical conditions as described in K.S.A. 2010 Supp. 22-3729,  
21 and amendments thereto.

22 (d) This section does not apply to any person sentenced to  
23 imprisonment for an off-grid offense.

24 (e) *This section does not apply to any person under sentence of death*  
25 *or life without the possibility of parole.*

26 Sec. 17. K.S.A. 22-4210 is hereby amended to read as follows: 22-  
27 4210. If a person confined in a penal institution in any other state may be a  
28 material witness in a criminal action pending in a court of record or in a  
29 grand jury investigation in this state, a judge of the court may certify (1)  
30 that there is a criminal proceeding or investigation by a grand jury or a  
31 criminal action pending in the court, (2) that a person who is confined in a  
32 penal institution in the other state may be a material witness in the  
33 proceeding, investigation, or action, and (3) that his presence will be  
34 required during a specified time. The certificate shall be presented to a  
35 judge of a court of record in the other state having jurisdiction over the  
36 prisoner confined, and a notice shall be given to the attorney general of the  
37 state in which the prisoner is confined.

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

41 Sec. 18. K.S.A. 2010 Supp. 22-4902 is hereby amended to read as  
42 follows: 22-4902. As used in the Kansas offender registration act, unless  
43 the context otherwise requires:

- 1 (a) "Offender" means: (1) A sex offender as defined in subsection (b);  
2 (2) a violent offender as defined in subsection (d);  
3 (3) a sexually violent predator as defined in subsection (f);  
4 (4) any person who, on and after May 29, 1997, is convicted of any  
5 of the following crimes when the victim is less than 18 years of age:  
6 (A) Kidnapping as defined in K.S.A. 21-3420, *prior to its repeal, or*  
7 *subsection (a) of section 43 of chapter 136 of the 2010 Session Laws of*  
8 *Kansas*, and amendments thereto, except by a parent;  
9 (B) aggravated kidnapping as defined in K.S.A. 21-3421, *prior to its*  
10 *repeal, or subsection (b) of section 43 of chapter 136 of the 2010 Session*  
11 *Laws of Kansas*, and amendments thereto; or  
12 (C) criminal restraint as defined in K.S.A. 21-3424, *prior to its*  
13 *repeal, or section 46 of chapter 136 of the 2010 Session Laws of Kansas*,  
14 and amendments thereto, except by a parent;  
15 (5) any person convicted of any of the following criminal sexual  
16 conduct if one of the parties involved is less than 18 years of age:  
17 (A) Adultery as defined by K.S.A. 21-3507, *prior to its repeal, or*  
18 *section 75 of chapter 136 of the 2010 Session Laws of Kansas*, and  
19 amendments thereto;  
20 (B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-  
21 3505, *prior to its repeal, or subsection (a)(1) or (a)(2) of section 68 of*  
22 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;  
23 (C) promoting prostitution as defined by K.S.A. 21-3513, *prior to its*  
24 *repeal, or section 230 of chapter 136 of the 2010 Session Laws of Kansas*,  
25 and amendments thereto;  
26 (D) patronizing a prostitute as defined by K.S.A. 21-3515, *prior to*  
27 *its repeal, or section 231 of chapter 136 of the 2010 Session Laws of*  
28 *Kansas*, and amendments thereto; or  
29 (E) lewd and lascivious behavior as defined by K.S.A. 21-3508,  
30 *prior to its repeal, or section 77 of chapter 136 of the 2010 Session Laws*  
31 *of Kansas*, and amendments thereto;  
32 (6) any person who has been required to register under any federal,  
33 military or other state's law or is otherwise required to be registered;  
34 (7) any person who, on or after July 1, 2006, is convicted of any  
35 person felony and the court makes a finding on the record that a deadly  
36 weapon was used in the commission of such person felony;  
37 (8) any person who has been convicted of an offense in effect at any  
38 time prior to May 29, 1997, that is comparable to any crime defined in  
39 subsection (4), (5), (7) or (11), or any federal, military or other state  
40 conviction for an offense that under the laws of this state would be an  
41 offense defined in subsection (4), (5), (7) or (11);  
42 (9) any person who has been convicted of an attempt, conspiracy or  
43 criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303,

1 *prior to their repeal, or section 33, 34 or 35 of chapter 136 of the 2010*  
2 *Session Laws of Kansas, and amendments thereto, of an offense defined in*  
3 *subsection (4), (5), (7) or (10);*

4 (10) any person who has been convicted of aggravated human  
5 trafficking as defined in K.S.A. 21-3447, *prior to its repeal, or subsection*  
6 *(b) of section 61 of chapter 136 of the 2010 Session Laws of Kansas, and*  
7 *amendments thereto; or*

8 (11) any person who has been convicted of: (A) Unlawful  
9 manufacture or attempting such of any controlled substance or controlled  
10 substance analog as defined by K.S.A. 65-4159, prior to its repeal, or  
11 K.S.A. 2010 Supp. 21-36a03, and amendments thereto, unless the court  
12 makes a finding on the record that the manufacturing or attempting to  
13 manufacture such controlled substance was for such person's personal use;

14 (B) possession of ephedrine, pseudoephedrine, red phosphorus,  
15 lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized  
16 ammonia or phenylpropanolamine, or their salts, isomers or salts of  
17 isomers with intent to use the product to manufacture a controlled  
18 substance as defined by subsection (a) of K.S.A. 65-7006, prior to its  
19 repeal, or subsection (a) of K.S.A. 2010 Supp. 21-36a09, and amendments  
20 thereto, unless the court makes a finding on the record that the possession  
21 of such product was intended to be used to manufacture a controlled  
22 substance for such person's personal use; or

23 (C) K.S.A. 65-4161, prior to its repeal, or subsection (a)(1) of K.S.A.  
24 2010 Supp. 21-36a05, and amendments thereto. The provisions of this  
25 paragraph shall not apply to violations of subsections (a)(2) through (a)(6)  
26 or (b) of K.S.A. 2010 Supp. 21-36a05, and amendments thereto, which  
27 occurred on and after July 1, 2009, through ~~the effective date of this~~  
28 ~~act~~ *April 15, 2010.*

29 Convictions which result from or are connected with the same act, or  
30 result from crimes committed at the same time, shall be counted for the  
31 purpose of this section as one conviction. Any conviction set aside  
32 pursuant to law is not a conviction for purposes of this section. A  
33 conviction from another state shall constitute a conviction for purposes of  
34 this section.

35 (b) "Sex offender" includes any person who, on or after April 14,  
36 1994, is convicted of any sexually violent crime set forth in subsection (c)  
37 or is adjudicated as a juvenile offender for an act which if committed by an  
38 adult would constitute the commission of a sexually violent crime set forth  
39 in subsection (c).

40 (c) "Sexually violent crime" means:

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 as defined in K.S.A. 21-3503, *prior*  
2 *to its repeal, or subsection (a) of section 70 of chapter 136 of the 2010*  
3 *Session Laws of Kansas*, and amendments thereto;
- 4 (3) aggravated indecent liberties with a child as defined in K.S.A. 21-  
5 3504, *prior to its repeal, or subsection (b) of section 70 of chapter 136 of*  
6 *the 2010 Session Laws of Kansas*, and amendments thereto;
- 7 (4) criminal sodomy as defined in subsection (a)(2) ~~and~~ (a)(3) of  
8 K.S.A. 21-3505, *prior to its repeal, or subsection (a)(3) or (a)(4) of*  
9 *section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and  
10 amendments thereto;
- 11 (5) aggravated criminal sodomy as defined in K.S.A. 21-3506, *prior*  
12 *to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010*  
13 *Session Laws of Kansas*, and amendments thereto;
- 14 (6) indecent solicitation of a child as defined by K.S.A. 21-3510,  
15 *prior to its repeal, or subsection (a) of section 72 of chapter 136 of the*  
16 *2010 Session Laws of Kansas*, and amendments thereto;
- 17 (7) aggravated indecent solicitation of a child as defined by K.S.A.  
18 21-3511, *prior to its repeal, or subsection (b) of section 72 of chapter 136*  
19 *of the 2010 Session Laws of Kansas*, and amendments thereto;
- 20 (8) sexual exploitation of a child as defined by K.S.A. 21-3516, *prior*  
21 *to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of*  
22 *Kansas*, and amendments thereto;
- 23 (9) sexual battery as defined by K.S.A. 21-3517, *prior to its repeal,*  
24 *or subsection (a) of section 69 of chapter 136 of the 2010 Session Laws of*  
25 *Kansas*, and amendments thereto;
- 26 (10) aggravated sexual battery as defined by K.S.A. 21-3518, *prior*  
27 *to its repeal, or subsection (b) of section 69 of chapter 136 of the 2010*  
28 *Session Laws of Kansas*, and amendments thereto;
- 29 (11) aggravated incest as defined by K.S.A. 21-3603, *prior to its*  
30 *repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session*  
31 *Laws of Kansas*, and amendments thereto;
- 32 (12) electronic solicitation as defined by K.S.A. 21-3523, *prior to its*  
33 *repeal, and section 73 of chapter 136 of the 2010 Session Laws of*  
34 *Kansas*, and amendments thereto, committed on or after April 17, 2008;
- 35 (13) unlawful sexual relations as defined by K.S.A. 21-3520, *prior to*  
36 *its repeal, or section 76 of chapter 136 of the 2010 Session Laws of*  
37 *Kansas*, and amendments thereto, committed on or after July 1, 2010;
- 38 (14) any conviction for an offense in effect at any time prior to April  
39 29, 1993, that is comparable to a sexually violent crime as defined in  
40 subparagraphs (1) through (11), or any federal, military or other state  
41 conviction for an offense that under the laws of this state would be a  
42 sexually violent crime as defined in this section;
- 43 (15) an attempt, conspiracy or criminal solicitation, as defined in



1 K.S.A. 21-3301, 21-3302 or 21-3303, *prior to their repeal, or section 33,*  
2 *34 or 35 of chapter 136 of the 2010 Session Laws of Kansas,* and  
3 amendments thereto, of a sexually violent crime, as defined in this section;  
4 or

5 (16) any act which at the time of sentencing for the offense has been  
6 determined beyond a reasonable doubt to have been sexually motivated.  
7 As used in this subparagraph, "sexually motivated" means that one of the  
8 purposes for which the defendant committed the crime was for the purpose  
9 of the defendant's sexual gratification.

10 (d) "Violent offender" includes any person who, on or after May 29,  
11 1997, is convicted of any of the following crimes:

12 (1) Capital murder as defined by K.S.A. 21-3439 ~~and amendments~~  
13 ~~thereto~~, *prior to its repeal*;

14 (2) *aggravated murder, as defined by section 2, and amendments*  
15 *thereto*;

16 ~~(2)~~ (3) murder in the first degree as defined by K.S.A. 21-3401, *prior*  
17 *to its repeal, or section 37 of chapter 136 of the 2010 Session Laws of*  
18 *Kansas,* and amendments thereto;

19 ~~(3)~~ (4) murder in the second degree as defined by K.S.A. 21-3402,  
20 *prior to its repeal, or section 38 of chapter 136 of the 2010 Session Laws*  
21 *of Kansas,* and amendments thereto;

22 ~~(4)~~ (5) voluntary manslaughter as defined by K.S.A. 21-3403, *prior*  
23 *to its repeal, or section 39 of chapter 136 of the 2010 Session Laws of*  
24 *Kansas,* and amendments thereto;

25 ~~(5)~~ (6) involuntary manslaughter as defined by K.S.A. 21-3404, *prior*  
26 *to its repeal, or section 40 of chapter 136 of the 2010 Session Laws of*  
27 *Kansas,* and amendments thereto;

28 ~~(6)~~ (7) any conviction for an offense in effect at any time prior to  
29 May 29, 1997, that is comparable to any crime defined in this subsection,  
30 or any federal, military or other state conviction for an offense that under  
31 the laws of this state would be an offense defined in this subsection; or

32 ~~(7)~~ (8) an attempt, conspiracy or criminal solicitation, as defined in  
33 K.S.A. 21-3301, 21-3302 or 21-3303, *prior to their repeal, or section 33,*  
34 *34 or 35 of chapter 136 of the 2010 Session Laws of Kansas,* and  
35 amendments thereto, of an offense defined in this subsection.

36 (e) "Law enforcement agency having jurisdiction" means the sheriff  
37 of the county in which the offender expects to reside upon the offender's  
38 discharge, parole or release.

39 (f) "Sexually violent predator" means any person who, on or after  
40 July 1, 2001, is found to be a sexually violent predator pursuant to K.S.A.  
41 59-29a01 et seq., and amendments thereto.

42 (g) "Nonresident student or worker" includes any offender who  
43 crosses into the state or county for more than 14 days, or for an aggregate

1 period exceeding 30 days in a calendar year, for the purposes of  
2 employment, with or without compensation, or to attend school as a  
3 student.

4 (h) "Aggravated offenses" means engaging in sexual acts involving  
5 penetration with victims of any age through the use of force or the threat  
6 of serious violence, or engaging in sexual acts involving penetration with  
7 victims less than 14 years of age, and includes the following offenses:

8 (1) Rape as defined in subsection (a)(1)(A) ~~and subsection (a)(2)~~ of  
9 K.S.A. 21-3502, *prior to its repeal, or subsection (a)(1)(A) or (a)(3) of*  
10 *section 67 of chapter 136 of the 2010 Session Laws of Kansas*, and  
11 amendments thereto;

12 (2) aggravated criminal sodomy as defined in subsection (a)(1) ~~and~~  
13 ~~subsection (a)(3)(A)~~ of K.S.A. 21-3506, *prior to its repeal, or*  
14 *subsection (b)(1) or (b)(3)(A) of section 68 of chapter 136 of the 2010*  
15 *Session Laws of Kansas*, and amendments thereto; and

16 (3) any attempt, conspiracy or criminal solicitation, as defined in  
17 K.S.A. 21-3301, 21-3302 or 21-3303, *prior to their repeal, or section 33,*  
18 *34 or 35 of chapter 136 of the 2010 Session Laws of Kansas*, and  
19 amendments thereto, of an offense defined in this subsection.

20 (i) "Institution of higher education" means any postsecondary school  
21 under the supervision of the Kansas board of regents.

22 Sec. 19. K.S.A. 2010 Supp. 38-2255 is hereby amended to read as  
23 follows: 38-2255. (a) *Considerations*. Prior to entering an order of  
24 disposition, the court shall give consideration to:

- 25 (1) The child's physical, mental and emotional condition;
- 26 (2) the child's need for assistance;
- 27 (3) the manner in which the parent participated in the abuse, neglect  
28 or abandonment of the child;
- 29 (4) any relevant information from the intake and assessment process;  
30 and
- 31 (5) the evidence received at the dispositional hearing.

32 (b) *Custody with a parent*. The court may place the child in the  
33 custody of either of the child's parents subject to terms and conditions  
34 which the court prescribes to assure the proper care and protection of the  
35 child, including, but not limited to:

- 36 (1) Supervision of the child and the parent by a court services officer;
- 37 (2) participation by the child and the parent in available programs  
38 operated by an appropriate individual or agency; and
- 39 (3) any special treatment or care which the child needs for the child's  
40 physical, mental or emotional health and safety.

41 (c) *Removal of a child from custody of a parent*. The court shall not  
42 enter the initial order removing a child from the custody of a parent  
43 pursuant to this section unless the court first finds probable cause that: (1)

1 (A) The child is likely to sustain harm if not immediately removed from  
2 the home;

3 (B) allowing the child to remain in home is contrary to the welfare of  
4 the child; or

5 (C) immediate placement of the child is in the best interest of the  
6 child; and

7 (2) reasonable efforts have been made to maintain the family unit and  
8 prevent the unnecessary removal of the child from the child's home or that  
9 an emergency exists which threatens the safety to the child.

10 (d) *Custody of a child removed from the custody of a parent.* If the  
11 court has made the findings required by subsection (c), the court shall  
12 enter an order awarding custody to a relative of the child or to a person  
13 with whom the child has close emotional ties who shall not be required to  
14 be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated,  
15 and amendments thereto, to any other suitable person, to a shelter facility,  
16 to a youth residential facility or, if the child is 15 years of age or younger,  
17 or 16 or 17 years of age if the child has no identifiable parental or family  
18 resources or shows signs of physical, mental, emotional or sexual abuse, to  
19 the secretary. Custody awarded under this subsection shall continue until  
20 further order of the court.

21 (1) When custody is awarded to the secretary, the secretary shall  
22 consider any placement recommendation by the court and notify the court  
23 of the placement or proposed placement of the child within ~~40~~ 14 days of  
24 the order awarding custody. After providing the parties or interested parties  
25 notice and opportunity to be heard, the court may determine whether the  
26 secretary's placement or proposed placement is contrary to the welfare or  
27 in the best interests of the child. In making that determination the court  
28 shall consider the health and safety needs of the child and the resources  
29 available to meet the needs of children in the custody of the secretary. If  
30 the court determines that the placement or proposed placement is contrary  
31 to the welfare or not in the best interests of the child, the court shall notify  
32 the secretary, who shall then make an alternative placement.

33 (2) The custodian designated under this subsection shall notify the  
34 court in writing at least ~~40~~ 14 days prior to any planned placement with a  
35 parent. The written notice shall state the basis for the custodian's belief that  
36 placement with a parent is no longer contrary to the welfare or best interest  
37 of the child. Upon reviewing the notice, the court may allow the custodian  
38 to proceed with the planned placement or may set the date for a hearing to  
39 determine if the child shall be allowed to return home. If the court sets a  
40 hearing on the matter, the custodian shall not return the child home without  
41 written consent of the court.

42 (3) The court may grant any person reasonable rights to visit the  
43 child upon motion of the person and a finding that the visitation rights

1 would be in the best interests of the child.

2 (4) The court may enter an order restraining any alleged perpetrator  
3 of physical, mental or emotional abuse or sexual abuse of the child from  
4 residing in the child's home; visiting, contacting, harassing or intimidating  
5 the child, other family member or witness; or attempting to visit, contact,  
6 harass or intimidate the child, other family member or witness. Such  
7 restraining order shall be served by personal service pursuant to subsection  
8 (a) of K.S.A. 2010 Supp. 38-2237, and amendments thereto, on any  
9 alleged perpetrator to whom the order is directed.

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

13 (e) *Further determinations regarding a child removed from the home.*  
14 If custody has been awarded under subsection (d) to a person other than a  
15 parent, a permanency plan shall be provided or prepared pursuant to  
16 K.S.A. 2010 Supp. 38-2264, and amendments thereto. If a permanency  
17 plan is provided at the dispositional hearing, the court may determine  
18 whether reintegration is a viable alternative or, if reintegration is not a  
19 viable alternative, whether the child should be placed for adoption or a  
20 permanent custodian appointed. In determining whether reintegration is a  
21 viable alternative, the court shall consider:

22 (1) Whether a parent has been found by a court to have committed  
23 one of the following crimes or to have violated the law of another state  
24 prohibiting such crimes or to have aided and abetted, attempted, conspired  
25 or solicited the commission of one of these crimes: *Capital murder, K.S.A.*  
26 *21-3439, prior to its repeal; aggravated murder, section 2, and*  
27 *amendments thereto; murder in the first degree, K.S.A. 21-3401, prior to*  
28 *its repeal, or section 37 of chapter 136 of the 2010 Session Laws of*  
29 *Kansas, and amendments thereto; ; murder in the second degree, K.S.A.*  
30 *21-3402, prior to its repeal, or section 38 of chapter 136 of the 2010*  
31 *Session Laws of Kansas, and amendments thereto; ~~capital murder, K.S.A.~~*  
32 *~~21-3439, and amendments thereto; ;~~ voluntary manslaughter, K.S.A. 21-*  
33 *3403, prior to its repeal, or section 39 of chapter 136 of the 2010 Session*  
34 *Laws of Kansas, and amendments thereto; ; or a felony battery that*  
35 *resulted in bodily injury;*

36 (2) whether a parent has subjected the child or another child to  
37 aggravated circumstances;

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

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

42 (5) whether the parents have failed to work diligently toward  
43 reintegration;

1 (6) whether the secretary has provided the family with services  
2 necessary for the safe return of the child to the home; and

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

5 (f) *Proceedings if reintegration is not a viable alternative.* If the  
6 court determines that reintegration is not a viable alternative, proceedings  
7 to terminate parental rights and permit placement of the child for adoption  
8 or appointment of a permanent custodian shall be initiated unless the court  
9 finds that compelling reasons have been documented in the case plan why  
10 adoption or appointment of a permanent custodian would not be in the best  
11 interests of the child. If compelling reasons have not been documented, the  
12 county or district attorney shall file a motion within 30 days to terminate  
13 parental rights or a motion to appoint a permanent custodian within 30  
14 days and the court shall hold a hearing on the motion within 90 days of its  
15 filing. No hearing is required when the parents voluntarily relinquish  
16 parental rights or consent to the appointment of a permanent custodian.

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

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

26 (2) If the court has reason to believe that a child is before the court  
27 due, in whole or in part, to the use or misuse of alcohol or a violation of  
28 K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto,  
29 by the child, a parent of the child, or another person responsible for the  
30 care of the child, the court may order the child, parent of the child or other  
31 person responsible for the care of the child to submit to and complete an  
32 alcohol and drug evaluation by a qualified person or agency and comply  
33 with any recommendations. If the evaluation is performed by a  
34 community-based alcohol and drug safety program certified pursuant to  
35 K.S.A. 8-1008, and amendments thereto, the child, parent of the child or  
36 other person responsible for the care of the child shall pay a fee not to  
37 exceed the fee established by that statute. If the court finds that the child  
38 and those legally liable for the child's support are indigent, the fee may be  
39 waived. In no event shall the fee be assessed against the secretary.

40 (3) If child support has been requested and the parent or parents have  
41 a duty to support the child, the court may order one or both parents to pay  
42 child support and, when custody is awarded to the secretary, the court shall  
43 order one or both parents to pay child support. The court shall determine,

1 for each parent separately, whether the parent is already subject to an order  
2 to pay support for the child. If the parent is not presently ordered to pay  
3 support for any child who is subject to the jurisdiction of the court and the  
4 court has personal jurisdiction over the parent, the court shall order the  
5 parent to pay child support in an amount determined under K.S.A. 2010  
6 Supp. 38-2277, and amendments thereto. Except for good cause shown,  
7 the court shall issue an immediate income withholding order pursuant to  
8 K.S.A. 23-4,105 et seq., and amendments thereto, for each parent ordered  
9 to pay support under this subsection, regardless of whether a payor has  
10 been identified for the parent. A parent ordered to pay child support under  
11 this subsection shall be notified, at the hearing or otherwise, that the child  
12 support order may be registered pursuant to K.S.A. 2010 Supp. 38-2279,  
13 and amendments thereto. The parent shall also be informed that, after  
14 registration, the income withholding order may be served on the parent's  
15 employer without further notice to the parent and the child support order  
16 may be enforced by any method allowed by law. Failure to provide this  
17 notice shall not affect the validity of the child support order.

18 Sec. 20. K.S.A. 2010 Supp. 38-2271 is hereby amended to read as  
19 follows: 38-2271. (a) It is presumed in the manner provided in K.S.A. 60-  
20 414, and amendments thereto, that a parent is unfit by reason of conduct or  
21 condition which renders the parent unable to fully care for a child, if the  
22 state establishes, by clear and convincing evidence, that:

23 (1) A parent has previously been found to be an unfit parent in  
24 proceedings under K.S.A. 2010 Supp. 38-2266 et seq., and amendments  
25 thereto, or comparable proceedings under the laws of another jurisdiction;

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

31 (3) on two or more prior occasions a child in the physical custody of  
32 the parent has been adjudicated a child in need of care as defined by  
33 subsection (d)(1),(d)(3), (d)(5) or (d)(11) of K.S.A. 2010 Supp. 38-2202,  
34 and amendments thereto, or comparable proceedings under the laws of  
35 another jurisdiction.

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

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

43 (6) (A) the child has been in an out-of-home placement, under court

1 order for a cumulative total period of two years or longer; (B) the parent  
2 has failed to carry out a reasonable plan, approved by the court, directed  
3 toward reintegration of the child into the parental home; and (C) there is a  
4 substantial probability that the parent will not carry out such plan in the  
5 near future;

6 (7) a parent has been convicted of capital murder, K.S.A. 21-3439,  
7 *prior to its repeal, aggravated murder, section 2*, and amendments thereto,  
8 murder in the first degree, K.S.A. 21-3401, *prior to its repeal, or section*  
9 *37 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments  
10 thereto, murder in the second degree, K.S.A. 21-3402, *prior to its repeal,*  
11 *or section 38 of chapter 136 of the 2010 Session Laws of Kansas*, and  
12 amendments thereto, or voluntary manslaughter, K.S.A. 21-3403, *prior to*  
13 *its repeal, or section 39 of chapter 136 of the 2010 Session Laws of*  
14 *Kansas*, and amendments thereto, or comparable proceedings under the  
15 laws of another jurisdiction or, has been adjudicated a juvenile offender  
16 because of an act which if committed by an adult would be an offense as  
17 provided in this subsection, and the victim of such murder was the other  
18 parent of the child;

19 (8) a parent abandoned or neglected the child after having knowledge  
20 of the child's birth or either parent has been granted immunity from  
21 prosecution for abandonment of the child under subsection (b) of K.S.A.  
22 21-3604, *prior to its repeal, or subsection (d) of section 82 of chapter 136*  
23 *of the 2010 Session Laws of Kansas*, and amendments thereto; or

24 (9) a parent has made no reasonable efforts to support or  
25 communicate with the child after having knowledge of the child's birth;

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

29 (11) a father abandoned the mother after having knowledge of the  
30 pregnancy;

31 (12) a parent has been convicted of rape, K.S.A. 21-3502, *prior to*  
32 *its repeal, or section 67 of chapter 136 of the 2010 Session Laws of*  
33 *Kansas*, and amendments thereto, or comparable proceedings under the  
34 laws of another jurisdiction resulting in the conception of the child; or

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

39 (b) The burden of proof is on the parent to rebut the presumption of  
40 unfitness by a preponderance of the evidence. In the absence of proof that  
41 the parent is presently fit and able to care for the child or that the parent  
42 will be fit and able to care for the child in the foreseeable future, the court  
43 shall terminate parental rights in proceedings pursuant to K.S.A. 2010

1 Supp. 38-2266 et seq., and amendments thereto.

2 Sec. 21. K.S.A. 2010 Supp. 38-2312 is hereby amended to read as  
3 follows: 38-2312. (a) Except as provided in subsection (b), any records or  
4 files specified in this code concerning a juvenile may be expunged upon  
5 application to a judge of the court of the county in which the records or  
6 files are maintained. The application for expungement may be made by the  
7 juvenile, if 18 years of age or older or, if the juvenile is less than 18 years  
8 of age, by the juvenile's parent or next friend.

9 (b) There shall be no expungement of records or files concerning acts  
10 committed by a juvenile which, if committed by an adult, would constitute  
11 a violation of *K.S.A. 21-3439, prior to its repeal, capital murder, section 2,*  
12 *and amendments thereto, aggravated murder, K.S.A. 21-3401, prior to its*  
13 *repeal, or section 37 of chapter 136 of the 2010 Session Laws of Kansas,*  
14 *and amendments thereto, murder in the first degree, K.S.A. 21-3402, prior*  
15 *to its repeal, or section 38 of chapter 136 of the 2010 Session Laws of*  
16 *Kansas, and amendments thereto, murder in the second degree, K.S.A. 21-*  
17 *3403, prior to its repeal, or section 39 of chapter 136 of the 2010 Session*  
18 *Laws of Kansas, and amendments thereto, voluntary manslaughter, K.S.A.*  
19 *21-3404, prior to its repeal, or section 40 of chapter 136 of the 2010*  
20 *Session Laws of Kansas, and amendments thereto, involuntary*  
21 *manslaughter, ~~K.S.A. 21-3439, and amendments thereto, capital murder,~~*  
22 *K.S.A. 21-3442, prior to its repeal, and amendments thereto, involuntary*  
23 *manslaughter while driving under the influence of alcohol or drugs, K.S.A.*  
24 *21-3502, prior to its repeal, or section 67 of chapter 136 of the 2010*  
25 *Session Laws of Kansas, and amendments thereto, rape, K.S.A. 21-3503,*  
26 *prior to its repeal, or subsection (a) of section 70 of chapter 136 of the*  
27 *2010 Session Laws of Kansas, and amendments thereto, indecent liberties*  
28 *with a child, K.S.A. 21-3504, prior to its repeal, or subsection (b) of*  
29 *section 70 of chapter 136 of the 2010 Session Laws of Kansas, and*  
30 *amendments thereto, aggravated indecent liberties with a child, K.S.A. 21-*  
31 *3506, prior to its repeal, or subsection (b) of section 68 of chapter 136 of*  
32 *the 2010 Session Laws of Kansas, and amendments thereto, aggravated*  
33 *criminal sodomy, K.S.A. 21-3510, prior to its repeal, or subsection (a) of*  
34 *section 72 of chapter 136 of the 2010 Session Laws of Kansas, and*  
35 *amendments thereto, indecent solicitation of a child, K.S.A. 21-3511,*  
36 *prior to its repeal, or subsection (b) of section 72 of chapter 136 of the*  
37 *2010 Session Laws of Kansas, and amendments thereto, aggravated*  
38 *indecent solicitation of a child, K.S.A. 21-3516, prior to its repeal, or*  
39 *section 74 of chapter 136 of the 2010 Session Laws of Kansas, and*  
40 *amendments thereto, sexual exploitation, K.S.A. 21-3603, prior to its*  
41 *repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session*  
42 *Laws of Kansas, and amendments thereto, aggravated incest, K.S.A. 21-*  
43 *3608, prior to its repeal, or subsection (a) of section 78 of chapter 136 of*



1 *the 2010 Session Laws of Kansas, and amendments thereto, endangering a*  
2 *child, K.S.A. 21-3608a, prior to its repeal, or subsection (b) of section 78*  
3 *of chapter 136 of the 2010 Session Laws of Kansas, and amendments*  
4 *thereto, aggravated endangering a child, K.S.A. 21-3609, prior to its*  
5 *repeal, or section 79 of chapter 136 of the 2010 Session Laws of Kansas,*  
6 *and amendments thereto, abuse of a child, or which would constitute an*  
7 *attempt to commit a violation of any of the offenses specified in this*  
8 *subsection.*

9 (c) When a petition for expungement is filed, the court shall set a  
10 date for a hearing on the petition and shall give notice thereof to the  
11 county or district attorney. The petition shall state: (1) The juvenile's full  
12 name; (2) the full name of the juvenile as reflected in the court record, if  
13 different than (1); (3) the juvenile's sex and date of birth; (4) the offense  
14 for which the juvenile was adjudicated; (5) the date of the trial; and (6) the  
15 identity of the trial court. Except as otherwise provided by law, a petition  
16 for expungement shall be accompanied by a docket fee in the amount of  
17 \$100. On and after the effective date of this act through June 30, 2011, the  
18 supreme court may impose a charge, not to exceed \$15 per case, to fund  
19 the costs of non-judicial personnel. All petitions for expungement shall be  
20 docketed in the original action. Any person who may have relevant  
21 information about the petitioner may testify at the hearing. The court may  
22 inquire into the background of the petitioner.

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

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

27 (B) since the final discharge of the juvenile, the juvenile has not been  
28 convicted of a felony or of a misdemeanor other than a traffic offense or  
29 adjudicated as a juvenile offender under the revised Kansas juvenile justice  
30 code and no proceedings are pending seeking such a conviction or  
31 adjudication; and

32 (C) the circumstances and behavior of the petitioner warrant  
33 expungement.

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

36 (e) Upon entry of an order expunging records or files, the offense  
37 which the records or files concern shall be treated as if it never occurred,  
38 except that upon conviction of a crime or adjudication in a subsequent  
39 action under this code the offense may be considered in determining the  
40 sentence to be imposed. The petitioner, the court and all law enforcement  
41 officers and other public offices and agencies shall properly reply on  
42 inquiry that no record or file exists with respect to the juvenile. Inspection  
43 of the expunged files or records thereafter may be permitted by order of

1 the court upon petition by the person who is the subject thereof. The  
2 inspection shall be limited to inspection by the person who is the subject of  
3 the files or records and the person's designees.

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

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

12 (h) Nothing in this section shall be construed to prohibit the  
13 maintenance of information relating to an offense after records or files  
14 concerning the offense have been expunged if the information is kept in a  
15 manner that does not enable identification of the juvenile.

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

19 (j) Whenever the records or files of any adjudication have been  
20 expunged under the provisions of this section, the custodian of the records  
21 or files of adjudication relating to that offense shall not disclose the  
22 existence of such records or files, except when requested by:

23 (1) The person whose record was expunged;

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

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

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

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

37 (6) the Kansas lottery, and the request is accompanied by a statement  
38 that the request is being made to aid in determining qualifications for  
39 employment with the Kansas lottery or for work in sensitive areas within  
40 the Kansas lottery as deemed appropriate by the executive director of the  
41 Kansas lottery;

42 (7) the governor or the Kansas racing commission, or a designee of  
43 the commission, and the request is accompanied by a statement that the

1 request is being made to aid in determining qualifications for executive  
2 director of the commission, for employment with the commission, for  
3 work in sensitive areas in parimutuel racing as deemed appropriate by the  
4 executive director of the commission or for licensure, renewal of licensure  
5 or continued licensure by the commission; or

6 (8) the Kansas sentencing commission.

7 Sec. 22. K.S.A. 2010 Supp. 38-2365 is hereby amended to read as  
8 follows: 38-2365. (a) When a juvenile offender has been placed in the  
9 custody of the commissioner, the commissioner shall have a reasonable  
10 time to make a placement. If the juvenile offender has not been placed, any  
11 party who believes that the amount of time elapsed without placement has  
12 exceeded a reasonable time may file a motion for review with the court. In  
13 determining what is a reasonable amount of time, matters considered by  
14 the court shall include, but not be limited to, the nature of the underlying  
15 offense, efforts made for placement of the juvenile offender and the  
16 availability of a suitable placement. The commissioner shall notify the  
17 court, the juvenile's attorney of record and the juvenile's parent, in writing,  
18 of the initial placement and any subsequent change of placement as soon  
19 as the placement has been accomplished. The notice to the juvenile  
20 offender's parent shall be sent to such parent's last known address or  
21 addresses. The court shall have no power to direct a specific placement by  
22 the commissioner, but may make recommendations to the commissioner.  
23 The commissioner may place the juvenile offender in an institution  
24 operated by the commissioner, a youth residential facility or any other  
25 appropriate placement. If the court has recommended an out-of-home  
26 placement, the commissioner may not return the juvenile offender to the  
27 home from which removed without first notifying the court of the plan.

28 (b) If a juvenile is in the custody of the commissioner, the  
29 commissioner shall prepare and present a permanency plan at sentencing  
30 or within 30 days thereafter. If a permanency plan is already in place under  
31 a child in need of care proceeding, the court may adopt the plan under the  
32 present proceeding. The written permanency plan shall provide for  
33 reintegration of the juvenile into such juvenile's family or, if reintegration  
34 is not a viable alternative, for other permanent placement of the juvenile.  
35 Reintegration may not be a viable alternative when: (1) The parent has  
36 been found by a court to have committed *capital murder, K.S.A. 21-3439,*  
37 *prior to its repeal, aggravated murder, section 2, and amendments thereto,*  
38 *murder in the first degree, K.S.A. 21-3401, prior to its repeal, or section*  
39 *37 of chapter 136 of the 2010 Session Laws of Kansas, and amendments*  
40 *thereto, murder in the second degree, K.S.A. 21-3402, prior to its repeal,*  
41 *or section 38 of chapter 136 of the 2010 Session Laws of Kansas, and*  
42 *amendments thereto, ~~capital murder, K.S.A. 21-3439, and amendments~~*  
43 *thereto, voluntary manslaughter, K.S.A. 21-3403, prior to its repeal, or*

1 *section 39 of chapter 136 of the 2010 Session Laws of Kansas*, and  
2 amendments thereto, of a child or violated a law of another state which  
3 prohibits such murder or manslaughter of a child;

4 (2) the parent aided or abetted, attempted, conspired or solicited to  
5 commit such murder or voluntary manslaughter of a child;

6 (3) the parent committed a felony battery that resulted in bodily  
7 injury to the juvenile who is the subject of this proceeding or another  
8 child;

9 (4) the parent has subjected the juvenile who is the subject of this  
10 proceeding or another child to aggravated circumstances as defined in  
11 K.S.A. 38-1502, and amendments thereto;

12 (5) the parental rights of the parent to another child have been  
13 terminated involuntarily; or

14 (6) the juvenile has been in extended out-of-home placement as  
15 defined in K.S.A. 2010 Supp. 38-2202, and amendments thereto.

16 (c) If the juvenile is placed in the custody of the commissioner, the  
17 plan shall be prepared and submitted by the commissioner. If the juvenile  
18 is placed in the custody of a facility or person other than the commissioner,  
19 the plan shall be prepared and submitted by a court services officer. If the  
20 permanency goal is reintegration into the family, the permanency plan  
21 shall include measurable objectives and time schedules for reintegration.

22 (d) During the time a juvenile remains in the custody of the  
23 commissioner, the commissioner shall submit to the court, at least every  
24 six months, a written report of the progress being made toward the goals of  
25 the permanency plan submitted pursuant to subsections (b) and (c) and the  
26 specific actions taken to achieve the goals of the permanency plan. If the  
27 juvenile is placed in foster care, the court may request the foster parent to  
28 submit to the court, at least every six months, a report in regard to the  
29 juvenile's adjustment, progress and condition. Such report shall be made a  
30 part of the juvenile's court social file. The court shall review the plan  
31 submitted by the commissioner and the report, if any, submitted by the  
32 foster parent and determine whether reasonable efforts and progress have  
33 been made to achieve the goals of the permanency plan. If the court  
34 determines that progress is inadequate or that the permanency plan is no  
35 longer viable, the court shall hold a hearing pursuant to subsection (e).

36 (e) When the commissioner has custody of the juvenile, a  
37 permanency hearing shall be held no more than 12 months after the  
38 juvenile is first placed outside such juvenile's home and at least every 12  
39 months thereafter. Juvenile offenders who have been in extended out-of-  
40 home placement shall be provided a permanency hearing within 30 days of  
41 a request from the commissioner. The court may appoint a *guardian ad*  
42 *litem* to represent the juvenile offender at the permanency hearing. At each  
43 hearing, the court shall make a written finding whether reasonable efforts

1 have been made to accomplish the permanency goal and whether  
2 continued out-of-home placement is necessary for the juvenile's safety.

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

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

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

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

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

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

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

43 (2) services set out in the case plan necessary for the safe return of

1 the juvenile have not been made available to the parent with whom  
2 reintegration is planned; or

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

12 Sec. 23. K.S.A. 2010 Supp. 39-970 is hereby amended to read as  
13 follows: 39-970. (a) (1) No person shall knowingly operate an adult care  
14 home if, in the adult care home, there works any person who has been  
15 convicted of or has been adjudicated a juvenile offender because of having  
16 committed an act which if done by an adult would constitute the  
17 commission of capital murder, pursuant to K.S.A. 21-3439, *prior to its*  
18 *repeal, aggravated murder, pursuant to section 2, and amendments thereto,*  
19 *first degree murder, pursuant to K.S.A. 21-3401, prior to its repeal, or*  
20 *section 37 of chapter 136 of the 2010 Session Laws of Kansas, and*  
21 *amendments thereto, second degree murder, pursuant to subsection (a) of*  
22 *K.S.A. 21-3402, prior to its repeal, or subsection (a) of section 38 of*  
23 *chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto,*  
24 *voluntary manslaughter, pursuant to K.S.A. 21-3403, prior to its repeal, or*  
25 *section 39 of chapter 136 of the 2010 Session Laws of Kansas, and*  
26 *amendments thereto, assisting suicide pursuant to K.S.A. 21-3406, prior to*  
27 *its repeal, or section 42 of chapter 136 of the 2010 Session Laws of*  
28 *Kansas, and amendments thereto, mistreatment of a dependent adult,*  
29 *pursuant to K.S.A. 21-3437, prior to its repeal, or section 52 of chapter*  
30 *136 of the 2010 Session Laws of Kansas, and amendments thereto, rape,*  
31 *pursuant to K.S.A. 21-3502, prior to its repeal, or section 67 of chapter*  
32 *136 of the 2010 Session Laws of Kansas, and amendments thereto,*  
33 *indecent liberties with a child, pursuant to K.S.A. 21-3503, prior to its*  
34 *repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session*  
35 *Laws of Kansas, and amendments thereto, aggravated indecent liberties*  
36 *with a child, pursuant to K.S.A. 21-3504, prior to its repeal, or subsection*  
37 *(b) of section 70 of chapter 136 of the 2010 Session Laws of Kansas, and*  
38 *amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-*  
39 *3506, prior to its repeal, or subsection (b) of section 68 of chapter 136 of*  
40 *the 2010 Session Laws of Kansas, and amendments thereto, indecent*  
41 *solicitation of a child, pursuant to K.S.A. 21-3510, prior to its repeal, or*  
42 *subsection (a) of section 72 of chapter 136 of the 2010 Session Laws of*  
43 *Kansas, and amendments thereto, aggravated indecent solicitation of a*

1 child, pursuant to K.S.A. 21-3511, *prior to its repeal, or subsection (b) of*  
2 *section 72 of chapter 136 of the 2010 Session Laws of Kansas, and*  
3 *amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-*  
4 *3516, prior to its repeal, or section 74 of chapter 136 of the 2010 Session*  
5 *Laws of Kansas, and amendments thereto, sexual battery, pursuant to*  
6 *K.S.A. 21-3517, prior to its repeal, or subsection (a) of section 69 of*  
7 *chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto,*  
8 *or aggravated sexual battery, pursuant to K.S.A. 21-3518, prior to its*  
9 *repeal, or subsection (b) of section 69 of chapter 136 of the 2010 Session*  
10 *Laws of Kansas, and amendments thereto, an attempt to commit any of the*  
11 *crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, prior to*  
12 *its repeal, or section 33 of chapter 136 of the 2010 Session Laws of*  
13 *Kansas, and amendments thereto, a conspiracy to commit any of the*  
14 *crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, prior to*  
15 *its repeal, or section 34 of chapter 136 of the 2010 Session Laws of*  
16 *Kansas, and amendments thereto, or criminal solicitation of any of the*  
17 *crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, prior to*  
18 *its repeal, or section 35 of chapter 136 of the 2010 Session Laws of*  
19 *Kansas, and amendments thereto, or similar statutes of other states or the*  
20 *federal government. The provisions of subsection (a)(2)(C) shall not apply*  
21 *to any person who is employed by an adult care home on the effective date*  
22 *of this act July 1, 2010 and while continuously employed by the same adult*  
23 *care home.*

24 (2) A person operating an adult care home may employ an applicant  
25 who has been convicted of any of the following if five or more years have  
26 elapsed since the applicant satisfied the sentence imposed or was  
27 discharged from probation, a community correctional services program,  
28 parole, postrelease supervision, conditional release or a suspended  
29 sentence; or if five or more years have elapsed since the applicant has been  
30 finally discharged from the custody of the commissioner of juvenile justice  
31 or from probation or has been adjudicated a juvenile offender, whichever  
32 time is longer: A felony conviction for a crime which is described in: (A)  
33 Article 34 of chapter 21 of the Kansas Statutes Annotated, *prior to their*  
34 *repeal, or sections 36 through 64, 174, 210 or 211 of chapter 136 of the*  
35 *2010 Session Laws of Kansas, and amendments thereto, except those*  
36 *crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the*  
37 *Kansas Statutes Annotated, prior to their repeal, or sections 65 through 86*  
38 *or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas,*  
39 *and amendments thereto, except those crimes listed in subsection (a)(1)*  
40 *and K.S.A. 21-3605, prior to its repeal, or section 83 of chapter 136 of the*  
41 *2010 Session Laws of Kansas, and amendments thereto; (C) K.S.A. 21-*  
42 *3701, prior to its repeal, or section 87 of chapter 136 of the 2010 Session*  
43 *Laws of Kansas, and amendments thereto; (D) an attempt to commit any of*

1 the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301,  
2 *prior to its repeal, or section 33 of chapter 136 of the 2010 Session Laws*  
3 *of Kansas*, and amendments thereto; (E) a conspiracy to commit any of the  
4 crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302, *prior to its*  
5 *repeal, or section 34 of chapter 136 of the 2010 Session Laws of Kansas*,  
6 and amendments thereto; (F) criminal solicitation of any of the crimes  
7 listed in subsection (a)(2) pursuant to K.S.A. 21-3303, *prior to its repeal,*  
8 *or section 35 of chapter 136 of the 2010 Session Laws of Kansas*, and  
9 amendments thereto; or (G) similar statutes of other states or the federal  
10 government.

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

16 (c) The secretary of health and environment shall have access to any  
17 criminal history record information in the possession of the Kansas bureau  
18 of investigation regarding any criminal history information, convictions  
19 under K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their repeal, or*  
20 *section 52, subsection (a) of section 69 and section 87 of chapter 136 of*  
21 *the 2010 Session Laws of Kansas*, and amendments thereto, adjudications  
22 of a juvenile offender which if committed by an adult would have been a  
23 felony conviction, and adjudications of a juvenile offender for an offense  
24 described in K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their repeal,*  
25 *or section 52, subsection (a) of section 69 and section 87 of chapter 136 of*  
26 *the 2010 Session Laws of Kansas*, and amendments thereto, concerning  
27 persons working in an adult care home. The secretary shall have access to  
28 these records for the purpose of determining whether or not the adult care  
29 home meets the requirements of this section. The Kansas bureau of  
30 investigation may charge to the department of health and environment a  
31 reasonable fee for providing criminal history record information under this  
32 subsection.

33 (d) For the purpose of complying with this section, the operator of an  
34 adult care home shall request from the department of health and  
35 environment information regarding any criminal history information,  
36 convictions under K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their*  
37 *repeal, or section 52, subsection (a) of section 69 and section 87 of*  
38 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto,  
39 adjudications of a juvenile offender which if committed by an adult would  
40 have been a felony conviction, and adjudications of a juvenile offender for  
41 an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, *prior to*  
42 *their repeal, or section 52, subsection (a) of section 69 and section 87 of*  
43 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto,



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

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

29 (f) (1) The secretary of health and environment shall provide each  
30 operator requesting information under this section with the criminal  
31 history record information concerning any criminal history information  
32 and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, *prior to*  
33 *their repeal, or section 52, subsection (a) of section 69 and section 87 of*  
34 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto,  
35 in writing and within three working days of receipt of such information  
36 from the Kansas bureau of investigation. The criminal history record  
37 information shall be provided regardless of whether the information  
38 discloses that the subject of the request has been convicted of an offense  
39 enumerated in subsection (a).

40 (2) When an offense enumerated in subsection (a) exists in the  
41 criminal history record information, and when further confirmation  
42 regarding criminal history record information is required from the  
43 appropriate court of jurisdiction or Kansas department of corrections, the

1 secretary shall notify each operator that requests information under this  
2 section in writing and within three working days of receipt from the  
3 Kansas bureau of investigation that further confirmation is required. The  
4 secretary shall provide to the operator requesting information under this  
5 section information in writing and within three working days of receipt of  
6 such information from the appropriate court of jurisdiction or Kansas  
7 department of corrections regarding confirmation regarding the criminal  
8 history record information.

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

14 (4) The secretary of health and environment shall not provide each  
15 operator requesting information under this section with the juvenile  
16 criminal history record information which relates to a person subject to a  
17 background check as is provided by K.S.A. 2010 Supp. 38-2326, and  
18 amendments thereto, except for adjudications of a juvenile offender for an  
19 offense described in K.S.A. 21-3701, *prior to its repeal, or section 87 of*  
20 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.  
21 The secretary shall notify the operator that requested the information, in  
22 writing and within three working days of receipt of such information from  
23 the Kansas bureau of investigation, whether juvenile criminal history  
24 record information received pursuant to this section reveals that the  
25 operator would or would not be prohibited by this section from employing  
26 the subject of the request for information and whether such information  
27 contains adjudications of a juvenile offender for an offense described in  
28 K.S.A. 21-3701, *prior to its repeal, or section 87 of chapter 136 of the*  
29 *2010 Session Laws of Kansas*, and amendments thereto.

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

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

40 (h) A person who volunteers in an adult care home shall not be  
41 subject to the provisions of this section because of such volunteer activity.

42 (i) An operator may request from the department of health and  
43 environment criminal history information on persons employed under

1 subsections (g) and (h).

2 (j) No person who has been employed by the same adult care home  
3 since July 1, 1992, shall be subject to the provisions of this section while  
4 employed by such adult care home.

5 (k) The operator of an adult care home shall not be required under  
6 this section to conduct a background check on an applicant for  
7 employment with the adult care home if the applicant has been the subject  
8 of a background check under this act within one year prior to the  
9 application for employment with the adult care home. The operator of an  
10 adult care home where the applicant was the subject of such background  
11 check may release a copy of such background check to the operator of an  
12 adult care home where the applicant is currently applying.

13 (l) No person who is in the custody of the secretary of corrections  
14 and who provides services, under direct supervision in nonpatient areas, on  
15 the grounds or other areas designated by the superintendent of the Kansas  
16 soldiers' home or the Kansas veterans' home shall be subject to the  
17 provisions of this section while providing such services.

18 (m) For purposes of this section, the Kansas bureau of investigation  
19 shall report any criminal history information, convictions under K.S.A. 21-  
20 3437, 21-3517 and 21-3701, *prior to their repeal, or section 52,*  
21 *subsection (a) of section 69 and section 87 of chapter 136 of the 2010*  
22 *Session Laws of Kansas*, and amendments thereto, adjudications of a  
23 juvenile offender which if committed by an adult would have been a  
24 felony conviction, and adjudications of a juvenile offender for an offense  
25 described in K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their repeal,*  
26 *or section 52, subsection (a) of section 69 and section 87 of chapter 136 of*  
27 *the 2010 Session Laws of Kansas*, and amendments thereto, to the  
28 secretary of health and environment when a background check is  
29 requested.

30 Sec. 24. K.S.A. 2010 Supp. 65-5117 is hereby amended to read as  
31 follows: 65-5117. (a) (1) No person shall knowingly operate a home health  
32 agency if, for the home health agency, there works any person who has  
33 been convicted of or has been adjudicated a juvenile offender because of  
34 having committed an act which if done by an adult would constitute the  
35 commission of capital murder, pursuant to K.S.A. 21-3439, *prior to its*  
36 *repeal, aggravated murder, pursuant to section 2,* and amendments thereto,  
37 first degree murder, pursuant to K.S.A. 21-3401, *prior to its repeal, or*  
38 *section 37 of chapter 136 of the 2010 Session Laws of Kansas*, and  
39 amendments thereto, second degree murder, pursuant to subsection (a) of  
40 K.S.A. 21-3402, *prior to its repeal, or subsection (a) of section 38 of*  
41 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto,  
42 voluntary manslaughter, pursuant to K.S.A. 21-3403, *prior to its repeal, or*  
43 *section 39 of chapter 136 of the 2010 Session Laws of Kansas*, and

1 amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406, *prior*  
2 *to its repeal, or section 42 of chapter 136 of the 2010 Session Laws of*  
3 *Kansas*, and amendments thereto, mistreatment of a dependent adult,  
4 pursuant to K.S.A. 21-3437, *prior to its repeal, or section 52 of chapter*  
5 *136 of the 2010 Session Laws of Kansas*, and amendments thereto, rape,  
6 pursuant to K.S.A. 21-3502, *prior to its repeal, or section 67 of chapter*  
7 *136 of the 2010 Session Laws of Kansas*, and amendments thereto,  
8 indecent liberties with a child, pursuant to K.S.A. 21-3503, *prior to its*  
9 *repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session*  
10 *Laws of Kansas*, and amendments thereto, aggravated indecent liberties  
11 with a child, pursuant to K.S.A. 21-3504, *prior to its repeal, or subsection*  
12 *(b) of section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and  
13 amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-  
14 3506, *prior to its repeal, or subsection (b) of section 68 of chapter 136 of*  
15 *the 2010 Session Laws of Kansas*, and amendments thereto, indecent  
16 solicitation of a child, pursuant to K.S.A. 21-3510, *prior to its repeal, or*  
17 *subsection (a) of section 72 of chapter 136 of the 2010 Session Laws of*  
18 *Kansas*, and amendments thereto, aggravated indecent solicitation of a  
19 child, pursuant to K.S.A. 21-3511, *prior to its repeal, or subsection (b) of*  
20 *section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and  
21 amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-  
22 3516, *prior to its repeal, or section 74 of chapter 136 of the 2010 Session*  
23 *Laws of Kansas*, and amendments thereto, sexual battery, pursuant to  
24 K.S.A. 21-3517, *prior to its repeal, or subsection (a) of section 69 of*  
25 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto,  
26 or aggravated sexual battery, pursuant to K.S.A. 21-3518, *prior to its*  
27 *repeal, or subsection (b) of section 69 of chapter 136 of the 2010 Session*  
28 *Laws of Kansas*, and amendments thereto, an attempt to commit any of the  
29 crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, *prior to*  
30 *its repeal, or section 33 of chapter 136 of the 2010 Session Laws of*  
31 *Kansas*, and amendments thereto, a conspiracy to commit any of the  
32 crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, *prior to*  
33 *its repeal, or section 34 of chapter 136 of the 2010 Session Laws of*  
34 *Kansas*, and amendments thereto, or criminal solicitation of any of the  
35 crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, *prior to*  
36 *its repeal, or section 35 of chapter 136 of the 2010 Session Laws of*  
37 *Kansas*, and amendments thereto, or similar statutes of other states or the  
38 federal government. The provisions of subsection (a)(2)(C) shall not apply  
39 to any person who is employed by a home health agency on ~~the effective~~  
40 ~~date of this act~~ July 1, 2010 and while continuously employed by the same  
41 home health agency.

42 (2) A person operating a home health agency may employ an  
43 applicant who has been convicted of any of the following if five or more

1 years have elapsed since the applicant satisfied the sentence imposed or  
2 was discharged from probation, a community correctional services  
3 program, parole, postrelease supervision, conditional release or a  
4 suspended sentence; or if five or more years have elapsed since the  
5 applicant has been finally discharged from the custody of the  
6 commissioner of juvenile justice or from probation or has been adjudicated  
7 a juvenile offender, whichever time is longer: A felony conviction for a  
8 crime which is described in: (A) Article 34 of chapter 21 of the Kansas  
9 Statutes Annotated, *prior to their repeal, or sections 36 through 64, 174,*  
10 *210 or 211 of chapter 136 of the 2010 Session Laws of Kansas,* and  
11 amendments thereto, except those crimes listed in subsection (a)(1); (B)  
12 articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated, *prior to*  
13 *their repeal, or sections 65 through 86 or 229 through 231 of chapter 136*  
14 *of the 2010 Session Laws of Kansas,* and amendments thereto, except those  
15 crimes listed in subsection (a)(1) and K.S.A. 21-3605, *prior to its repeal,*  
16 *or section 83 of chapter 136 of the 2010 Session Laws of Kansas,* and  
17 amendments thereto; (C) K.S.A. 21-3701, *prior to its repeal, or section 87*  
18 *of chapter 136 of the 2010 Session Laws of Kansas,* and amendments  
19 thereto; (D) an attempt to commit any of the crimes listed in this  
20 subsection (a)(2) pursuant to K.S.A. 21-3301, *prior to its repeal, or*  
21 *section 33 of chapter 136 of the 2010 Session Laws of Kansas,* and  
22 amendments thereto; (E) a conspiracy to commit any of the crimes listed  
23 in subsection (a)(2) pursuant to K.S.A. 21-3302, *prior to its repeal, or*  
24 *section 34 of chapter 136 of the 2010 Session Laws of Kansas,* and  
25 amendments thereto; (F) criminal solicitation of any of the crimes listed in  
26 subsection (a)(2) pursuant to K.S.A. 21-3303, *prior to its repeal, or*  
27 *section 35 of chapter 136 of the 2010 Session Laws of Kansas,* and  
28 amendments thereto; or (G) similar statutes of other states or the federal  
29 government.

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

35 (c) The secretary of health and environment shall have access to any  
36 criminal history record information in the possession of the Kansas bureau  
37 of investigation regarding any criminal history information, convictions  
38 under K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their repeal, or*  
39 *section 52, subsection (a) of section 69 and section 87 of chapter 136 of*  
40 *the 2010 Session Laws of Kansas,* and amendments thereto, adjudications  
41 of a juvenile offender which if committed by an adult would have been a  
42 felony conviction, and adjudications of a juvenile offender for an offense  
43 described in K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their repeal,*

1 or section 52, subsection (a) of section 69 and section 87 of chapter 136 of  
2 the 2010 Session Laws of Kansas, and amendments thereto, concerning  
3 persons working for a home health agency. The secretary shall have access  
4 to these records for the purpose of determining whether or not the home  
5 health agency meets the requirements of this section. The Kansas bureau  
6 of investigation may charge to the department of health and environment a  
7 reasonable fee for providing criminal history record information under this  
8 subsection.

9 (d) For the purpose of complying with this section, the operator of a  
10 home health agency shall request from the department of health and  
11 environment information regarding any criminal history information,  
12 convictions under K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their*  
13 *repeal, or section 52, subsection (a) of section 69 and section 87 of*  
14 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto,  
15 adjudications of a juvenile offender which if committed by an adult would  
16 have been a felony conviction, and adjudications of a juvenile offender for  
17 an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, *prior to*  
18 *their repeal, or section 52, subsection (a) of section 69 and section 87 of*  
19 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto,  
20 and which relates to a person who works for the home health agency or is  
21 being considered for employment by the home health agency, for the  
22 purpose of determining whether such person is subject to the provisions of  
23 this section. For the purpose of complying with this section, information  
24 relating to convictions and adjudications by the federal government or to  
25 convictions and adjudications in states other than Kansas shall not be  
26 required until such time as the secretary of health and environment  
27 determines the search for such information could reasonably be performed  
28 and the information obtained within a two-week period. For the purpose of  
29 complying with this section, the operator of a home health agency shall  
30 receive from any employment agency which provides employees to work  
31 for the home health agency written certification that such employees are  
32 not prohibited from working for the home health agency under this  
33 section. For the purpose of complying with this section, a person who  
34 operates a home health agency may hire an applicant for employment on a  
35 conditional basis pending the results from the department of health and  
36 environment of a request for information under this subsection. No home  
37 health agency, the operator or employees of a home health agency or an  
38 employment agency, or the operator or employees of an employment  
39 agency, which provides employees to work for the home health agency  
40 shall be liable for civil damages resulting from any decision to employ, to  
41 refuse to employ or to discharge from employment any person based on  
42 such home health agency's compliance with the provisions of this section  
43 if such home health agency or employment agency acts in good faith to

1 comply with this section.

2 (e) The secretary of health and environment shall charge each person  
3 requesting information under this section a fee equal to cost, not to exceed  
4 \$10, for each name about which an information request has been submitted  
5 under this section.

6 (f) (1) The secretary of health and environment shall provide each  
7 operator requesting information under this section with the criminal  
8 history record information concerning any criminal history information  
9 and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, *prior to*  
10 *their repeal, or section 52, subsection (a) of section 69 and section 87 of*  
11 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto,  
12 in writing and within three working days of receipt of such information  
13 from the Kansas bureau of investigation. The criminal history record  
14 information shall be provided regardless of whether the information  
15 discloses that the subject of the request has been convicted of an offense  
16 enumerated in subsection (a).

17 (2) When an offense enumerated in subsection (a) exists in the  
18 criminal history record information, and when further confirmation  
19 regarding criminal history record information is required from the  
20 appropriate court of jurisdiction or Kansas department of corrections, the  
21 secretary shall notify each operator that requests information under this  
22 section in writing and within three working days of receipt from the  
23 Kansas bureau of investigation that further confirmation is required. The  
24 secretary shall provide to the operator requesting information under this  
25 section information in writing and within three working days of receipt of  
26 such information from the appropriate court of jurisdiction or Kansas  
27 department of corrections regarding confirmation regarding the criminal  
28 history record information.

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

34 (4) The secretary of health and environment shall not provide each  
35 operator requesting information under this section with the juvenile  
36 criminal history record information which relates to a person subject to a  
37 background check as is provided by K.S.A. 2010 Supp. 38-2326, and  
38 amendments thereto, except for adjudications of a juvenile offender for an  
39 offense described in K.S.A. 21-3701, *prior to its repeal, or section 87 of*  
40 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.  
41 The secretary shall notify the operator that requested the information, in  
42 writing and within three working days of receipt of such information from  
43 the Kansas bureau of investigation, whether juvenile criminal history

1 record information received pursuant to this section reveals that the  
2 operator would or would not be prohibited by this section from employing  
3 the subject of the request for information and whether such information  
4 contains adjudications of a juvenile offender for an offense described in  
5 K.S.A. 21-3701, *prior to its repeal, or section 87 of chapter 136 of the*  
6 *2010 Session Laws of Kansas*, and amendments thereto.

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

12 (g) No person who works for a home health agency and who is  
13 currently licensed or registered by an agency of this state to provide  
14 professional services in this state and who provides such services as part of  
15 the work which such person performs for the home health agency shall be  
16 subject to the provisions of this section.

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

20 (i) An operator may request from the department of health and  
21 environment criminal history information on persons employed under  
22 subsections (g) and (h).

23 (j) No person who has been employed by the same home health  
24 agency since July 1, 1992, shall be subject to the requirements of this  
25 section while employed by such home health agency.

26 (k) The operator of a home health agency shall not be required under  
27 this section to conduct a background check on an applicant for  
28 employment with the home health agency if the applicant has been the  
29 subject of a background check under this act within one year prior to the  
30 application for employment with the home health agency. The operator of  
31 a home health agency where the applicant was the subject of such  
32 background check may release a copy of such background check to the  
33 operator of a home health agency where the applicant is currently  
34 applying.

35 (l) For purposes of this section, the Kansas bureau of investigation  
36 shall only report felony convictions, convictions under K.S.A. 21-3437,  
37 21-3517 and 21-3701, *prior to their repeal, or section 52, subsection (a) of*  
38 *section 69 and section 87 of chapter 136 of the 2010 Session Laws of*  
39 *Kansas*, and amendments thereto, adjudications of a juvenile offender  
40 which if committed by an adult would have been a felony conviction, and  
41 adjudications of a juvenile offender for an offense described in K.S.A. 21-  
42 3437, 21-3517 and 21-3701, *prior to their repeal, or section 52,*  
43 *subsection (a) of section 69 and section 87 of chapter 136 of the 2010*



1 *Session Laws of Kansas*, and amendments thereto, to the secretary of  
2 health and environment when a background check is requested.

3 (m) This section shall be part of and supplemental to the provisions  
4 of article 51 of chapter 65 of the Kansas Statutes Annotated ~~and acts~~  
5 ~~amendatory thereof or supplemental thereto, and amendments thereto.~~

6 Sec. 25. K.S.A. 2010 Supp. 72-1397 is hereby amended to read as  
7 follows: 72-1397. (a) The state board of education shall not knowingly  
8 issue a license to or renew the license of any person who has been  
9 convicted of:

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

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

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

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

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

26 (6) indecent solicitation of a child, as defined in K.S.A. 21-3510,  
27 *prior to its repeal, or subsection (a) of section 72 of chapter 136 of the*  
28 *2010 Session Laws of Kansas*, and amendments thereto;

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

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

35 (9) aggravated incest, as defined in K.S.A. 21-3603, *prior to its*  
36 *repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session*  
37 *Laws of Kansas*, and amendments thereto;

38 (10) aggravated endangering a child, as defined in K.S.A. 21-3608a,  
39 *prior to its repeal, or subsection (b) of section 78 of chapter 136 of the*  
40 *2010 Session Laws of Kansas*, and amendments thereto;

41 (11) abuse of a child, as defined in K.S.A. 21-3609, *prior to its*  
42 *repeal, or section 79 of chapter 136 of the 2010 Session Laws of Kansas*,  
43 and amendments thereto;

1 (12) capital murder, as defined in K.S.A. 21-3439, *prior to its repeal,*  
2 *or aggravated murder, as defined in section 2,* and amendments thereto;

3 (13) murder in the first degree, as defined in K.S.A. 21-3401, *prior*  
4 *to its repeal, or section 37 of chapter 136 of the 2010 Session Laws of*  
5 *Kansas,* and amendments thereto;

6 (14) murder in the second degree, as defined in K.S.A. 21-3402,  
7 *prior to its repeal, or section 38 of chapter 136 of the 2010 Session Laws*  
8 *of Kansas,* and amendments thereto;

9 (15) voluntary manslaughter, as defined in K.S.A. 21-3403, *prior to*  
10 *its repeal, or section 39 of chapter 136 of the 2010 Session Laws of*  
11 *Kansas,* and amendments thereto;

12 (16) involuntary manslaughter, as defined in K.S.A. 21-3404, *prior*  
13 *to its repeal, or section 40 of chapter 136 of the 2010 Session Laws of*  
14 *Kansas,* and amendments thereto;

15 (17) involuntary manslaughter while driving under the influence of  
16 alcohol or drugs, as defined in K.S.A. 21-3442, ~~and amendments thereto~~  
17 *prior to its repeal;*

18 (18) sexual battery, as defined in K.S.A. 21-3517, *prior to its repeal,*  
19 *or subsection (a) of section 69 of chapter 136 of the 2010 Session Laws of*  
20 *Kansas,* and amendments thereto, when, at the time the crime was  
21 committed, the victim was less than 18 years of age or a student of the  
22 person committing such crime;

23 (19) aggravated sexual battery, as defined in K.S.A. 21-3518, *prior*  
24 *to its repeal, or subsection (b) of section 69 of chapter 136 of the 2010*  
25 *Session Laws of Kansas,* and amendments thereto;

26 (20) attempt under K.S.A. 21-3301, *prior to its repeal, or section 33*  
27 *of chapter 136 of the 2010 Session Laws of Kansas,* and amendments  
28 thereto, to commit any act specified in this subsection;

29 (21) conspiracy under K.S.A. 21-3302, *prior to its repeal, or section*  
30 *34 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments  
31 thereto, to commit any act specified in this subsection;

32 (22) an act in another state or by the federal government that is  
33 comparable to any act described in this subsection; or

34 (23) an offense in effect at any time prior to the effective date of this  
35 act that is comparable to an offense as provided in this subsection.

36 (b) Except as provided in subsection (c), the state board of education  
37 shall not knowingly issue a license to or renew the license of any person  
38 who has been convicted of, or has entered into a criminal diversion  
39 agreement after having been charged with:

40 (1) A felony under K.S.A. 2010 Supp. 21-36a01 through 21-36a17,  
41 and amendments thereto, or any felony violation of any provision of the  
42 uniform controlled substances act prior to July 1, 2009;

43 (2) a felony described in any section of article 34 of chapter 21 of the

1 Kansas Statutes Annotated, *prior to their repeal, or sections 36 through*  
2 *64, 174, 210 or 211 of chapter 136 of the 2010 Session Laws of Kansas,*  
3 *and amendments thereto, other than an act specified in subsection (a), or a*  
4 *battery, as described in K.S.A. 21-3412, prior to its repeal, or subsection*  
5 *(a) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and*  
6 *amendments thereto, or domestic battery, as described in K.S.A. 21-3412a,*  
7 *prior to its repeal, or section 49 of chapter 136 of the 2010 Session Laws*  
8 *of Kansas, and amendments thereto, if the victim is a minor or student;*

9 (3) a felony described in any section of article 35 of chapter 21 of the  
10 Kansas Statutes Annotated, *prior to their repeal, or sections 65 through 77*  
11 *or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas,*  
12 *and amendments thereto, other than an act specified in subsection (a);*

13 (4) any act described in any section of article 36 of chapter 21 of the  
14 Kansas Statutes Annotated, *prior to their repeal, or sections 78 through 86*  
15 *of chapter 136 of the 2010 Session Laws of Kansas, and amendments*  
16 *thereto, other than an act specified in subsection (a);*

17 (5) a felony described in article 37 of chapter 21 of the Kansas  
18 Statutes Annotated, *prior to their repeal, or sections 87 through 125 or*  
19 *subsection (a)(6) of section 223 of chapter 136 of the 2010 Session Laws*  
20 *of Kansas, and amendments thereto;*

21 (6) promoting obscenity, as described in K.S.A. 21-4301, *prior to its*  
22 *repeal, or subsection (a) of section 212 of chapter 136 of the 2010 Session*  
23 *Laws of Kansas, and amendments thereto, promoting obscenity to minors,*  
24 *as described in K.S.A. 21-4301a, prior to its repeal, or subsection (b) of*  
25 *section 212 of chapter 136 of the 2010 Session Laws of Kansas, and*  
26 *amendments thereto, or promoting to minors obscenity harmful to minors,*  
27 *as described in K.S.A. 21-4301c, prior to its repeal, or section 213 of*  
28 *chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

29 (7) endangering a child, as defined in K.S.A. 21-3608, *prior to its*  
30 *repeal, or subsection (a) of section 78 of chapter 136 of the 2010 Session*  
31 *Laws of Kansas, and amendments thereto;*

32 (8) driving under the influence of alcohol or drugs in violation of  
33 K.S.A. 8-1567 or 8-2,144, and amendments thereto, when the violation is  
34 punishable as a felony;

35 (9) attempt under K.S.A. 21-3301, *prior to its repeal, or section 33*  
36 *of chapter 136 of the 2010 Session Laws of Kansas, and amendments*  
37 *thereto, to commit any act specified in this subsection;*

38 (10) conspiracy under K.S.A. 21-3302, *prior to its repeal, or section*  
39 *34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments*  
40 *thereto, to commit any act specified in this subsection; or*

41 (11) an act committed in violation of a federal law or in violation of  
42 another state's law that is comparable to any act described in this  
43 subsection.

1 (c) The state board of education may issue a license to or renew the  
2 license of a person who has been convicted of committing an offense or  
3 act described in subsection (b) or who has entered into a criminal diversion  
4 agreement after having been charged with an offense or act described in  
5 subsection (b) if the state board determines, following a hearing, that the  
6 person has been rehabilitated for a period of at least five years from the  
7 date of conviction of the offense or commission of the act or, in the case of  
8 a person who has entered into a criminal diversion agreement, that the  
9 person has satisfied the terms and conditions of the agreement. The state  
10 board of education may consider factors including, but not limited to, the  
11 following in determining whether to grant a license:

12 (1) The nature and seriousness of the offense or act;

13 (2) the conduct of the person subsequent to commission of the  
14 offense or act;

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

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

17 (5) whether the offense or act was an isolated or recurring incident;  
18 and

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

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

24 (e) The county or district attorney shall file a report with the state  
25 board of education indicating the name, address and social security  
26 number of any person who has been determined to have committed any  
27 offense or act specified in subsection (a) or (b) or to have entered into a  
28 criminal diversion agreement after having been charged with any offense  
29 or act specified in subsection (b). Such report shall be filed within 30 days  
30 of the date of the determination that the person has committed any such act  
31 or entered into any such diversion agreement.

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

35 Sec. 26. K.S.A. 2010 Supp. 75-52,148 is hereby amended to read as  
36 follows: 75-52,148. (a) The department of corrections shall be required to  
37 review and report on the following serious offenses committed by sex  
38 offenders, as defined by K.S.A. 22-4902, and amendments thereto, while  
39 such offenders are in the custody of the secretary of corrections:

40 (1) Murder in the first degree, as ~~provided in K.S.A. 21-3401~~ *defined*  
41 *in section 37 of chapter 136 of the 2010 Session Laws of Kansas*, and  
42 amendments thereto;

43 (2) murder in the second degree, as ~~provided in K.S.A. 21-~~

- 1 ~~3402~~ defined in section 38 of chapter 136 of the 2010 Session Laws of  
 2 Kansas, and amendments thereto;
- 3 (3) ~~capital murder, as provided in K.S.A. 21-3439~~ aggravated  
 4 murder, as defined in section 2, and amendments thereto;
- 5 (4) rape, as ~~provided in K.S.A. 21-3502~~ defined in section 67 of  
 6 chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;
- 7 (5) aggravated criminal sodomy, as ~~provided in K.S.A. 21-~~  
 8 ~~3506~~ defined in subsection (b) of section 68 of chapter 136 of the 2010  
 9 Session Laws of Kansas, and amendments thereto;
- 10 (6) sexual exploitation of a child, as ~~provided in K.S.A. 21-~~  
 11 ~~3516~~ defined in section 74 of chapter 136 of the 2010 Session Laws of  
 12 Kansas, and amendments thereto;
- 13 (7) kidnapping as ~~provided in K.S.A. 21-3420~~ defined in subsection  
 14 (a) of section 43 of chapter 136 of the 2010 Session Laws of Kansas, and  
 15 amendments thereto;
- 16 (8) aggravated kidnapping, as ~~provided in K.S.A. 21-3421~~ defined in  
 17 subsection (b) of section 43 of chapter 136 of the 2010 Session Laws of  
 18 Kansas, and amendments thereto;
- 19 (9) criminal restraint, as ~~provided in K.S.A. 21-3424~~ defined in  
 20 section 46 of chapter 136 of the 2010 Session Laws of Kansas, and  
 21 amendments thereto;
- 22 (10) indecent solicitation of a child, as ~~provided in K.S.A. 21-~~  
 23 ~~3510~~ defined in subsection (a) of section 72 of chapter 136 of the 2010  
 24 Session Laws of Kansas, and amendments thereto;
- 25 (11) aggravated indecent solicitation of a child, as ~~provided in K.S.A.~~  
 26 ~~21-3511~~ defined in subsection (b) of section 72 of chapter 136 of the 2010  
 27 Session Laws of Kansas, and amendments thereto;
- 28 (12) indecent liberties with a child, as ~~provided in K.S.A. 21-~~  
 29 ~~3503~~ defined in subsection (a) of section 70 of chapter 136 of the 2010  
 30 Session Laws of Kansas, and amendments thereto;
- 31 (13) aggravated indecent liberties with a child, as ~~provided in K.S.A.~~  
 32 ~~21-3504~~ defined in subsection (b) of section 70 of chapter 136 of the 2010  
 33 Session Laws of Kansas, and amendments thereto;
- 34 (14) criminal sodomy, as ~~provided in K.S.A. 21-3505~~ defined in  
 35 subsection (a) of section 68 of chapter 136 of the 2010 Session Laws of  
 36 Kansas, and amendments thereto;
- 37 (15) ~~aggravated~~ child abuse, as ~~provided in K.S.A. 21-3609~~ defined in  
 38 section 79 of chapter 136 of the 2010 Session Laws of Kansas, and  
 39 amendments thereto;
- 40 (16) aggravated robbery, as ~~provided in K.S.A. 21-3427~~ defined in  
 41 subsection (b) of section 55 of chapter 136 of the 2010 Session Laws of  
 42 Kansas, and amendments thereto;
- 43 (17) burglary, as ~~provided in K.S.A. 21-3715~~ defined in subsection

1 (a) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and  
2 amendments thereto;

3 (18) aggravated burglary, as ~~provided in K.S.A. 21-3716~~ defined in  
4 subsection (b) of section 93 of chapter 136 of the 2010 Session Laws of  
5 Kansas, and amendments thereto;

6 (19) theft, as ~~provided in K.S.A. 21-3701~~ defined in section 87 of  
7 chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

8 (20) vehicular homicide, as ~~provided in K.S.A. 21-3405~~ defined in  
9 section 41 of chapter 136 of the 2010 Session Laws of Kansas, and  
10 amendments thereto;

11 (21) involuntary manslaughter while driving under the influence, as  
12 ~~provided in K.S.A. 21-3442~~ defined in subsection (a)(3) of section 40 of  
13 chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;  
14 or

15 (22) stalking, as ~~provided in K.S.A. 21-3438~~ defined in section 62 of  
16 chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

17 (b) The secretary of corrections shall submit such report to the  
18 speaker of the house of representatives and the president of the senate  
19 annually, beginning January 1, 2007.

20 Sec. 27. K.S.A. 22-3405, 22-3705 and 22-4210 and K.S.A. 2010  
21 Supp. 21-4619, 21-4623, 21-4624, 21-4634, 21-4642, 22-3717, 22-3717c,  
22 22-3728, 22-4902, 38-2255, 38-2255a, 38-2271, 38-2312, 38-2365, 39-  
23 970, 65-5117, 72-1397 and 75-52,148 and sections 36, 54, 254, 257, 258,  
24 259, 260, 262, 266, 268, 269 and 287 of chapter 136 of the 2010 Session  
25 Laws of Kansas are hereby repealed.

26 Sec. 28. This act shall take effect and be in force from and after its  
27 publication in the statute book.

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