

HOUSE BILL No. 2167

By Representatives Becker, Arnberger, Carmichael, Concannon, Dierks,
Henderson, Highberger, Hodge, Houser, Kessinger, Koesten, Kuether, Phelps,
Sawyer and Sutton

1-25

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. 2016 Supp. 21-5419, 21-6614, 21-6618, 21-
5 6620, 21-6622, 21-6628, 21-6629, 21-6806, 22-3717, 22-4902, 22-
6 4906, 38-2255, 38-2271, 38-2312, 38-2365, 39-970, 65-5117, 72-1397
7 and 75-52,148 and repealing the existing sections; also repealing
8 K.S.A. 2016 Supp. 21-5401, 21-6614g, 21-6614h, 21-6617 and 21-
9 6619.

10
11 *Be it enacted by the Legislature of the State of Kansas:*

12 New Section 1. (a) No person shall be sentenced to death for a crime
13 committed on or after July 1, 2017.

14 (b) Any person who is sentenced to death for a crime committed prior
15 to July 1, 2017, may be put to death pursuant to the provisions of article 40
16 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto.

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

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

20 (1) Intentional and premeditated killing of any person in the
21 commission of kidnapping, as defined in K.S.A. 2016 Supp. 21-5408, and
22 amendments thereto, or aggravating kidnapping, as defined in K.S.A. 2016
23 Supp. 21-5408(b), and amendments thereto, when the kidnapping or
24 aggravated kidnapping was committed with the intent to hold such person
25 for ransom;

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

29 (3) intentional and premeditated killing of any person by an inmate or
30 prisoner confined in a state correctional institution, community
31 correctional institution or jail or while in the custody of an officer or
32 employee of a state correctional institution, community correctional
33 institution or jail;

34 (4) intentional and premeditated killing of the victim of one of the

1 following crimes in the commission of, or subsequent to, such crime:
 2 Rape, as defined in K.S.A. 2016 Supp. 21-5503, and amendments thereto,
 3 criminal sodomy, as defined in K.S.A. 2016 Supp. 21-5504(a)(3) or (a)(4),
 4 and amendments thereto, or aggravated criminal sodomy, as defined in
 5 K.S.A. 2016 Supp. 21-5504(b), and amendments thereto, or any attempt
 6 thereof, as defined in K.S.A. 2016 Supp. 21-5301, and amendments
 7 thereto;

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

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

13 (7) intentional and premeditated killing of a child under the age of 14
 14 in the commission of kidnapping, as defined in K.S.A. 2016 Supp. 21-
 15 5408(a), and amendments thereto, or aggravated kidnapping, as defined in
 16 K.S.A. 2016 Supp. 21-5408(b), and amendments thereto, when the
 17 kidnapping or aggravated kidnapping was committed with intent to
 18 commit a sex offense upon or with the child or with intent that the child
 19 commit or submit to a sex offense.

20 (b) For purposes of this section, "sex offense" means rape, as defined
 21 in K.S.A. 2016 Supp. 21-5503, and amendments thereto, aggravated
 22 indecent liberties with a child, as defined in K.S.A. 2016 Supp. 21-
 23 5506(b), and amendments thereto, aggravated criminal sodomy, as defined
 24 in K.S.A. 2016 Supp. 21-5504(b), and amendments thereto, prostitution, as
 25 defined in K.S.A. 2016 Supp. 21-6419, and amendments thereto,
 26 promoting prostitution, as defined in K.S.A. 2016 Supp. 21-6420, and
 27 amendments thereto, or sexual exploitation of a child, as defined in K.S.A.
 28 2016 Supp. 21-5510, and amendments thereto.

29 (c) Notwithstanding K.S.A. 2016 Supp. 21-5109(b)(1) or (b)(2), and
 30 amendments thereto, when the same conduct of a defendant may establish
 31 the commission of aggravated murder and the commission of another
 32 crime under the laws of this state, the defendant may be prosecuted and
 33 sentenced for each of such crimes.

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

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

37 New Sec. 3. (a) When it is provided by law that a person shall be
 38 sentenced pursuant to this section, such person shall be sentenced to
 39 imprisonment for life without the possibility of parole. A defendant who is
 40 sentenced to imprisonment for life without the possibility of parole shall
 41 spend the remainder of the defendant's natural life incarcerated and in the
 42 custody of the secretary of corrections. A defendant who is sentenced to
 43 imprisonment for life without the possibility of parole shall not be eligible

1 for commutation of sentence, parole, probation, assignment to a
 2 community correctional services program, conditional release, postrelease
 3 supervision, functional incapacitation release pursuant to K.S.A. 22-3728,
 4 and amendments thereto, or suspension, modification or reduction of
 5 sentence. Upon sentencing a defendant to imprisonment for life without
 6 the possibility of parole, the court shall commit the defendant to the
 7 custody of the secretary of corrections and the court shall state in the
 8 sentencing order of the judgment form or journal entry, whichever is
 9 delivered with the defendant to the correctional institution, that the
 10 defendant has been sentenced to imprisonment for life without the
 11 possibility of parole.

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

14 Sec. 4. K.S.A. 2016 Supp. 21-5419 is hereby amended to read as
 15 follows: 21-5419. (a) As used in this section:

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

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

20 (b) This section shall not apply to:

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

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

25 (3) the lawful dispensation or administration of lawfully prescribed
 26 medication.

27 (c) As used in K.S.A. 2016 Supp. ~~21-5401~~, 21-5402, 21-5403, 21-
 28 5404, 21-5405, 21-5406 ~~and subsections (a) and (b) of~~ 21-5413(a) and (b)
 29 and section 2, and amendments thereto, "person" and "human being" also
 30 mean an unborn child.

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

32 Sec. 5. K.S.A. 2016 Supp. 21-6614 is hereby amended to read as
 33 follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d), (e)
 34 and (f), any person convicted in this state of a traffic infraction, cigarette
 35 or tobacco infraction, misdemeanor or a class D or E felony, or for crimes
 36 committed on or after July 1, 1993, any nongrid felony or felony ranked in
 37 severity levels 6 through 10 of the nondrug grid, or for crimes committed
 38 on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in
 39 severity level 4 of the drug grid, or for crimes committed on or after July
 40 1, 2012, any felony ranked in severity level 5 of the drug grid may petition
 41 the convicting court for the expungement of such conviction or related
 42 arrest records if three or more years have elapsed since the person: (A)
 43 Satisfied the sentence imposed; or (B) was discharged from probation, a

1 community correctional services program, parole, postrelease supervision,
2 conditional release or a suspended sentence.

3 (2) Except as provided in subsections (b), (c), (d), (e) and (f), any
4 person who has fulfilled the terms of a diversion agreement may petition
5 the district court for the expungement of such diversion agreement and
6 related arrest records if three or more years have elapsed since the terms of
7 the diversion agreement were fulfilled.

8 (b) Any person convicted of prostitution, as defined in K.S.A. 21-
9 3512, prior to its repeal, convicted of a violation of K.S.A. 2016 Supp. 21-
10 6419, and amendments thereto, or who entered into a diversion agreement
11 in lieu of further criminal proceedings for such violation, may petition the
12 convicting court for the expungement of such conviction or diversion
13 agreement and related arrest records if:

14 (1) One or more years have elapsed since the person satisfied the
15 sentence imposed or the terms of a diversion agreement or was discharged
16 from probation, a community correctional services program, parole,
17 postrelease supervision, conditional release or a suspended sentence; and

18 (2) such person can prove they were acting under coercion caused by
19 the act of another. For purposes of this subsection, "coercion" means:
20 Threats of harm or physical restraint against any person; a scheme, plan or
21 pattern intended to cause a person to believe that failure to perform an act
22 would result in bodily harm or physical restraint against any person; or the
23 abuse or threatened abuse of the legal process.

24 (c) Except as provided in subsections (e) and (f), no person may
25 petition for expungement until five or more years have elapsed since the
26 person satisfied the sentence imposed or the terms of a diversion
27 agreement or was discharged from probation, a community correctional
28 services program, parole, postrelease supervision, conditional release or a
29 suspended sentence, if such person was convicted of a class A, B or C
30 felony, or for crimes committed on or after July 1, 1993, if convicted of an
31 off-grid felony or any felony ranked in severity levels 1 through 5 of the
32 nondrug grid, or for crimes committed on or after July 1, 1993, but prior to
33 July 1, 2012, any felony ranked in severity levels 1 through 3 of the drug
34 grid, or for crimes committed on or after July 1, 2012, any felony ranked
35 in severity levels 1 through 4 of the drug grid, or:

36 (1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its
37 repeal, or K.S.A. 2016 Supp. 21-5406, and amendments thereto, or as
38 prohibited by any law of another state which is in substantial conformity
39 with that statute;

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

1 statute;

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

5 (4) violating the provisions of K.S.A. 8-142 *Fifth*, and amendments
6 thereto, relating to fraudulent applications or violating the provisions of a
7 law of another state which is in substantial conformity with that statute;

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

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

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

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

17 (d) (1) No person may petition for expungement until five or more
18 years have elapsed since the person satisfied the sentence imposed or the
19 terms of a diversion agreement or was discharged from probation, a
20 community correctional services program, parole, postrelease supervision,
21 conditional release or a suspended sentence, if such person was convicted
22 of a first violation of K.S.A. 8-1567 or K.S.A. 2016 Supp. 8-1025, and
23 amendments thereto, including any diversion for such violation.

24 (2) No person may petition for expungement until 10 or more years
25 have elapsed since the person satisfied the sentence imposed or was
26 discharged from probation, a community correctional services program,
27 parole, postrelease supervision, conditional release or a suspended
28 sentence, if such person was convicted of a second or subsequent violation
29 of K.S.A. 8-1567 or K.S.A. 2016 Supp. 8-1025, and amendments thereto.

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

33 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
34 2016 Supp. 21-5503, and amendments thereto;

35 (2) indecent liberties with a child or aggravated indecent liberties
36 with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal,
37 or K.S.A. 2016 Supp. 21-5506, and amendments thereto;

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

41 (4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
42 to its repeal, or K.S.A. 2016 Supp. 21-5504, and amendments thereto;

43 (5) indecent solicitation of a child or aggravated indecent solicitation

1 of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal,
2 or K.S.A. 2016 Supp. 21-5508, and amendments thereto;

3 (6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
4 to its repeal, or K.S.A. 2016 Supp. 21-5510, and amendments thereto;

5 (7) aggravated incest, as defined in K.S.A. 21-3603, prior to its
6 repeal, or K.S.A. 2016 Supp. 21-5604, and amendments thereto;

7 (8) endangering a child or aggravated endangering a child, as defined
8 in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2016 Supp.
9 21-5601, and amendments thereto;

10 (9) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal,
11 or K.S.A. 2016 Supp. 21-5602, and amendments thereto;

12 (10) capital murder, as defined in K.S.A. 21-3439, prior to its repeal,
13 or K.S.A. 2016 Supp. 21-5401, *prior to its repeal*;

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

16 ~~(11)~~ (12) murder in the first degree, as defined in K.S.A. 21-3401,
17 prior to its repeal, or K.S.A. 2016 Supp. 21-5402, and amendments
18 thereto;

19 ~~(12)~~ (13) murder in the second degree, as defined in K.S.A. 21-3402,
20 prior to its repeal, or K.S.A. 2016 Supp. 21-5403, and amendments
21 thereto;

22 ~~(13)~~ (14) voluntary manslaughter, as defined in K.S.A. 21-3403, prior
23 to its repeal, or K.S.A. 2016 Supp. 21-5404, and amendments thereto;

24 ~~(14)~~ (15) involuntary manslaughter, as defined in K.S.A. 21-3404,
25 prior to its repeal, or K.S.A. 2016 Supp. 21-5405, and amendments
26 thereto;

27 ~~(15)~~ (16) sexual battery, as defined in K.S.A. 21-3517, prior to its
28 repeal, or K.S.A. 2016 Supp. 21-5505, and amendments thereto, when the
29 victim was less than 18 years of age at the time the crime was committed;

30 ~~(16)~~ (17) aggravated sexual battery, as defined in K.S.A. 21-3518,
31 prior to its repeal, or K.S.A. 2016 Supp. 21-5505, and amendments
32 thereto;

33 ~~(17)~~ (18) a violation of K.S.A. 8-2,144, and amendments thereto,
34 including any diversion for such violation; or

35 ~~(18)~~ (19) any conviction for any offense in effect at any time prior to
36 July 1, 2011, that is comparable to any offense as provided in this
37 subsection.

38 (f) Notwithstanding any other law to the contrary, for any offender
39 who is required to register as provided in the Kansas offender registration
40 act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no
41 expungement of any conviction or any part of the offender's criminal
42 record while the offender is required to register as provided in the Kansas
43 offender registration act.

1 (g) (1) When a petition for expungement is filed, the court shall set a
2 date for a hearing of such petition and shall cause notice of such hearing to
3 be given to the prosecutor and the arresting law enforcement agency. The
4 petition shall state the:

5 (A) Defendant's full name;

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

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

9 (D) crime for which the defendant was arrested, convicted or
10 diverted;

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

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

14 (2) Except as otherwise provided by law, a petition for expungement
15 shall be accompanied by a docket fee in the amount of \$176. On and after
16 July 1, 2015, through June 30, 2017, the supreme court may impose a
17 charge, not to exceed \$19 per case, to fund the costs of non-judicial
18 personnel. The charge established in this section shall be the only fee
19 collected or moneys in the nature of a fee collected for the case. Such
20 charge shall only be established by an act of the legislature and no other
21 authority is established by law or otherwise to collect a fee.

22 (3) All petitions for expungement shall be docketed in the original
23 criminal action. Any person who may have relevant information about the
24 petitioner may testify at the hearing. The court may inquire into the
25 background of the petitioner and shall have access to any reports or
26 records relating to the petitioner that are on file with the secretary of
27 corrections or the prisoner review board.

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

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

33 (2) the circumstances and behavior of the petitioner warrant the
34 expungement; and

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

36 (i) When the court has ordered an arrest record, conviction or
37 diversion expunged, the order of expungement shall state the information
38 required to be contained in the petition. The clerk of the court shall send a
39 certified copy of the order of expungement to the Kansas bureau of
40 investigation which shall notify the federal bureau of investigation, the
41 secretary of corrections and any other criminal justice agency which may
42 have a record of the arrest, conviction or diversion. *If the case was*
43 *appealed from municipal court, the clerk of the district court shall send a*

1 *certified copy of the order of expungement to the municipal court. The*
2 *municipal court shall order the case expunged once the certified copy of*
3 *the order of expungement is received. After the order of expungement is*
4 entered, the petitioner shall be treated as not having been arrested,
5 convicted or diverted of the crime, except that:

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

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

11 (A) In any application for licensure as a private detective, private
12 detective agency, certification as a firearms trainer pursuant to K.S.A.
13 2016 Supp. 75-7b21, and amendments thereto, or employment as a
14 detective with a private detective agency, as defined by K.S.A. 75-7b01,
15 and amendments thereto; as security personnel with a private patrol
16 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
17 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
18 the Kansas department for aging and disability services;

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

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

25 (D) to aid in determining the petitioner's qualifications for executive
26 director of the Kansas racing and gaming commission, for employment
27 with the commission or for work in sensitive areas in parimutuel racing as
28 deemed appropriate by the executive director of the commission, or to aid
29 in determining qualifications for licensure or renewal of licensure by the
30 commission;

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

36 (F) upon application for a commercial driver's license under K.S.A.
37 8-2,125 through 8-2,142, and amendments thereto;

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

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

43 (I) in any application for registration as a broker-dealer, agent,

1 investment adviser or investment adviser representative all as defined in
2 K.S.A. 17-12a102, and amendments thereto;

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

5 (K) for applications received on and after July 1, 2006, to aid in
6 determining the petitioner's qualifications for a license to carry a concealed
7 weapon pursuant to the personal and family protection act, K.S.A. 2016
8 Supp. 75-7c01 et seq., and amendments thereto; *or*

9 (L) *for applications received on and after July 1, 2016, to aid in*
10 *determining the petitioner's qualifications for a license to act as a bail*
11 *enforcement agent pursuant to K.S.A. 2016 Supp. 75-7e01 through 75-*
12 *7e09 and K.S.A. 2016 Supp. 50-6,141, and amendments thereto;*

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

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

18 (5) upon commitment to the custody of the secretary of corrections,
19 any previously expunged record in the possession of the secretary of
20 corrections may be reinstated and the expungement disregarded, and the
21 record continued for the purpose of the new commitment.

22 (j) Whenever a person is convicted of a crime, pleads guilty and pays
23 a fine for a crime, is placed on parole, postrelease supervision or
24 probation, is assigned to a community correctional services program, is
25 granted a suspended sentence or is released on conditional release, the
26 person shall be informed of the ability to expunge the arrest records or
27 conviction. Whenever a person enters into a diversion agreement, the
28 person shall be informed of the ability to expunge the diversion.

29 (k) (1) Subject to the disclosures required pursuant to subsection (i),
30 in any application for employment, license or other civil right or privilege,
31 or any appearance as a witness, a person whose arrest records, conviction
32 or diversion of a crime has been expunged under this statute may state that
33 such person has never been arrested, convicted or diverted of such crime.

34 (2) Notwithstanding the provisions of subsection (k)(1), and except as
35 provided in K.S.A. 2016 Supp. 21-6304(a)(3)(A), and amendments
36 thereto, the expungement of a prior felony conviction does not relieve the
37 individual of complying with any state or federal law relating to the use,
38 shipment, transportation, receipt or possession of firearms by persons
39 previously convicted of a felony.

40 (l) Whenever the record of any arrest, conviction or diversion has
41 been expunged under the provisions of this section or under the provisions
42 of any other existing or former statute, the custodian of the records of
43 arrest, conviction, diversion and incarceration relating to that crime shall

1 not disclose the existence of such records, except when requested by:

2 (1) The person whose record was expunged;

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

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

9 (4) the secretary for aging and disability services, or a designee of the
10 secretary, for the purpose of obtaining information relating to employment
11 in an institution, as defined in K.S.A. 76-12a01, and amendments thereto,
12 of the Kansas department for aging and disability services of any person
13 whose record has been expunged;

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

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

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

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

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

37 (10) the Kansas racing and gaming commission, or a designee of the
38 commission, and the request is accompanied by a statement that the
39 request is being made to aid in determining qualifications of the following
40 under the Kansas expanded lottery act: (A) Lottery gaming facility
41 managers and prospective managers, racetrack gaming facility managers
42 and prospective managers, licensees and certificate holders; and (B) their
43 officers, directors, employees, owners, agents and contractors;

1 (11) the Kansas sentencing commission;

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

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

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

17 (15) a law enforcement agency and the request is accompanied by a
18 statement that the request is being made to aid in determining eligibility
19 for employment as a law enforcement officer as defined by K.S.A. 22-
20 2202, and amendments thereto;

21 (16) the attorney general and the request is accompanied by a
22 statement that the request is being made to aid in determining
23 qualifications for a license to:

24 (A) Carry a concealed weapon pursuant to the personal and family
25 protection act; or

26 (B) *act as a bail enforcement agent pursuant to K.S.A. 2016 Supp.*
27 *75-7e01 through 75-7e09 and K.S.A. 2016 Supp. 50-6,141, and*
28 *amendments thereto; or*

29 (17) the Kansas bureau of investigation for the purposes of:

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

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

36 (m) The provisions of subsection (l)(17) shall apply to records
37 created prior to, on and after July 1, 2011.

38 Sec. 6. K.S.A. 2016 Supp. 21-6618 is hereby amended to read as
39 follows: 21-6618. Upon conviction of a defendant of ~~capital~~ *aggravated*
40 murder and a finding that the defendant was less than 18 years of age at
41 the time of the commission thereof, the court shall sentence the defendant
42 as otherwise provided by law, and no sentence of ~~death or~~ life without the
43 possibility of parole shall be imposed ~~hereunder~~.

1 Sec. 7. K.S.A. 2016 Supp. 21-6620 is hereby amended to read as
2 follows: 21-6620. (a) (1) Except as provided in subsection (a)(2) and
3 K.S.A. 2016 Supp. 21-6618 and 21-6622, and amendments thereto, if a
4 defendant is convicted of the crime of ~~capital murder and a sentence of~~
5 ~~death is not imposed pursuant to subsection (c) of K.S.A. 2016 Supp. 21-~~
6 ~~6617, and amendments thereto, or requested pursuant to subsection (a) or~~
7 ~~(b) of K.S.A. 2016 Supp. 21-6617, and amendments thereto~~ *aggravated*
8 *murder*, the defendant shall be sentenced to life without the possibility of
9 parole *pursuant to section 3, and amendments thereto.*

10 (2) (A) Except as provided in subsection (a)(2)(B), a defendant
11 convicted of attempt to commit the crime of ~~capital~~ *aggravated* murder
12 shall be sentenced to imprisonment for life and shall not be eligible for
13 probation or suspension, modification or reduction of sentence. In
14 addition, the defendant shall not be eligible for parole prior to serving 25
15 years' imprisonment, and such 25 years' imprisonment shall not be reduced
16 by the application of good time credits. No other sentence shall be
17 permitted.

18 (B) The provisions of subsection (a)(2)(A) requiring the court to
19 impose a mandatory minimum term of imprisonment of 25 years shall not
20 apply if the court finds the defendant, because of the defendant's criminal
21 history classification, is subject to presumptive imprisonment pursuant to
22 the sentencing guidelines grid for nondrug crimes and the sentencing range
23 exceeds 300 months. In such case, the defendant is required to serve a
24 mandatory minimum term equal to the sentence established pursuant to the
25 sentencing range.

26 (b) The provisions of this subsection shall apply only to the crime of
27 murder in the first degree as described in ~~subsection (a)(2) of K.S.A. 2016~~
28 ~~Supp. 21-5402(a)(2), and amendments thereto, committed on or after July~~
29 ~~1, 2014.~~

30 (1) Except as provided in subsection (b)(2), a defendant convicted of
31 murder in the first degree as described in ~~subsection (a)(2) of K.S.A. 2016~~
32 ~~Supp. 21-5402(a)(2), and amendments thereto, shall be sentenced to~~
33 ~~imprisonment for life and shall not be eligible for probation or suspension,~~
34 ~~modification or reduction of sentence. In addition, the defendant shall not~~
35 ~~be eligible for parole prior to serving 25 years' imprisonment, and such 25~~
36 ~~years' imprisonment shall not be reduced by the application of good time~~
37 ~~credits. No other sentence shall be permitted.~~

38 (2) The provisions of subsection (b)(1) requiring the court to impose
39 a mandatory minimum term of imprisonment of 25 years shall not apply if
40 the court finds the defendant, because of the defendant's criminal history
41 classification, is subject to presumptive imprisonment pursuant to the
42 sentencing guidelines grid for nondrug crimes and the sentencing range
43 exceeds 300 months. In such case, the defendant is required to serve a

1 mandatory minimum term equal to the sentence established pursuant to the
2 sentencing range.

3 (c) The provisions of this subsection shall apply only to the crime of
4 murder in the first degree based upon the finding of premeditated murder
5 committed on or after July 1, 2014.

6 (1) (A) Except as provided in subsection (c)(1)(B), a defendant
7 convicted of murder in the first degree based upon the finding of
8 premeditated murder shall be sentenced pursuant to K.S.A. 2016 Supp. 21-
9 6623, and amendments thereto, unless the sentencing judge finds
10 substantial and compelling reasons, following a review of mitigating
11 circumstances, to impose the sentence specified in subsection (c)(2).

12 (B) The provisions of subsection (c)(1)(A) requiring the court to
13 impose the mandatory minimum term of imprisonment required by K.S.A.
14 2016 Supp. 21-6623, and amendments thereto, shall not apply if the court
15 finds the defendant, because of the defendant's criminal history
16 classification, is subject to presumptive imprisonment pursuant to the
17 sentencing guidelines grid for nondrug crimes and the sentencing range
18 exceeds 600 months. In such case, the defendant is required to serve a
19 mandatory minimum term equal to the sentence established pursuant to the
20 sentencing range.

21 (2) (A) If the sentencing judge does not impose the mandatory
22 minimum term of imprisonment required by K.S.A. 2016 Supp. 21-6623,
23 and amendments thereto, the judge shall state on the record at the time of
24 sentencing the substantial and compelling reasons therefor, and, except as
25 provided in subsection (c)(2)(B), the defendant shall be sentenced to
26 imprisonment for life and shall not be eligible for probation or suspension,
27 modification or reduction of sentence. In addition, the defendant shall not
28 be eligible for parole prior to serving 25 years' imprisonment, and such 25
29 years' imprisonment shall not be reduced by the application of good time
30 credits. No other sentence shall be permitted.

31 (B) The provisions of subsection (c)(2)(A) requiring the court to
32 impose a mandatory minimum term of imprisonment of 25 years shall not
33 apply if the court finds the defendant, because of the defendant's criminal
34 history classification, is subject to presumptive imprisonment pursuant to
35 the sentencing guidelines grid for nondrug crimes and the sentencing range
36 exceeds 300 months. In such case, the defendant is required to serve a
37 mandatory minimum term equal to the sentence established pursuant to the
38 sentencing range.

39 (d) The provisions of this subsection shall apply only to the crime of
40 murder in the first degree based upon the finding of premeditated murder
41 committed on or after September 6, 2013.

42 (1) If a defendant is convicted of murder in the first degree based
43 upon the finding of premeditated murder, upon reasonable notice by the

1 prosecuting attorney, the court shall determine, in accordance with this
2 subsection, whether the defendant shall be required to serve a mandatory
3 minimum term of imprisonment of 50 years or sentenced as otherwise
4 provided by law.

5 (2) The court shall conduct a separate proceeding following the
6 determination of the defendant's guilt for the jury to determine whether
7 one or more aggravating circumstances exist. Such proceeding shall be
8 conducted by the court before a jury as soon as practicable. If any person
9 who served on the trial jury is unable to serve on the jury for the
10 proceeding, the court shall substitute an alternate juror who has been
11 impaneled for the trial jury. If there are insufficient alternate jurors to
12 replace trial jurors who are unable to serve at the proceeding, the court
13 may conduct such proceeding before a jury which may have 12 or less
14 jurors, but at no time less than six jurors. If the jury has been discharged
15 prior to the proceeding, a new jury shall be impaneled. Any decision of the
16 jury regarding the existence of an aggravating circumstance shall be
17 beyond a reasonable doubt. Jury selection procedures, qualifications of
18 jurors and grounds for exemption or challenge of prospective jurors in
19 criminal trials shall be applicable to the selection of such jury. The jury at
20 the proceeding may be waived in the manner provided by K.S.A. 22-3403,
21 and amendments thereto, for waiver of a trial jury. If the jury at the
22 proceeding has been waived, such proceeding shall be conducted by the
23 court.

24 (3) In the proceeding, evidence may be presented concerning any
25 matter relating to any of the aggravating circumstances enumerated in
26 K.S.A. 2016 Supp. 21-6624, and amendments thereto. Only such evidence
27 of aggravating circumstances as the prosecuting attorney has made known
28 to the defendant prior to the proceeding shall be admissible and no
29 evidence secured in violation of the constitution of the United States or of
30 the state of Kansas shall be admissible. No testimony by the defendant at
31 the time of the proceeding shall be admissible against the defendant at any
32 subsequent criminal proceeding. At the conclusion of the evidentiary
33 presentation, the court shall allow the parties a reasonable period of time in
34 which to present oral argument.

35 (4) At the conclusion of the evidentiary portion of the proceeding, the
36 court shall provide oral and written instructions to the jury to guide its
37 deliberations. If the prosecuting attorney relies on ~~subsection (a)~~ of K.S.A.
38 2016 Supp. 21-6624(a), and amendments thereto, as an aggravating
39 circumstance, and the court finds that one or more of the defendant's prior
40 convictions satisfy such subsection, the jury shall be instructed that a
41 certified journal entry of a prior conviction is presumed to prove the
42 existence of such prior conviction or convictions beyond a reasonable
43 doubt.

1 (5) If, by unanimous vote, the jury finds beyond a reasonable doubt
2 that one or more of the aggravating circumstances enumerated in K.S.A.
3 2016 Supp. 21-6624, and amendments thereto, exist, the jury shall
4 designate, in writing, signed by the foreman of the jury, the statutory
5 aggravating circumstances which it found. If, after a reasonable time for
6 deliberation, the jury is unable to reach a unanimous sentencing decision,
7 the court shall dismiss the jury and the defendant shall be sentenced as
8 provided by law. In nonjury cases, the court shall designate, in writing, the
9 specific circumstance or circumstances which the court found beyond a
10 reasonable doubt.

11 (6) If one or more of the aggravating circumstances enumerated in
12 K.S.A. 2016 Supp. 21-6624, and amendments thereto, are found to exist
13 beyond a reasonable doubt pursuant to this subsection, the defendant shall
14 be sentenced pursuant to K.S.A. 2016 Supp. 21-6623, and amendments
15 thereto, unless the sentencing judge finds substantial and compelling
16 reasons, following a review of mitigating circumstances, to impose the
17 sentence specified in this paragraph. If the sentencing judge does not
18 impose the mandatory minimum term of imprisonment required by K.S.A.
19 2016 Supp. 21-6623, and amendments thereto, the judge shall state on the
20 record at the time of sentencing the substantial and compelling reasons
21 therefor, and the defendant shall be sentenced to imprisonment for life and
22 shall not be eligible for probation or suspension, modification or reduction
23 of sentence. In addition, the defendant shall not be eligible for parole prior
24 to serving 25 years' imprisonment, and such 25 years' imprisonment shall
25 not be reduced by the application of good time credits. No other sentence
26 shall be permitted.

27 (e) The provisions of this subsection shall apply only to the crime of
28 murder in the first degree based upon the finding of premeditated murder
29 committed prior to September 6, 2013.

30 (1) If a defendant is convicted of murder in the first degree based
31 upon the finding of premeditated murder, upon reasonable notice by the
32 prosecuting attorney, the court shall conduct a separate sentencing
33 proceeding in accordance with this subsection to determine whether the
34 defendant shall be required to serve a mandatory minimum term of
35 imprisonment of 40 years or for crimes committed on and after July 1,
36 1999, a mandatory minimum term of imprisonment of 50 years or
37 sentenced as otherwise provided by law.

38 (2) The sentencing proceeding shall be conducted by the court before
39 a jury as soon as practicable. If the trial jury has been discharged prior to
40 sentencing, a new jury shall be impaneled. Any decision to impose a
41 mandatory minimum term of imprisonment of 40 or 50 years shall be by a
42 unanimous jury. Jury selection procedures, qualifications of jurors and
43 grounds for exemption or challenge of prospective jurors in criminal trials

1 shall be applicable to the selection of such jury. The jury at the sentencing
2 proceeding may be waived in the manner provided by K.S.A. 22-3403, and
3 amendments thereto, for waiver of a trial jury. If the jury at the sentencing
4 proceeding has been waived, such proceeding shall be conducted by the
5 court.

6 (3) In the sentencing proceeding, evidence may be presented
7 concerning any matter that the court deems relevant to the question of
8 sentence and shall include matters relating to any of the aggravating
9 circumstances enumerated in K.S.A. 2016 Supp. 21-6624, and
10 amendments thereto, or for crimes committed prior to July 1, 2011, K.S.A.
11 21-4636, prior to its repeal, and any mitigating circumstances. Any such
12 evidence which the court deems to have probative value may be received
13 regardless of its admissibility under the rules of evidence, provided that
14 the defendant is accorded a fair opportunity to rebut any hearsay
15 statements. Only such evidence of aggravating circumstances as the
16 prosecuting attorney has made known to the defendant prior to the
17 sentencing proceeding shall be admissible and no evidence secured in
18 violation of the constitution of the United States or of the state of Kansas
19 shall be admissible. Only such evidence of mitigating circumstances
20 subject to discovery pursuant to K.S.A. 22-3212, and amendments thereto,
21 that the defendant has made known to the prosecuting attorney prior to the
22 sentencing proceeding shall be admissible. No testimony by the defendant
23 at the time of sentencing shall be admissible against the defendant at any
24 subsequent criminal proceeding. At the conclusion of the evidentiary
25 presentation, the court shall allow the parties a reasonable period of time in
26 which to present oral argument.

27 (4) At the conclusion of the evidentiary portion of the sentencing
28 proceeding, the court shall provide oral and written instructions to the jury
29 to guide its deliberations. If the prosecuting attorney relies on ~~subsection~~
30 ~~(a)~~ of K.S.A. 2016 Supp. 21-6624(a), and amendments thereto, or for
31 crimes committed prior to July 1, 2011, ~~subsection (a)~~ of K.S.A. 21-
32 4636(a), prior to its repeal, as an aggravating circumstance, and the court
33 finds that one or more of the defendant's prior convictions satisfy such
34 subsection, the jury shall be instructed that a certified journal entry of a
35 prior conviction is presumed to prove the existence of such prior
36 conviction or convictions beyond a reasonable doubt.

37 (5) If, by unanimous vote, the jury finds beyond a reasonable doubt
38 that one or more of the aggravating circumstances enumerated in K.S.A.
39 2016 Supp. 21-6624, and amendments thereto, or for crimes committed
40 prior to July 1, 2011, K.S.A. 21-4636, prior to its repeal, exist and, further,
41 that the existence of such aggravating circumstances is not outweighed by
42 any mitigating circumstances which are found to exist, the defendant shall
43 be sentenced pursuant to K.S.A. 2016 Supp. 21-6623, and amendments

1 thereto; otherwise, the defendant shall be sentenced as provided by law.
2 The sentencing jury shall designate, in writing, signed by the foreman of
3 the jury, the statutory aggravating circumstances which it found. ~~The trier
4 of fact may make the findings required by this subsection for the purpose
5 of determining whether to sentence a defendant pursuant to K.S.A. 2016
6 Supp. 21-6623, and amendments thereto, notwithstanding contrary
7 findings made by the jury or court pursuant to subsection (e) of K.S.A.
8 2016 Supp. 21-6617, and amendments thereto, for the purpose of
9 determining whether to sentence such defendant to death. If, after a
10 reasonable time for deliberation, the jury is unable to reach a unanimous
11 sentencing decision, the court shall dismiss the jury and the defendant
12 shall be sentenced as provided by law. In nonjury cases, the court shall
13 designate in writing the specific circumstance or circumstances which the
14 court found beyond a reasonable doubt.~~

15 (f) The amendments to subsection (e) by chapter 1 of the 2013
16 Session Laws of Kansas (Special Session):

17 (1) Establish a procedural rule for sentencing proceedings, and as
18 such shall be construed and applied retroactively to all crimes committed
19 prior to the effective date of this act, except as provided further in this
20 subsection; (2) shall not apply to cases in which the defendant's conviction
21 and sentence were final prior to June 17, 2013, unless the conviction or
22 sentence has been vacated in a collateral proceeding, including, but not
23 limited to, K.S.A. 22-3504 or 60-1507, and amendments thereto; and (3)
24 shall apply only in sentencing proceedings otherwise authorized by law.

25 (g) Notwithstanding the provisions of subsection (h), for all cases on
26 appeal on or after September 6, 2013, if a sentence imposed under this
27 section, prior to amendment by chapter 1 of the 2013 Session Laws of
28 Kansas (Special Session), or under K.S.A. 21-4635, prior to its repeal, is
29 vacated for any reason other than sufficiency of the evidence as to all
30 aggravating circumstances, resentencing shall be required under this
31 section, as amended by chapter 1 of the 2013 Session Laws of Kansas
32 (Special Session), unless the prosecuting attorney chooses not to pursue
33 such a sentence.

34 (h) In the event any sentence imposed under this section is held to be
35 unconstitutional, the court having jurisdiction over a person previously
36 sentenced shall cause such person to be brought before the court and shall
37 sentence such person to the maximum term of imprisonment otherwise
38 provided by law.

39 (i) If any provision or provisions of this section or the application
40 thereof to any person or circumstance is held invalid, the invalidity shall
41 not affect other provisions or applications of this section which can be
42 given effect without the invalid provision or provisions or application, and
43 to this end the provisions of this section are severable.

1 Sec. 8. K.S.A. 2016 Supp. 21-6622 is hereby amended to read as
2 follows: 21-6622. (a) ~~If, under K.S.A. 2016 Supp. 21-6617, and~~
3 ~~amendments thereto, the county or district attorney has filed a notice of~~
4 ~~intent to request a separate sentencing proceeding to determine whether~~
5 ~~the defendant should be sentenced to death and the defendant is convicted~~
6 ~~of the crime of capital murder, the defendant's counsel or the warden of the~~
7 ~~correctional institution or sheriff having custody of the defendant may~~
8 ~~request a determination by the court of whether the defendant is a person~~
9 ~~with intellectual disability. If the court determines that there is not~~
10 ~~sufficient reason to believe that the defendant is a person with intellectual~~
11 ~~disability, the court shall so find and the defendant shall be sentenced in~~
12 ~~accordance with K.S.A. 2016 Supp. 21-6617, 21-6619, 21-6624, 21-6625,~~
13 ~~21-6628 and 21-6629, and amendments thereto. If the court determines~~
14 ~~that there is sufficient reason to believe that the defendant is a person with~~
15 ~~intellectual disability, the court shall conduct a hearing to determine~~
16 ~~whether the defendant is a person with intellectual disability.~~

17 ~~(b) If a defendant is convicted of the crime of capital murder and a~~
18 ~~sentence of death is not imposed~~ *aggravated murder*, or if a defendant is
19 convicted of the crime of murder in the first degree based upon the finding
20 of premeditated murder, the defendant's counsel or the warden of the
21 correctional institution or sheriff having custody of the defendant may
22 request a determination by the court of whether the defendant is a person
23 with intellectual disability. If the court determines that there is not
24 sufficient reason to believe that the defendant is a person with intellectual
25 disability, the court shall so find and the defendant shall be sentenced in
26 accordance with K.S.A. 2016 Supp. 21-6620, 21-6623, 21-6624 and 21-
27 6625, and amendments thereto. If the court determines that there is
28 sufficient reason to believe that the defendant is a person with intellectual
29 disability, the court shall conduct a hearing to determine whether the
30 defendant is a person with intellectual disability.

31 ~~(e)~~ (b) At the hearing, the court shall determine whether the defendant
32 is a person with intellectual disability. The court shall order a psychiatric
33 or psychological examination of the defendant. For that purpose, the court
34 shall appoint two licensed physicians or licensed psychologists, or one of
35 each, qualified by training and practice to make such examination, to
36 examine the defendant and report their findings in writing to the judge
37 within 14 days after the order of examination is issued. The defendant
38 shall have the right to present evidence and cross-examine any witnesses at
39 the hearing. No statement made by the defendant in the course of any
40 examination provided for by this section, whether or not the defendant
41 consents to the examination, shall be admitted in evidence against the
42 defendant in any criminal proceeding.

43 ~~(d) If, at the conclusion of a hearing pursuant to subsection (a), the~~

1 ~~court determines that the defendant is not a person with intellectual~~
2 ~~disability, the defendant shall be sentenced in accordance with K.S.A.~~
3 ~~2016 Supp. 21-6617, 21-6619, 21-6624, 21-6625, 21-6628 and 21-6629,~~
4 ~~and amendments thereto.~~

5 ~~(e) (c) If, at the conclusion of a hearing pursuant to subsection (b)~~
6 ~~this section, the court determines that the defendant is not a person with~~
7 ~~intellectual disability, the defendant shall be sentenced in accordance with~~
8 ~~K.S.A. 2016 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and~~
9 ~~amendments thereto.~~

10 ~~(f) (d) If, at the conclusion of a hearing pursuant to this section, the~~
11 ~~court determines that the defendant is a person with intellectual disability,~~
12 ~~the court shall sentence the defendant as otherwise provided by law, and~~
13 ~~no sentence of death, life without the possibility of parole, or mandatory~~
14 ~~term of imprisonment shall be imposed hereunder.~~

15 ~~(g) Unless otherwise ordered by the court for good cause shown, the~~
16 ~~provisions of subsection (b) shall not apply if it has been determined,~~
17 ~~pursuant to a hearing granted under the provisions of subsection (a), that~~
18 ~~the defendant is not a person with intellectual disability.~~

19 ~~(h) (e) As used in this section, "intellectual disability" means having~~
20 ~~significantly subaverage general intellectual functioning, as defined by~~
21 ~~K.S.A. 76-12b01, and amendments thereto, to an extent which~~
22 ~~substantially impairs one's capacity to appreciate the criminality of one's~~
23 ~~conduct or to conform one's conduct to the requirements of law.~~

24 Sec. 9. K.S.A. 2016 Supp. 21-6628 is hereby amended to read as
25 follows: 21-6628. (a) In the event the term of imprisonment for life
26 without the possibility of parole or any provision of K.S.A. 2016 Supp. 21-
27 6626 or 21-6627, and amendments thereto, authorizing such term is held to
28 be unconstitutional by the supreme court of Kansas or the United States
29 supreme court, the court having jurisdiction over a person previously
30 sentenced shall cause such person to be brought before the court and shall
31 modify the sentence to require no term of imprisonment for life without
32 the possibility of parole and shall sentence the defendant to the maximum
33 term of imprisonment otherwise provided by law.

34 (b) ~~In the event a sentence of death or any provision of chapter 252 of~~
35 ~~the 1994 Session Laws of Kansas authorizing such sentence is held to be~~
36 ~~unconstitutional by the supreme court of Kansas or the United States~~
37 ~~supreme court, the court having jurisdiction over a person previously~~
38 ~~sentenced shall cause such person to be brought before the court and shall~~
39 ~~modify the sentence and resentence the defendant as otherwise provided~~
40 ~~by law.~~

41 ~~(c) In the event the mandatory term of imprisonment or any provision~~
42 ~~of chapter 341 of the 1994 Session Laws of Kansas authorizing such~~
43 ~~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. 10. K.S.A. 2016 Supp. 21-6629 is hereby amended to read as
7 follows: 21-6629. (a) The provisions of K.S.A. 21-4622 through 21-4630,
8 as they existed immediately prior to July 1, 1994, shall be applicable only
9 to persons convicted of crimes committed on or after July 1, 1990, and
10 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 K.S.A. 2016 Supp. 21-6617, 21-6618, 21-6619, 21-6622, 21-6624, 21-
14 6625 and ~~subsection (b) of 21-6628(b), and amendments thereto as they~~
15 *existed immediately prior to July 1, 2017*, shall be applicable only to
16 persons convicted of crimes committed on or after July 1, 1994, *and*
17 *before July 1, 2017*.

18 (c) K.S.A. 21-4633 through 21-4640, prior to their repeal, and K.S.A.
19 2016 Supp. 21-6620 through 21-6625 and ~~subsection (e) of 21-6628(c),~~
20 ~~and amendments thereto as they existed immediately prior to July 1, 2017,~~
21 shall be applicable only to persons convicted of crimes committed on or
22 after July 1, 1994, *and before July 1, 2017*.

23 (d) *The provisions of K.S.A. 2016 Supp. 21-6681, 21-6620, 21-6622*
24 *and 21-6628, as amended on July 1, 2017, and K.S.A. 2016 Supp 21-6621,*
25 *21-6623, 21-6624 and 21-6625, and amendments thereto, shall be*
26 *applicable only to persons convicted of crimes committed on or after July*
27 *1, 2017.*

28 Sec. 11. K.S.A. 2016 Supp. 21-6806 is hereby amended to read as
29 follows: 21-6806. (a) Sentences of imprisonment shall represent the time a
30 person shall actually serve, subject to a reduction of the primary sentence
31 for good time as authorized by K.S.A. 2016 Supp. 21-6821, and
32 amendments thereto.

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

34 (c) Violations of K.S.A. 2016 Supp. ~~21-5401,~~ 21-5402, 21-5421, 21-
35 5422 and 21-5901, and amendments thereto, are off-grid crimes for the
36 purpose of sentencing. Except as otherwise provided by K.S.A. 2016
37 Supp. ~~21-6617,~~ 21-6618, ~~21-6619,~~ 21-6622, 21-6624, 21-6625, 21-6628
38 and 21-6629, and amendments thereto, the sentence shall be imprisonment
39 for life and shall not be subject to statutory provisions for suspended
40 sentence, community service or probation.

41 (d) As identified in K.S.A. 2016 Supp. 21-5426, 21-5503, 21-5504,
42 21-5506, 21-5510 and 21-6422, and amendments thereto, if the offender is
43 18 years of age or older and the victim is under 14 years of age, such

1 violations are off-grid crimes for the purposes of sentencing. Except as
2 provided in K.S.A. 2016 Supp. 21-6626, and amendments thereto, the
3 sentence shall be imprisonment for life pursuant to K.S.A. 2016 Supp. 21-
4 6627, and amendments thereto.

5 *(e) A violation of section 2, and amendments thereto, is an off-grid*
6 *crime for the purposes of sentencing. Except as provided in K.S.A. 2016*
7 *Supp 21-6618 and 21-6622, and amendments thereto, the sentence shall*
8 *be imprisonment for life without the possibility of parole pursuant to*
9 *section 3, and amendments thereto.*

10 Sec. 12. K.S.A. 2016 Supp. 22-3717 is hereby amended to read as
11 follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A.
12 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4624, 21-4635 through
13 21-4638 and 21-4642, prior to their repeal; K.S.A. 2016 Supp. 21-6617,
14 *prior to its repeal*, 21-6620, 21-6623, 21-6624, 21-6625 and 21-6626, and
15 amendments thereto; *section 3, and amendments thereto*; and K.S.A. 8-
16 1567, and amendments thereto; an inmate, including an inmate sentenced
17 pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2016 Supp. 21-
18 6707, and amendments thereto, shall be eligible for parole after serving the
19 entire minimum sentence imposed by the court, less good time credits.

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

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

36 (3) Except as provided by subsections (b)(1), (b)(2) and (b)(5),
37 K.S.A. 1993 Supp. 21-4628, prior to its repeal, K.S.A. 21-4635 through
38 21-4638, prior to their repeal, and K.S.A. 2016 Supp. 21-6620, 21-6623,
39 21-6624 and 21-6625, and amendments thereto, an inmate sentenced to
40 imprisonment for an off-grid offense committed on or after July 1, 1993,
41 but prior to July 1, 1999, shall be eligible for parole after serving 15 years
42 of confinement, without deduction of any good time credits and an inmate
43 sentenced to imprisonment for an off-grid offense committed on or after

1 July 1, 1999, shall be eligible for parole after serving 20 years of
2 confinement without deduction of any good time credits.

3 (4) Except as provided by K.S.A. 1993 Supp. 21-4628, prior to its
4 repeal, an inmate sentenced for a class A felony committed before July 1,
5 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to
6 its repeal, or K.S.A. 2016 Supp. 21-6707, and amendments thereto, shall
7 be eligible for parole after serving 15 years of confinement, without
8 deduction of any good time credits.

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

13 (6) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
14 4643, prior to its repeal, or K.S.A. 2016 Supp. 21-6627, and amendments
15 thereto, committed on or after July 1, 2006, shall be eligible for parole
16 after serving the mandatory term of imprisonment without deduction of
17 any good time credits.

18 (7) *An inmate sentenced to imprisonment for life without the*
19 *possibility of parole pursuant to section 3, and amendments thereto, shall*
20 *not be eligible for parole.*

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

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

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

31 (2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-
32 4643, prior to its repeal, or K.S.A. 2016 Supp. 21-6627, and amendments
33 thereto, for crimes committed on or after July 1, 2006, the inmate shall be
34 eligible for parole after serving the mandatory term of imprisonment.

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

40 (A) Except as provided in subparagraphs (D) and (E), persons
41 sentenced for nondrug severity levels 1 through 4 crimes, drug severity
42 levels 1 and 2 crimes committed on or after July 1, 1993, but prior to July
43 1, 2012, and drug severity levels 1, 2 and 3 crimes committed on or after

1 July 1, 2012, must serve 36 months on postrelease supervision.

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

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

12 (D) Persons sentenced to a term of imprisonment that includes a
13 sentence for a sexually violent crime as defined in K.S.A. 22-3717, and
14 amendments thereto, a sexually motivated crime in which the offender has
15 been ordered to register pursuant to K.S.A. 22-3717(d)(1)(D)(vii), and
16 amendments thereto, electronic solicitation, K.S.A. 21-3523, prior to its
17 repeal, or K.S.A. 2016 Supp. 21-5509, and amendments thereto, or
18 unlawful sexual relations, K.S.A. 21-3520, prior to its repeal, or K.S.A.
19 2016 Supp. 21-5512, and amendments thereto, shall serve the period of
20 postrelease supervision as provided in subsections (d)(1)(A), (d)(1)(B) or
21 (d)(1)(C) plus the amount of good time and program credit earned and
22 retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2016
23 Supp. 21-6821, and amendments thereto, on postrelease supervision.

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

28 (ii) If the sentencing judge departs from the presumptive postrelease
29 supervision period, the judge shall state on the record at the time of
30 sentencing the substantial and compelling reasons for the departure.
31 Departures in this section are subject to appeal pursuant to K.S.A. 21-
32 4721, prior to its repeal, or K.S.A. 2016 Supp. 21-6820, and amendments
33 thereto.

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

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

38 (b) any evidence received during the proceeding;

39 (c) the presentence report, the victim's impact statement and any
40 psychological evaluation as ordered by the court pursuant to K.S.A. 21-
41 4714(e), prior to its repeal, or K.S.A. 2016 Supp. 21-6813(e), and
42 amendments thereto; and

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

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

5 (v) In carrying out the provisions of subsection (d)(1)(D), the court
6 shall refer to K.S.A. 21-4718, prior to its repeal, or K.S.A. 2016 Supp. 21-
7 6817, and amendments thereto.

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

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

19 (viii) Persons convicted of K.S.A. 21-3510 or 21-3511, prior to their
20 repeal, or K.S.A. 2016 Supp. 21-5508, and amendments thereto, shall be
21 required to participate in a treatment program for sex offenders during the
22 postrelease supervision period.

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

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

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

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

43 (3) Persons serving a period of incarceration for a supervision

1 violation shall not have the period of postrelease supervision modified
2 until such person is released and returned to postrelease supervision.

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

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

12 (A) Rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 2016 Supp.
13 21-5503, and amendments thereto;

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

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

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

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

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

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

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

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

31 (J) aggravated incest, K.S.A. 21-3603, prior to its repeal, or K.S.A.
32 2016 Supp. 21-5604(b), and amendments thereto;

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

37 (L) commercial sexual exploitation of a child, as defined in K.S.A.
38 2016 Supp. 21-6422, and amendments thereto; or

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

43 (6) As used in this subsection, "sexually motivated" means that one of

1 the purposes for which the defendant committed the crime was for the
2 purpose of the defendant's sexual gratification.

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

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

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

1 Parole shall not be granted as an award of clemency and shall not be
2 considered a reduction of sentence or a pardon.

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

1 sentencing guidelines for the conduct that resulted in the inmate's
2 incarceration; and capacity of state correctional institutions.

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

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

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

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

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

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

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

39 (l) The prisoner review board shall promulgate rules and regulations
40 in accordance with K.S.A. 77-415 et seq., and amendments thereto, not
41 inconsistent with the law and as it may deem proper or necessary, with
42 respect to the conduct of parole hearings, postrelease supervision reviews,
43 revocation hearings, orders of restitution, reimbursement of expenditures

1 by the state board of indigents' defense services and other conditions to be
2 imposed upon parolees or releasees. Whenever an order for parole or
3 postrelease supervision is issued it shall recite the conditions thereof.

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

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

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

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

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

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

41 (6) shall order that the parolee or person on postrelease supervision
42 agree in writing to be subject to searches of the person and the person's
43 effects, vehicle, residence and property by a parole officer or a department

1 of corrections enforcement, apprehension and investigation officer, at any
2 time of the day or night, with or without a search warrant and with or
3 without cause. Nothing in this subsection shall be construed to authorize
4 such officers to conduct arbitrary or capricious searches or searches for the
5 sole purpose of harassment; and

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

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

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

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

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

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

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

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

43 (1) On or before September 1, 2013, for offenders convicted of:

- 1 (A) Severity levels 9 and 10 crimes on the sentencing guidelines grid
2 for nondrug crimes;
- 3 (B) severity level 4 crimes on the sentencing guidelines grid for drug
4 crimes committed prior to July 1, 2012; and
- 5 (C) severity level 5 crimes on the sentencing guidelines grid for drug
6 crimes committed on and after July 1, 2012;
- 7 (2) on or before November 1, 2013, for offenders convicted of:
- 8 (A) Severity levels 6, 7 and 8 crimes on the sentencing guidelines
9 grid for nondrug crimes;
- 10 (B) level 3 crimes on the sentencing guidelines grid for drug crimes
11 committed prior to July 1, 2012; and
- 12 (C) level 4 crimes on the sentencing guidelines grid for drug crimes
13 committed on or after July 1, 2012; and
- 14 (3) on or before January 1, 2014, for offenders convicted of:
- 15 (A) Severity levels 1, 2, 3, 4 and 5 crimes on the sentencing
16 guidelines grid for nondrug crimes;
- 17 (B) severity levels 1 and 2 crimes on the sentencing guidelines grid
18 for drug crimes committed at any time; and
- 19 (C) severity level 3 crimes on the sentencing guidelines grid for drug
20 crimes committed on or after July 1, 2012.
- 21 (u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
22 4643, prior to its repeal, or K.S.A. 2016 Supp. 21-6627, and amendments
23 thereto, for crimes committed on or after July 1, 2006, shall be placed on
24 parole for life and shall not be discharged from supervision by the prisoner
25 review board. When the board orders the parole of an inmate pursuant to
26 this subsection, the board shall order as a condition of parole that the
27 inmate be electronically monitored for the duration of the inmate's natural
28 life.
- 29 (v) Whenever the prisoner review board orders a person to be
30 electronically monitored pursuant to this section, or the court orders a
31 person to be electronically monitored pursuant to K.S.A. 2016 Supp. 21-
32 6604(r), and amendments thereto, the board shall order the person to
33 reimburse the state for all or part of the cost of such monitoring. In
34 determining the amount and method of payment of such sum, the board
35 shall take account of the financial resources of the person and the nature of
36 the burden that the payment of such sum will impose.
- 37 (w) (1) On and after July 1, 2012, for any inmate who is a sex
38 offender, as defined in K.S.A. 22-4902, and amendments thereto,
39 whenever the prisoner review board orders the parole of such inmate or
40 establishes conditions for such inmate placed on postrelease supervision,
41 such inmate shall agree in writing to not possess pornographic materials.
- 42 (A) As used in this subsection, "pornographic materials" means any
43 obscene material or performance depicting sexual conduct, sexual contact

1 or a sexual performance; and any visual depiction of sexually explicit
2 conduct.

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

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

10 Sec. 13. K.S.A. 2016 Supp. 22-4902 is hereby amended to read as
11 follows: 22-4902. As used in the Kansas offender registration act, unless
12 the context otherwise requires:

13 (a) "Offender" means:

14 (1) A sex offender;

15 (2) a violent offender;

16 (3) a drug offender;

17 (4) any person who has been required to register under out-of-state
18 law or is otherwise required to be registered; and

19 (5) any person required by court order to register for an offense not
20 otherwise required as provided in the Kansas offender registration act.

21 (b) "Sex offender" includes any person who:

22 (1) On or after April 14, 1994, is convicted of any sexually violent
23 crime;

24 (2) on or after July 1, 2002, is adjudicated as a juvenile offender for
25 an act which if committed by an adult would constitute the commission of
26 a sexually violent crime, unless the court, on the record, finds that the act
27 involved non-forcible sexual conduct, the victim was at least 14 years of
28 age and the offender was not more than four years older than the victim;

29 (3) has been determined to be a sexually violent predator;

30 (4) on or after July 1, 1997, is convicted of any of the following
31 crimes when one of the parties involved is less than 18 years of age:

32 (A) Adultery, as defined in K.S.A. 21-3507, prior to its repeal, or
33 K.S.A. 2016 Supp. 21-5511, and amendments thereto;

34 (B) criminal sodomy, as defined in K.S.A. 21-3505(a)(1), prior to its
35 repeal, or K.S.A. 2016 Supp. 21-5504(a)(1) or (a)(2), and amendments
36 thereto;

37 (C) promoting prostitution, as defined in K.S.A. 21-3513, prior to its
38 repeal, or K.S.A. 2016 Supp. 21-6420, prior to its amendment by section
39 17 of chapter 120 of the 2013 Session Laws of Kansas on July 1, 2013;

40 (D) patronizing a prostitute, as defined in K.S.A. 21-3515, prior to its
41 repeal, or K.S.A. 2016 Supp. 21-6421, prior to its amendment by section
42 18 of chapter 120 of the 2013 Session Laws of Kansas on July 1, 2013; or

43 (E) lewd and lascivious behavior, as defined in K.S.A. 21-3508, prior

1 to its repeal, or K.S.A. 2016 Supp. 21-5513, and amendments thereto;

2 (5) is convicted of sexual battery, as defined in K.S.A. 21-3517, prior
3 to its repeal, or ~~subsection (a)~~ of K.S.A. 2016 Supp. 21-5505(a), and
4 amendments thereto;

5 (6) is convicted of an attempt, conspiracy or criminal solicitation, as
6 defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or
7 K.S.A. 2016 Supp. 21-5301, 21-5302, 21-5303, and amendments thereto,
8 of an offense defined in this subsection; or

9 (7) has been convicted of an offense that is comparable to any crime
10 defined in this subsection, or any out-of-state conviction for an offense that
11 under the laws of this state would be an offense defined in this subsection.

12 (c) "Sexually violent crime" means:

13 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
14 2016 Supp. 21-5503, and amendments thereto;

15 (2) indecent liberties with a child, as defined in K.S.A. 21-3503, prior
16 to its repeal, or K.S.A. 2016 Supp. 21-5506(a), and amendments thereto;

17 (3) aggravated indecent liberties with a child, as defined in K.S.A.
18 21-3504, prior to its repeal, or K.S.A. 2016 Supp. 21-5506(b), and
19 amendments thereto;

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

23 (5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
24 to its repeal, or K.S.A. 2016 Supp. 21-5504(b), and amendments thereto;

25 (6) indecent solicitation of a child, as defined in K.S.A. 21-3510,
26 prior to its repeal, or K.S.A. 2016 Supp. 21-5508(a), and amendments
27 thereto;

28 (7) aggravated indecent solicitation of a child, as defined in K.S.A.
29 21-3511, prior to its repeal, or K.S.A. 2016 Supp. 21-5508(b), and
30 amendments thereto;

31 (8) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
32 to its repeal, or K.S.A. 2016 Supp. 21-5510, and amendments thereto;

33 (9) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to
34 its repeal, or K.S.A. 2016 Supp. 21-5505(b), and amendments thereto;

35 (10) aggravated incest, as defined in K.S.A. 21-3603, prior to its
36 repeal, or K.S.A. 2016 Supp. 21-5604(b), and amendments thereto;

37 (11) electronic solicitation, as defined in K.S.A. 21-3523, prior to its
38 repeal, and K.S.A. 2016 Supp. 21-5509, and amendments thereto;

39 (12) unlawful sexual relations, as defined in K.S.A. 21-3520, prior to
40 its repeal, or K.S.A. 2016 Supp. 21-5512, and amendments thereto;

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

1 gratification of the defendant or another;

2 (14) commercial sexual exploitation of a child, as defined in K.S.A.
3 2016 Supp. 21-6422, and amendments thereto;

4 (15) any conviction or adjudication for an offense that is comparable
5 to a sexually violent crime as defined in this subsection, or any out-of-state
6 conviction or adjudication for an offense that under the laws of this state
7 would be a sexually violent crime as defined in this subsection;

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

12 (17) any act which has been determined beyond a reasonable doubt to
13 have been sexually motivated, unless the court, on the record, finds that
14 the act involved non-forcible sexual conduct, the victim was at least 14
15 years of age and the offender was not more than four years older than the
16 victim. As used in this paragraph, "sexually motivated" means that one of
17 the purposes for which the defendant committed the crime was for the
18 purpose of the defendant's sexual gratification.

19 (d) "Sexually violent predator" means any person who, on or after
20 July 1, 2001, is found to be a sexually violent predator pursuant to K.S.A.
21 59-29a01 et seq., and amendments thereto.

22 (e) "Violent offender" includes any person who:

23 (1) On or after July 1, 1997, is convicted of any of the following
24 crimes:

25 (A) Capital murder, as defined in K.S.A. 21-3439, prior to its repeal,
26 or K.S.A. 2016 Supp. 21-5401, ~~and amendments thereto prior to its repeal~~;

27 (B) *aggravated murder, as defined in section 2, and amendments*
28 *thereto*;

29 (C) murder in the first degree, as defined in K.S.A. 21-3401, prior to
30 its repeal, or K.S.A. 2016 Supp. 21-5402, and amendments thereto;

31 ~~(D)~~ (D) murder in the second degree, as defined in K.S.A. 21-3402,
32 prior to its repeal, or K.S.A. 2016 Supp. 21-5403, and amendments
33 thereto;

34 ~~(E)~~ (E) voluntary manslaughter, as defined in K.S.A. 21-3403, prior
35 to its repeal, or K.S.A. 2016 Supp. 21-5404, and amendments thereto;

36 ~~(F)~~ (F) involuntary manslaughter, as defined in K.S.A. 21-3404, prior
37 to its repeal, or K.S.A. 2016 Supp. 21-5405(a)(1), (a)(2) or (a)(4), and
38 amendments thereto. The provisions of this paragraph shall not apply to
39 violations of K.S.A. 2016 Supp. 21-5405(a)(3), and amendments thereto,
40 which occurred on or after July 1, 2011, through July 1, 2013;

41 ~~(G)~~ (G) kidnapping, as defined in K.S.A. 21-3420, prior to its repeal,
42 or K.S.A. 2016 Supp. 21-5408(a), and amendments thereto;

43 ~~(H)~~ (H) aggravated kidnapping, as defined in K.S.A. 21-3421, prior

1 to its repeal, or K.S.A. 2016 Supp. 21-5408(b), and amendments thereto;

2 (H) (I) criminal restraint, as defined in K.S.A. 21-3424, prior to its
3 repeal, or K.S.A. 2016 Supp. 21-5411, and amendments thereto, except by
4 a parent, and only when the victim is less than 18 years of age; or

5 (H) (J) aggravated human trafficking, as defined in K.S.A. 21-3447,
6 prior to its repeal, or K.S.A. 2016 Supp. 21-5426(b), and amendments
7 thereto, if not committed in whole or in part for the purpose of the sexual
8 gratification of the defendant or another;

9 (2) on or after July 1, 2006, is convicted of any person felony and the
10 court makes a finding on the record that a deadly weapon was used in the
11 commission of such person felony;

12 (3) has been convicted of an offense that is comparable to any crime
13 defined in this subsection, any out-of-state conviction for an offense that
14 under the laws of this state would be an offense defined in this subsection;
15 or

16 (4) is convicted of an attempt, conspiracy or criminal solicitation, as
17 defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or
18 K.S.A. 2016 Supp. 21-5301, 21-5302 and 21-5303, and amendments
19 thereto, of an offense defined in this subsection.

20 (f) "Drug offender" includes any person who, on or after July 1, 2007:

21 (1) Is convicted of any of the following crimes:

22 (A) Unlawful manufacture or attempting such of any controlled
23 substance or controlled substance analog, as defined in K.S.A. 65-4159,
24 prior to its repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, or
25 K.S.A. 2016 Supp. 21-5703, and amendments thereto;

26 (B) possession of ephedrine, pseudoephedrine, red phosphorus,
27 lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized
28 ammonia or phenylpropanolamine, or their salts, isomers or salts of
29 isomers with intent to use the product to manufacture a controlled
30 substance, as defined in K.S.A. 65-7006(a), prior to its repeal, K.S.A. 2010
31 Supp. 21-36a09(a), prior to its transfer, or K.S.A. 2016 Supp. 21-5709(a),
32 and amendments thereto;

33 (C) K.S.A. 65-4161, prior to its repeal, K.S.A. 2010 Supp. 21-
34 36a05(a)(1), prior to its transfer, or K.S.A. 2016 Supp. 21-5705(a)(1), and
35 amendments thereto. The provisions of this paragraph shall not apply to
36 violations of K.S.A. 2010 Supp. 21-36a05(a)(2) through (a)(6) or (b)
37 which occurred on or after July 1, 2009, through April 15, 2010;

38 (2) has been convicted of an offense that is comparable to any crime
39 defined in this subsection, any out-of-state conviction for an offense that
40 under the laws of this state would be an offense defined in this subsection;
41 or

42 (3) is or has been convicted of an attempt, conspiracy or criminal
43 solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to

1 their repeal, or K.S.A. 2016 Supp. 21-5301, 21-5302 and 21-5303, and
2 amendments thereto, of an offense defined in this subsection.

3 (g) Convictions or adjudications which result from or are connected
4 with the same act, or result from crimes committed at the same time, shall
5 be counted for the purpose of this section as one conviction or
6 adjudication. Any conviction or adjudication set aside pursuant to law is
7 not a conviction or adjudication for purposes of this section. A conviction
8 or adjudication from any out-of-state court shall constitute a conviction or
9 adjudication for purposes of this section.

10 (h) "School" means any public or private educational institution,
11 including, but not limited to, postsecondary school, college, university,
12 community college, secondary school, high school, junior high school,
13 middle school, elementary school, trade school, vocational school or
14 professional school providing training or education to an offender for three
15 or more consecutive days or parts of days, or for 10 or more
16 nonconsecutive days in a period of 30 consecutive days.

17 (i) "Employment" means any full-time, part-time, transient, day-labor
18 employment or volunteer work, with or without compensation, for three or
19 more consecutive days or parts of days, or for 10 or more nonconsecutive
20 days in a period of 30 consecutive days.

21 (j) "Reside" means to stay, sleep or maintain with regularity or
22 temporarily one's person and property in a particular place other than a
23 location where the offender is incarcerated. It shall be presumed that an
24 offender resides at any and all locations where the offender stays, sleeps or
25 maintains the offender's person for three or more consecutive days or parts
26 of days, or for ten or more nonconsecutive days in a period of 30
27 consecutive days.

28 (k) "Residence" means a particular and definable place where an
29 individual resides. Nothing in the Kansas offender registration act shall be
30 construed to state that an offender may only have one residence for the
31 purpose of such act.

32 (l) "Transient" means having no fixed or identifiable residence.

33 (m) "Law enforcement agency having initial jurisdiction" means the
34 registering law enforcement agency of the county or location of
35 jurisdiction where the offender expects to most often reside upon the
36 offender's discharge, parole or release.

37 (n) "Registering law enforcement agency" means the sheriff's office
38 or tribal police department responsible for registering an offender.

39 (o) "Registering entity" means any person, agency or other
40 governmental unit, correctional facility or registering law enforcement
41 agency responsible for obtaining the required information from, and
42 explaining the required registration procedures to, any person required to
43 register pursuant to the Kansas offender registration act. "Registering

1 entity" shall include, but not be limited to, sheriff's offices, tribal police
2 departments and correctional facilities.

3 (p) "Treatment facility" means any public or private facility or
4 institution providing inpatient mental health, drug or alcohol treatment or
5 counseling, but does not include a hospital, as defined in K.S.A. 65-425,
6 and amendments thereto.

7 (q) "Correctional facility" means any public or private correctional
8 facility, juvenile detention facility, prison or jail.

9 (r) "Out-of-state" means: the District of Columbia; any federal,
10 military or tribal jurisdiction, including those within this state; any foreign
11 jurisdiction; or any state or territory within the United States, other than
12 this state.

13 (s) "Duration of registration" means the length of time during which
14 an offender is required to register for a specified offense or violation.

15 (t) (1) Notwithstanding any other provision of this section, "offender"
16 shall not include any person who is:

17 (A) Convicted of unlawful transmission of a visual depiction of a
18 child, as defined in K.S.A. 2016 Supp. 21-5611(a), and amendments
19 thereto, aggravated unlawful transmission of a visual depiction of a child,
20 as defined in K.S.A. 2016 Supp. 21-5611(b), and amendments thereto, or
21 unlawful possession of a visual depiction of a child, as defined in K.S.A.
22 2016 Supp. 21-5610, and amendments thereto; or

23 (B) adjudicated as a juvenile offender for an act which if committed
24 by an adult would constitute the commission of a crime defined in
25 subsection (t)(1)(A).

26 (2) Notwithstanding any other provision of law, a court shall not
27 order any person to register under the Kansas offender registration act for
28 the offenses described in subsection (t)(1).

29 Sec. 14. K.S.A. 2016 Supp. 22-4906 is hereby amended to read as
30 follows: 22-4906. (a) (1) Except as provided in subsection (c), if convicted
31 of any of the following offenses, an offender's duration of registration shall
32 be, if confined, 15 years after the date of parole, discharge or release,
33 whichever date is most recent, or, if not confined, 15 years from the date of
34 conviction:

35 (A) Sexual battery, as defined in K.S.A. 21-3517, prior to its repeal,
36 or ~~subsection (a) of~~ K.S.A. 2016 Supp. 21-5505(a), and amendments
37 thereto;

38 (B) adultery, as defined in K.S.A. 21-3507, prior to its repeal, or
39 K.S.A. 2016 Supp. 21-5511, and amendments thereto, when one of the
40 parties involved is less than 18 years of age;

41 (C) patronizing a prostitute, as defined in K.S.A. 21-3515, prior to its
42 repeal, or K.S.A. 2016 Supp. 21-6421, prior to its amendment by section
43 18 of chapter 120 of the 2013 Session Laws of Kansas on July 1, 2013,

1 when one of the parties involved is less than 18 years of age;

2 (D) lewd and lascivious behavior, as defined in K.S.A. 21-3508, prior
3 to its repeal, or K.S.A. 2016 Supp. 21-5513, and amendments thereto,
4 when one of the parties involved is less than 18 years of age;

5 (E) capital murder, as defined in K.S.A. 21-3439, prior to its repeal,
6 or K.S.A. 2016 Supp. 21-5401, ~~and amendments thereto prior to its repeal;~~

7 (F) *aggravated murder, as defined in section 2, and amendments*
8 *thereto;*

9 ~~(F)~~(G) murder in the first degree, as defined in K.S.A. 21-3401, prior
10 to its repeal, or K.S.A. 2016 Supp. 21-5402, and amendments thereto;

11 ~~(G)~~(H) murder in the second degree, as defined in K.S.A. 21-3402,
12 prior to its repeal, or K.S.A. 2016 Supp. 21-5403, and amendments
13 thereto;

14 ~~(H)~~(I) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to
15 its repeal, or K.S.A. 2016 Supp. 21-5404, and amendments thereto;

16 ~~(I)~~(J) involuntary manslaughter, as defined in K.S.A. 21-3404, prior
17 to its repeal, or ~~subsections (a)(1), (a)(2) or (a)(4) of K.S.A. 2016 Supp.~~
18 ~~21-5405(a)(1), (a)(2) or (a)(4), and amendments thereto;~~

19 ~~(J)~~(K) criminal restraint, as defined in K.S.A. 21-3424, prior to its
20 repeal, or K.S.A. 2016 Supp. 21-5411, and amendments thereto, except by
21 a parent, and only when the victim is less than 18 years of age;

22 ~~(K)~~(L) any act which has been determined beyond a reasonable
23 doubt to have been sexually motivated, unless the court, on the record,
24 finds that the act involved non-forcible sexual conduct, the victim was at
25 least 14 years of age and the offender was not more than four years older
26 than the victim;

27 ~~(L)~~(M) conviction of any person required by court order to register
28 for an offense not otherwise required as provided in the Kansas offender
29 registration act;

30 ~~(M)~~(N) conviction of any person felony and the court makes a
31 finding on the record that a deadly weapon was used in the commission of
32 such person felony;

33 ~~(N)~~(O) unlawful manufacture or attempting such of any controlled
34 substance or controlled substance analog, as defined in K.S.A. 65-4159,
35 prior to its repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, or
36 K.S.A. 2016 Supp. 21-5703, and amendments thereto;

37 ~~(O)~~(P) possession of ephedrine, pseudoephedrine, red phosphorus,
38 lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized
39 ammonia or phenylpropanolamine, or their salts, isomers or salts of
40 isomers with intent to use the product to manufacture a controlled
41 substance, as defined by ~~subsection (a) of K.S.A. 65-7006(a), prior to its~~
42 ~~repeal, subsection (a) of K.S.A. 2010 Supp. 21-36a09(a), prior to its~~
43 ~~transfer, or subsection (a) of K.S.A. 2016 Supp. 21-5709(a), and~~

1 amendments thereto;

2 ~~(P)~~ *(Q)* K.S.A. 65-4161, prior to its repeal, ~~subsection (a)(1) of~~
3 K.S.A. 2010 Supp. 21-36a05(a)(1), prior to its transfer, or ~~subsection (a)~~
4 ~~(1)~~ of K.S.A. 2016 Supp. 21-5705(a)(1), and amendments thereto; or

5 ~~(Q)~~ *(R)* any attempt, conspiracy or criminal solicitation, as defined in
6 K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2016
7 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an
8 offense defined in this subsection.

9 (2) Except as otherwise provided by the Kansas offender registration
10 act, the duration of registration terminates, if not confined, at the
11 expiration of 15 years from the date of conviction. Any period of time
12 during which any offender is incarcerated in any jail or correctional
13 facility or during which the offender does not comply with any and all
14 requirements of the Kansas offender registration act shall not count toward
15 the duration of registration.

16 (b) (1) Except as provided in subsection (c), if convicted of any of the
17 following offenses, an offender's duration of registration shall be, if
18 confined, 25 years after the date of parole, discharge or release, whichever
19 date is most recent, or, if not confined, 25 years from the date of
20 conviction:

21 (A) Criminal sodomy, as defined in ~~subsection (a)(1) of~~ K.S.A. 21-
22 3505(a)(1), prior to its repeal, or ~~subsection (a)(1) or (a)(2) of~~ K.S.A. 2016
23 Supp. 21-5504(a)(1) or (a)(2), and amendments thereto, when one of the
24 parties involved is less than 18 years of age;

25 (B) indecent solicitation of a child, as defined in K.S.A. 21-3510,
26 prior to its repeal, or ~~subsection (a) of~~ K.S.A. 2016 Supp. 21-5508(a), and
27 amendments thereto;

28 (C) electronic solicitation, as defined in K.S.A. 21-3523, prior to its
29 repeal, or K.S.A. 2016 Supp. 21-5509, and amendments thereto;

30 (D) aggravated incest, as defined in K.S.A. 21-3603, prior to its
31 repeal, or ~~subsection (b) of~~ K.S.A. 2016 Supp. 21-5604(b), and
32 amendments thereto;

33 (E) indecent liberties with a child, as defined in K.S.A. 21-3503, prior
34 to its repeal, or ~~subsection (a) of~~ K.S.A. 2016 Supp. 21-5506(a), and
35 amendments thereto;

36 (F) unlawful sexual relations, as defined in K.S.A. 21-3520, prior to
37 its repeal, or K.S.A. 2016 Supp. 21-5512, and amendments thereto;

38 (G) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
39 to its repeal, or K.S.A. 2016 Supp. 21-5510, and amendments thereto, if
40 the victim is 14 or more years of age but less than 18 years of age;

41 (H) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to
42 its repeal, or ~~subsection (b) of~~ K.S.A. 2016 Supp. 21-5505(b), and
43 amendments thereto;

1 (I) promoting prostitution, as defined in K.S.A. 21-3513, prior to its
2 repeal, or K.S.A. 2016 Supp. 21-6420, prior to its amendment by section
3 17 of chapter 120 of the 2013 Session Laws of Kansas on July 1, 2013, if
4 the person selling sexual relations is 14 or more years of age but less than
5 18 years of age; or

6 (J) any attempt, conspiracy or criminal solicitation, as defined in
7 K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2016
8 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an
9 offense defined in this subsection.

10 (2) Except as otherwise provided by the Kansas offender registration
11 act, the duration of registration terminates, if not confined, at the
12 expiration of 25 years from the date of conviction. Any period of time
13 during which any offender is incarcerated in any jail or correctional
14 facility or during which the offender does not comply with any and all
15 requirements of the Kansas offender registration act shall not count toward
16 the duration of registration.

17 (c) Upon a second or subsequent conviction of an offense requiring
18 registration, an offender's duration of registration shall be for such
19 offender's lifetime.

20 (d) The duration of registration for any offender who has been
21 convicted of any of the following offenses shall be for such offender's
22 lifetime:

23 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
24 2016 Supp. 21-5503, and amendments thereto;

25 (2) aggravated indecent solicitation of a child, as defined in K.S.A.
26 21-3511, prior to its repeal, or ~~subsection (b) of~~ K.S.A. 2016 Supp. 21-
27 5508(b), and amendments thereto;

28 (3) aggravated indecent liberties with a child, as defined in K.S.A.
29 21-3504, prior to its repeal, or ~~subsection (b) of~~ K.S.A. 2016 Supp. 21-
30 5506(b), and amendments thereto;

31 (4) criminal sodomy, as defined in ~~subsection (a)(2) or (a)(3) of~~
32 K.S.A. 21-3505(a)(2) or (a)(3), prior to its repeal, or ~~subsection (a)(3) or~~
33 ~~(a)(4) of~~ K.S.A. 2016 Supp. 21-5504(a)(3) or (a)(4), and amendments
34 thereto;

35 (5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
36 to its repeal, or ~~subsection (b) of~~ K.S.A. 2016 Supp. 21-5504(b), and
37 amendments thereto;

38 (6) aggravated human trafficking, as defined in K.S.A. 21-3447, prior
39 to its repeal, or ~~subsection (b) of~~ K.S.A. 2016 Supp. 21-5426(b), and
40 amendments thereto;

41 (7) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
42 to its repeal, or K.S.A. 2016 Supp. 21-5510, and amendments thereto, if
43 the victim is less than 14 years of age;

1 (8) promoting prostitution, as defined in K.S.A. 21-3513, prior to its
2 repeal, or K.S.A. 2016 Supp. 21-6420, prior to its amendment by section
3 17 of chapter 120 of the 2013 Session Laws of Kansas on July 1, 2013, if
4 the person selling sexual relations is less than 14 years of age;

5 (9) kidnapping, as defined in K.S.A. 21-3420, prior to its repeal, or
6 ~~subsection (a) of K.S.A. 2016 Supp. 21-5408(a)~~, and amendments thereto;

7 (10) aggravated kidnapping, as defined in K.S.A. 21-3421, prior to its
8 repeal, or ~~subsection (b) of K.S.A. 2016 Supp. 21-5408(b)~~, and
9 amendments thereto;

10 (11) commercial sexual exploitation of a child, as defined in K.S.A.
11 2016 Supp. 21-6422, and amendments thereto; or

12 (12) any attempt, conspiracy or criminal solicitation, as defined in
13 K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2016
14 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an
15 offense defined in this subsection.

16 (e) Any person who has been declared a sexually violent predator
17 pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall
18 register for such person's lifetime.

19 (f) Notwithstanding any other provisions of this section, for an
20 offender less than 14 years of age who is adjudicated as a juvenile offender
21 for an act which if committed by an adult would constitute a sexually
22 violent crime set forth in ~~subsection (e) of K.S.A. 22-4902(c)~~, and
23 amendments thereto, the court shall:

24 (1) Require registration until such offender reaches 18 years of age, at
25 the expiration of five years from the date of adjudication or, if confined,
26 from release from confinement, whichever date occurs later. Any period of
27 time during which the offender is incarcerated in any jail, juvenile facility
28 or correctional facility or during which the offender does not comply with
29 any and all requirements of the Kansas offender registration act shall not
30 count toward the duration of registration;

31 (2) not require registration if the court, on the record, finds substantial
32 and compelling reasons therefor; or

33 (3) require registration, but such registration information shall not be
34 open to inspection by the public or posted on any internet website, as
35 provided in K.S.A. 22-4909, and amendments thereto. If the court requires
36 registration but such registration is not open to the public, such offender
37 shall provide a copy of such court order to the registering law enforcement
38 agency at the time of registration. The registering law enforcement agency
39 shall forward a copy of such court order to the Kansas bureau of
40 investigation.

41 If such offender violates a condition of release during the term of the
42 conditional release, the court may require such offender to register
43 pursuant to ~~paragraph~~ *subsection (f)(1)*.

1 (g) Notwithstanding any other provisions of this section, for an
2 offender 14 years of age or more who is adjudicated as a juvenile offender
3 for an act which if committed by an adult would constitute a sexually
4 violent crime set forth in ~~subsection (e) of K.S.A. 22-4902(c)~~, and
5 amendments thereto, and such crime is not an off-grid felony or a felony
6 ranked in severity level 1 of the nondrug grid as provided in K.S.A. 21-
7 4704, prior to its repeal, or K.S.A. 2016 Supp. 21-6804, and amendments
8 thereto, the court shall:

9 (1) Require registration until such offender reaches 18 years of age, at
10 the expiration of five years from the date of adjudication or, if confined,
11 from release from confinement, whichever date occurs later. Any period of
12 time during which the offender is incarcerated in any jail, juvenile facility
13 or correctional facility or during which the offender does not comply with
14 any and all requirements of the Kansas offender registration act shall not
15 count toward the duration of registration;

16 (2) not require registration if the court, on the record, finds substantial
17 and compelling reasons therefor; or

18 (3) require registration, but such registration information shall not be
19 open to inspection by the public or posted on any internet website, as
20 provided in K.S.A. 22-4909, and amendments thereto. If the court requires
21 registration but such registration is not open to the public, such offender
22 shall provide a copy of such court order to the registering law enforcement
23 agency at the time of registration. The registering law enforcement agency
24 shall forward a copy of such court order to the Kansas bureau of
25 investigation.

26 If such offender violates a condition of release during the term of the
27 conditional release, the court may require such offender to register
28 pursuant to ~~paragraph~~ *subsection (g)(1)*.

29 (h) Notwithstanding any other provisions of this section, an offender
30 14 years of age or more who is adjudicated as a juvenile offender for an
31 act which if committed by an adult would constitute a sexually violent
32 crime set forth in ~~subsection (e) of K.S.A. 22-4902(c)~~, and amendments
33 thereto, and such crime is an off-grid felony or a felony ranked in severity
34 level 1 of the nondrug grid as provided in K.S.A. 21-4704, prior to its
35 repeal, or K.S.A. 2016 Supp. 21-6804, and amendments thereto, shall be
36 required to register for such offender's lifetime.

37 (i) Notwithstanding any other provision of law, if a diversionary
38 agreement or probation order, either adult or juvenile, or a juvenile
39 offender sentencing order, requires registration under the Kansas offender
40 registration act for an offense that would not otherwise require registration
41 as provided in ~~subsection (a)(5) of K.S.A. 22-4902(a)(5)~~, and amendments
42 thereto, then all provisions of the Kansas offender registration act shall
43 apply, except that the duration of registration shall be controlled by such

1 diversionary agreement, probation order or juvenile offender sentencing
2 order.

3 (j) The duration of registration does not terminate if the convicted or
4 adjudicated offender again becomes liable to register as provided by the
5 Kansas offender registration act during the required period of registration.

6 (k) For any person moving to Kansas who has been convicted or
7 adjudicated in an out-of-state court, or who was required to register under
8 an out-of-state law, the duration of registration shall be the length of time
9 required by the out-of -state jurisdiction or by the Kansas offender
10 registration act, whichever length of time is longer. The provisions of this
11 subsection shall apply to convictions or adjudications prior to June 1,
12 2006, and to persons who moved to Kansas prior to June 1, 2006, and to
13 convictions or adjudications on or after June 1, 2006, and to persons who
14 moved to Kansas on or after June 1, 2006.

15 (l) For any person residing, maintaining employment or attending
16 school in this state who has been convicted or adjudicated by an out-of-
17 state court of an offense that is comparable to any crime requiring
18 registration pursuant to the Kansas offender registration act, but who was
19 not required to register in the jurisdiction of conviction or adjudication, the
20 duration of registration shall be the duration required for the comparable
21 offense pursuant to the Kansas offender registration act.

22 Sec. 15. K.S.A. 2016 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 The court shall not enter an order removing a child from the custody of
11 a parent pursuant to this section based solely on the finding that the parent
12 is homeless.

13 (d) *Custody of a child removed from the custody of a parent.* If the
14 court has made the findings required by subsection (c), the court shall
15 enter an order awarding custody to: A relative of the child or to a person
16 with whom the child has close emotional ties who shall not be required to
17 be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated,
18 and amendments thereto; any other suitable person; a shelter facility; a
19 youth residential facility; a staff secure facility, notwithstanding any other
20 provision of law, if the child has been subjected to human trafficking or
21 aggravated human trafficking, as defined by K.S.A. 2016 Supp. 21-5426,
22 and amendments thereto, or commercial sexual exploitation of a child, as
23 defined by K.S.A. 2016 Supp. 21-6422, and amendments thereto, or the
24 child committed an act which, if committed by an adult, would constitute a
25 violation of K.S.A. 2016 Supp. 21-6419, and amendments thereto; or, if
26 the child is 15 years of age or younger, or 16 or 17 years of age if the child
27 has no identifiable parental or family resources or shows signs of physical,
28 mental, emotional or sexual abuse, to the secretary. Custody awarded
29 under this subsection shall continue until further order of the court.

30 (1) When custody is awarded to the secretary, the secretary shall
31 consider any placement recommendation by the court and notify the court
32 of the placement or proposed placement of the child within 10 days of the
33 order awarding custody. After providing the parties or interested parties
34 notice and opportunity to be heard, the court may determine whether the
35 secretary's placement or proposed placement is contrary to the welfare or
36 in the best interests of the child. In making that determination the court
37 shall consider the health and safety needs of the child and the resources
38 available to meet the needs of children in the custody of the secretary. If
39 the court determines that the placement or proposed placement is contrary
40 to the welfare or not in the best interests of the child, the court shall notify
41 the secretary, who shall then make an alternative placement.

42 (2) The custodian designated under this subsection shall notify the
43 court in writing at least 10 days prior to any planned placement with a

1 parent. The written notice shall state the basis for the custodian's belief that
2 placement with a parent is no longer contrary to the welfare or best interest
3 of the child. Upon reviewing the notice, the court may allow the custodian
4 to proceed with the planned placement or may set the date for a hearing to
5 determine if the child shall be allowed to return home. If the court sets a
6 hearing on the matter, the custodian shall not return the child home without
7 written consent of the court.

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

11 (4) The court may enter an order restraining any alleged perpetrator
12 of physical, mental or emotional abuse or sexual abuse of the child from
13 residing in the child's home; visiting, contacting, harassing or intimidating
14 the child, other family member or witness; or attempting to visit, contact,
15 harass or intimidate the child, other family member or witness. Such
16 restraining order shall be served by personal service pursuant to ~~subsection~~
17 ~~(a)~~ of K.S.A. 2016 Supp. 38-2237(a), and amendments thereto, on any
18 alleged perpetrator to whom the order is directed.

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

22 (e) *Further determinations regarding a child removed from the home.*
23 If custody has been awarded under subsection (d) to a person other than a
24 parent, a permanency plan shall be provided or prepared pursuant to
25 K.S.A. 2016 Supp. 38-2264, and amendments thereto. If a permanency
26 plan is provided at the dispositional hearing, the court may determine
27 whether reintegration is a viable alternative or, if reintegration is not a
28 viable alternative, whether the child should be placed for adoption or a
29 permanent custodian appointed. In determining whether reintegration is a
30 viable alternative, the court shall consider:

31 (1) Whether a parent has been found by a court to have committed
32 one of the following crimes or to have violated the law of another state
33 prohibiting such crimes or to have aided and abetted, attempted, conspired
34 or solicited the commission of one of these crimes: (A) *Capital murder,*
35 *K.S.A. 21-3439, prior to its repeal, or K.S.A. 2016 Supp. 21-5401, prior to*
36 *its repeal; (B) aggravated murder, section 2, and amendments thereto; (C)*
37 *murder in the first degree, K.S.A. 21-3401, prior to its repeal, or K.S.A.*
38 *2016 Supp. 21-5402, and amendments thereto; ~~(B)~~ (D) murder in the*
39 *second degree, K.S.A. 21-3402, prior to its repeal, or K.S.A. 2016 Supp.*
40 *21-5403, and amendments thereto; ~~(C)~~ capital murder, K.S.A. 21-3439,*
41 *prior to its repeal, or K.S.A. 2016 Supp. 21-5401, and amendments*
42 *thereto; ~~(D)~~ (E) voluntary manslaughter, K.S.A. 21-3403, prior to its*
43 *repeal, or K.S.A. 2016 Supp. 21-5404, and amendments thereto; or ~~(E)~~ (F)*

1 a felony battery that resulted in bodily injury;

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

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

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

8 (5) whether the parents have failed to work diligently toward
9 reintegration;

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

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

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

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

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

35 (2) If the court has reason to believe that a child is before the court
36 due, in whole or in part, to the use or misuse of alcohol or a violation of
37 K.S.A. 2016 Supp. 21-5701 through 21-5717, and amendments thereto, by
38 the child, a parent of the child, or another person responsible for the care
39 of the child, the court may order the child, parent of the child or other
40 person responsible for the care of the child to submit to and complete an
41 alcohol and drug evaluation by a qualified person or agency and comply
42 with any recommendations. If the evaluation is performed by a
43 community-based alcohol and drug safety program certified pursuant to

1 K.S.A. 8-1008, and amendments thereto, the child, parent of the child or
2 other person responsible for the care of the child shall pay a fee not to
3 exceed the fee established by that statute. If the court finds that the child
4 and those legally liable for the child's support are indigent, the fee may be
5 waived. In no event shall the fee be assessed against the secretary.

6 (3) If child support has been requested and the parent or parents have
7 a duty to support the child, the court may order one or both parents to pay
8 child support and, when custody is awarded to the secretary, the court shall
9 order one or both parents to pay child support. The court shall determine,
10 for each parent separately, whether the parent is already subject to an order
11 to pay support for the child. If the parent is not presently ordered to pay
12 support for any child who is subject to the jurisdiction of the court and the
13 court has personal jurisdiction over the parent, the court shall order the
14 parent to pay child support in an amount determined under K.S.A. 2016
15 Supp. 38-2277, and amendments thereto. Except for good cause shown,
16 the court shall issue an immediate income withholding order pursuant to
17 K.S.A. 2016 Supp. 23-3101 et seq., and amendments thereto, for each
18 parent ordered to pay support under this subsection, regardless of whether
19 a payor has been identified for the parent. A parent ordered to pay child
20 support under this subsection shall be notified, at the hearing or otherwise,
21 that the child support order may be registered pursuant to K.S.A. 2016
22 Supp. 38-2279, and amendments thereto. The parent shall also be informed
23 that, after registration, the income withholding order may be served on the
24 parent's employer without further notice to the parent and the child support
25 order may be enforced by any method allowed by law. Failure to provide
26 this notice shall not affect the validity of the child support order.

27 Sec. 16. K.S.A. 2016 Supp. 38-2271 is hereby amended to read as
28 follows: 38-2271. (a) It is presumed in the manner provided in K.S.A. 60-
29 414, and amendments thereto, that a parent is unfit by reason of conduct or
30 condition which renders the parent unable to fully care for a child, if the
31 state establishes, by clear and convincing evidence, that:

32 (1) A parent has previously been found to be an unfit parent in
33 proceedings under K.S.A. 2016 Supp. 38-2266 et seq., and amendments
34 thereto, or comparable proceedings under the laws of another jurisdiction;

35 (2) a parent has twice before been convicted of a crime specified in
36 article 34, 35, or 36 of chapter 21 of the Kansas Statutes Annotated, prior
37 to their repeal, or articles 54, 55 or 56 of chapter 21 of the Kansas Statutes
38 Annotated, or K.S.A. 2016 Supp. 21-6104, 21-6325, 21-6326 or 21-6418
39 through 21-6421, and amendments thereto, or comparable offenses under
40 the laws of another jurisdiction, or an attempt or attempts to commit such
41 crimes and the victim was under the age of 18 years;

42 (3) on two or more prior occasions a child in the physical custody of
43 the parent has been adjudicated a child in need of care as defined by

- 1 K.S.A. 2016 Supp. 38-2202(d)(1), (d)(3), (d)(5) or (d)(11), and
2 amendments thereto, or comparable proceedings under the laws of another
3 jurisdiction;
- 4 (4) the parent has been convicted of causing the death of another
5 child or stepchild of the parent;
- 6 (5) the child has been in an out-of-home placement, under court order
7 for a cumulative total period of one year or longer and the parent has
8 substantially neglected or willfully refused to carry out a reasonable plan,
9 approved by the court, directed toward reintegration of the child into the
10 parental home;
- 11 (6) (A) the child has been in an out-of-home placement, under court
12 order for a cumulative total period of two years or longer; (B) the parent
13 has failed to carry out a reasonable plan, approved by the court, directed
14 toward reintegration of the child into the parental home; and (C) there is a
15 substantial probability that the parent will not carry out such plan in the
16 near future;
- 17 (7) a parent has been convicted of capital murder, K.S.A. 21-3439,
18 prior to its repeal, or K.S.A. 2016 Supp. 21-5401, *prior to its repeal*,
19 *aggravated murder, section 2*, and amendments thereto, murder in the first
20 degree, K.S.A. 21-3401, prior to its repeal, or K.S.A. 2016 Supp. 21-5402,
21 and amendments thereto, murder in the second degree, K.S.A. 21-3402,
22 prior to its repeal, or K.S.A. 2016 Supp. 21-5403, and amendments
23 thereto, voluntary manslaughter, K.S.A. 21-3403, prior to its repeal, or
24 K.S.A. 2016 Supp. 21-5404, and amendments thereto, human trafficking
25 or aggravated human trafficking, K.S.A. 21-3446 or 21-3447, prior to their
26 repeal, or K.S.A. 2016 Supp. 21-5426, and amendments thereto, or
27 commercial sexual exploitation of a child, K.S.A. 2016 Supp. 21-6422,
28 and amendments thereto, or comparable proceedings under the laws of
29 another jurisdiction or, has been adjudicated a juvenile offender because of
30 an act which if committed by an adult would be an offense as provided in
31 this subsection, and the victim of such murder was the other parent of the
32 child;
- 33 (8) a parent abandoned or neglected the child after having knowledge
34 of the child's birth or either parent has been granted immunity from
35 prosecution for abandonment of the child under K.S.A. 21-3604(b), prior
36 to its repeal, or K.S.A. 2016 Supp. 21-5605(d), and amendments thereto;
37 or
- 38 (9) a parent has made no reasonable efforts to support or
39 communicate with the child after having knowledge of the child's birth;
- 40 (10) a father, after having knowledge of the pregnancy, failed without
41 reasonable cause to provide support for the mother during the six months
42 prior to the child's birth;
- 43 (11) a father abandoned the mother after having knowledge of the

1 pregnancy;

2 (12) a parent has been convicted of rape, K.S.A. 21-3502, prior to its
3 repeal, or K.S.A. 2016 Supp. 21-5503, and amendments thereto, or
4 comparable proceedings under the laws of another jurisdiction resulting in
5 the conception of the child; or

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

10 (b) The burden of proof is on the parent to rebut the presumption of
11 unfitness by a preponderance of the evidence. In the absence of proof that
12 the parent is presently fit and able to care for the child or that the parent
13 will be fit and able to care for the child in the foreseeable future, the court
14 shall terminate parental rights in proceedings pursuant to K.S.A. 2016
15 Supp. 38-2266 et seq., and amendments thereto.

16 Sec. 17. K.S.A. 2016 Supp. 38-2312 is hereby amended to read as
17 follows: 38-2312. (a) Except as provided in subsection (b) and (c), any
18 records or files specified in this code concerning a juvenile may be
19 expunged upon application to a judge of the court of the county in which
20 the records or files are maintained. The application for expungement may
21 be made by the juvenile, if 18 years of age or older or, if the juvenile is
22 less than 18 years of age, by the juvenile's parent or next friend.

23 (b) There shall be no expungement of records or files concerning acts
24 committed by a juvenile which, if committed by an adult, would constitute
25 a violation of *K.S.A. 21-3439, prior to its repeal, or K.S.A. 2016 Supp. 21-*
26 *5401, prior to its repeal, capital murder; section 2, and amendments*
27 *thereto, aggravated murder; K.S.A. 21-3401, prior to its repeal, or K.S.A.*
28 *2016 Supp. 21-5402, and amendments thereto, murder in the first degree;*
29 *K.S.A. 21-3402, prior to its repeal, or K.S.A. 2016 Supp. 21-5403, and*
30 *amendments thereto, murder in the second degree; K.S.A. 21-3403, prior*
31 *to its repeal, or K.S.A. 2016 Supp. 21-5404, and amendments thereto,*
32 *voluntary manslaughter; K.S.A. 21-3404, prior to its repeal, or K.S.A.*
33 *2016 Supp. 21-5405, and amendments thereto, involuntary manslaughter;*
34 ~~*K.S.A. 21-3439, prior to its repeal, or K.S.A. 2016 Supp. 21-5401, and*~~
35 ~~*amendments thereto, capital murder; K.S.A. 21-3442, prior to its repeal, or*~~
36 ~~*K.S.A. 2016 Supp. 21-5405(a)(3), and amendments thereto, involuntary*~~
37 ~~*manslaughter while driving under the influence of alcohol or drugs; K.S.A.*~~
38 ~~*21-3502, prior to its repeal, or K.S.A. 2016 Supp. 21-5503, and*~~
39 ~~*amendments thereto, rape; K.S.A. 21-3503, prior to its repeal, or K.S.A.*~~
40 ~~*2016 Supp. 21-5506(a), and amendments thereto, indecent liberties with a*~~
41 ~~*child; K.S.A. 21-3504, prior to its repeal, or K.S.A. 2016 Supp. 21-*~~
42 ~~*5506(b), and amendments thereto, aggravated indecent liberties with a*~~
43 ~~*child; K.S.A. 21-3506, prior to its repeal, or K.S.A. 2016 Supp. 21-*~~

1 5504(b), and amendments thereto, aggravated criminal sodomy; K.S.A.
2 21-3510, prior to its repeal, or K.S.A. 2016 Supp. 21-5508(a), and
3 amendments thereto, indecent solicitation of a child; K.S.A. 21-3511, prior
4 to its repeal, or K.S.A. 2016 Supp. 21-5508(b), and amendments thereto,
5 aggravated indecent solicitation of a child; K.S.A. 21-3516, prior to its
6 repeal, or K.S.A. 2016 Supp. 21-5510, and amendments thereto, sexual
7 exploitation of a child; K.S.A. 21-3603, prior to its repeal, or K.S.A. 2016
8 Supp. 21-5604(b), and amendments thereto, aggravated incest; K.S.A. 21-
9 3608, prior to its repeal, or K.S.A. 2016 Supp. 21-5601(a), and
10 amendments thereto, endangering a child; K.S.A. 21-3609, prior to its
11 repeal, or K.S.A. 2016 Supp. 21-5602, and amendments thereto, abuse of a
12 child; or which would constitute an attempt to commit a violation of any of
13 the offenses specified in this subsection.

14 (c) Notwithstanding any other law to the contrary, for any offender
15 who is required to register as provided in the Kansas offender registration
16 act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no
17 expungement of any conviction or any part of the offender's criminal
18 record while the offender is required to register as provided in the Kansas
19 offender registration act.

20 (d) When a petition for expungement is filed, the court shall set a date
21 for a hearing on the petition and shall give notice thereof to the county or
22 district attorney. The petition shall state: (1) The juvenile's full name; (2)
23 the full name of the juvenile as reflected in the court record, if different
24 than (1); (3) the juvenile's sex and date of birth; (4) the offense for which
25 the juvenile was adjudicated; (5) the date of the trial; and (6) the identity
26 of the trial court. Except as otherwise provided by law, a petition for
27 expungement shall be accompanied by a docket fee in the amount of \$176.
28 On and after July 1, 2015, through June 30, 2017, the supreme court may
29 impose a charge, not to exceed \$19 per case, to fund the costs of non-
30 judicial personnel. All petitions for expungement shall be docketed in the
31 original action. Any person who may have relevant information about the
32 petitioner may testify at the hearing. The court may inquire into the
33 background of the petitioner.

34 (e) (1) After hearing, the court shall order the expungement of the
35 records and files if the court finds that:

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

38 (ii) one year has elapsed since the final discharge for an adjudication
39 concerning acts committed by a juvenile which, if committed by an adult,
40 would constitute a violation of K.S.A. 2016 Supp. 21-6419, and
41 amendments thereto;

42 (B) since the final discharge of the juvenile, the juvenile has not been
43 convicted of a felony or of a misdemeanor other than a traffic offense or

1 adjudicated as a juvenile offender under the revised Kansas juvenile justice
2 code and no proceedings are pending seeking such a conviction or
3 adjudication; and

4 (C) the circumstances and behavior of the petitioner warrant
5 expungement.

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

8 (f) Upon entry of an order expunging records or files, the offense
9 which the records or files concern shall be treated as if it never occurred,
10 except that upon conviction of a crime or adjudication in a subsequent
11 action under this code the offense may be considered in determining the
12 sentence to be imposed. The petitioner, the court and all law enforcement
13 officers and other public offices and agencies shall properly reply on
14 inquiry that no record or file exists with respect to the juvenile. Inspection
15 of the expunged files or records thereafter may be permitted by order of
16 the court upon petition by the person who is the subject thereof. The
17 inspection shall be limited to inspection by the person who is the subject of
18 the files or records and the person's designees.

19 (g) A certified copy of any order made pursuant to subsection (a) or
20 (d) shall be sent to the Kansas bureau of investigation, which shall notify
21 every juvenile or criminal justice agency which may possess records or
22 files ordered to be expunged. If the agency fails to comply with the order
23 within a reasonable time after its receipt, such agency may be adjudged in
24 contempt of court and punished accordingly.

25 (h) The court shall inform any juvenile who has been adjudicated a
26 juvenile offender of the provisions of this section.

27 (i) Nothing in this section shall be construed to prohibit the
28 maintenance of information relating to an offense after records or files
29 concerning the offense have been expunged if the information is kept in a
30 manner that does not enable identification of the juvenile.

31 (j) Nothing in this section shall be construed to permit or require
32 expungement of files or records related to a child support order registered
33 pursuant to the revised Kansas juvenile justice code.

34 (k) Whenever the records or files of any adjudication have been
35 expunged under the provisions of this section, the custodian of the records
36 or files of adjudication relating to that offense shall not disclose the
37 existence of such records or files, except when requested by:

38 (1) The person whose record was expunged;

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

43 (3) a court, upon a showing of a subsequent conviction of the person

1 whose record has been expunged;

2 (4) the secretary for aging and disability services, or a designee of the
3 secretary, for the purpose of obtaining information relating to employment
4 in an institution, as defined in K.S.A. 76-12a01, and amendments thereto,
5 of the Kansas department for aging and disability services of any person
6 whose record has been expunged;

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

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

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

21 (8) the Kansas sentencing commission; or

22 (9) the Kansas bureau of investigation, for the purposes of:

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

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

29 (l) The provisions of subsection (k)(9) shall apply to all records
30 created prior to, on and after July 1, 2011.

31 Sec. 18. K.S.A. 2016 Supp. 38-2365 is hereby amended to read as
32 follows: 38-2365. (a) When a juvenile offender has been placed in the
33 custody of the secretary, the secretary shall have a reasonable time to make
34 a placement. If the juvenile offender has not been placed, any party who
35 believes that the amount of time elapsed without placement has exceeded a
36 reasonable time may file a motion for review with the court. In
37 determining what is a reasonable amount of time, matters considered by
38 the court shall include, but not be limited to, the nature of the underlying
39 offense, efforts made for placement of the juvenile offender and the
40 availability of a suitable placement. The secretary shall notify the court,
41 the juvenile's attorney of record and the juvenile's parent, in writing, of the
42 initial placement and any subsequent change of placement as soon as the
43 placement has been accomplished. The notice to the juvenile offender's

1 parent shall be sent to such parent's last known address or addresses. The
2 court shall have no power to direct a specific placement by the secretary,
3 but may make recommendations to the secretary. The secretary may place
4 the juvenile offender in an institution operated by the secretary, a youth
5 residential facility or any other appropriate placement. If the court has
6 recommended an out-of-home placement, the secretary may not return the
7 juvenile offender to the home from which removed without first notifying
8 the court of the plan.

9 (b) If a juvenile is in the custody of the secretary, the secretary shall
10 prepare and present a permanency plan at sentencing or within 30 days
11 thereafter. If the juvenile is 14 years of age or older and the juvenile is
12 able, the secretary shall prepare the permanency plan in consultation with
13 the juvenile. If a permanency plan is already in place under a child in need
14 of care proceeding, the court may adopt the plan under the present
15 proceeding. The written permanency plan shall provide for reintegration of
16 the juvenile into such juvenile's family or, if reintegration is not a viable
17 alternative, for other permanent placement of the juvenile. Reintegration
18 may not be a viable alternative when: (1) The parent has been found by a
19 court to have committed *capital murder, K.S.A. 21-3439, prior to its*
20 *repeal, or K.S.A. 2016 Supp 21-5401, prior to its repeal, aggravated*
21 *murder, section 2, and amendments thereto, murder in the first degree,*
22 *K.S.A. 21-3401, prior to its repeal, or K.S.A. 2016 Supp. 21-5402, and*
23 *amendments thereto, murder in the second degree, K.S.A. 21-3402, prior*
24 *to its repeal, or K.S.A. 2016 Supp. 21-5403, and amendments thereto,*
25 ~~*capital murder, K.S.A. 21-3439, prior to its repeal, or K.S.A. 2016 Supp.*~~
26 ~~*21-5401, and amendments thereto,*~~ voluntary manslaughter, K.S.A. 21-
27 3403, prior to its repeal, or K.S.A. 2016 Supp. 21-5404, and amendments
28 thereto, of a child or violated a law of another state which prohibits such
29 murder or manslaughter of a child;

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

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

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

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

40 (6) the juvenile has been in extended out-of-home placement as
41 defined in K.S.A. 2016 Supp. 38-2202, and amendments thereto.

42 (c) If the juvenile is placed in the custody of the secretary, the plan
43 shall be prepared and submitted by the secretary. If the juvenile is placed

1 in the custody of a facility or person other than the secretary, the plan shall
2 be prepared and submitted by a court services officer. If the permanency
3 goal is reintegration into the family, the permanency plan shall include
4 measurable objectives and time schedules for reintegration.

5 (d) During the time a juvenile remains in the custody of the secretary,
6 the secretary shall submit to the court, at least every six months, a written
7 report of the progress being made toward the goals of the permanency plan
8 submitted pursuant to subsections (b) and (c) and the specific actions taken
9 to achieve the goals of the permanency plan. If the juvenile is placed in
10 foster care, the court may request the foster parent to submit to the court,
11 at least every six months, a report in regard to the juvenile's adjustment,
12 progress and condition. Such report shall be made a part of the juvenile's
13 court social file. The court shall review the plan submitted by the secretary
14 and the report, if any, submitted by the foster parent and determine
15 whether reasonable efforts and progress have been made to achieve the
16 goals of the permanency plan. If the court determines that progress is
17 inadequate or that the permanency plan is no longer viable, the court shall
18 hold a hearing pursuant to subsection (e).

19 (e) When the secretary has custody of the juvenile, a permanency
20 hearing shall be held no more than 12 months after the juvenile is first
21 placed outside such juvenile's home and at least every 12 months
22 thereafter. Juvenile offenders who have been in extended out-of-home
23 placement shall be provided a permanency hearing within 30 days of a
24 request from the secretary. The court may appoint a guardian ad litem to
25 represent the juvenile offender at the permanency hearing. At the
26 permanency hearing, the court shall determine whether and, if applicable,
27 when the juvenile will be:

28 (1) Reintegrated with the juvenile's parents;
29 (2) placed for adoption;
30 (3) placed with a permanent custodian; or
31 (4) if the juvenile is 16 years of age or older and the secretary has
32 documented compelling reasons why it would not be in the juvenile's best
33 interests for a placement in one of the placements pursuant to paragraphs
34 (1), (2) or (3), placed in another planned permanent arrangement.

35 (f) At each permanency hearing, the court shall:

36 (1) Make a written finding as to whether reasonable efforts have been
37 made to accomplish the permanency goal and whether continued out-of-
38 home placement is necessary for the juvenile's safety;

39 (2) make a written finding as to whether the reasonable and prudent
40 parenting standard has been met and whether the juvenile has regular,
41 ongoing opportunities to engage in age or developmentally appropriate
42 activities. The secretary shall report to the court the steps the secretary is
43 taking to ensure that the reasonable and prudent parenting standard is

1 being met and that the juvenile has regular, ongoing opportunities to
2 engage in age or developmentally appropriate activities, including
3 consultation with the juvenile in an age-appropriate manner about the
4 opportunities of the juvenile to participate in the activities; and

5 (3) if the juvenile is 14 years of age or older, document the efforts
6 made by the secretary to help the juvenile prepare for the transition from
7 custody to a successful adulthood. The secretary shall report to the court
8 the programs and services that are being provided to the juvenile which
9 will help the juvenile prepare for the transition from custody to a
10 successful adulthood.

11 (g) The requirements of this subsection shall apply only if the
12 permanency goal in place at the time of the hearing is another planned
13 permanent arrangement as described in subsection (e)(4). At each
14 permanency hearing held with respect to the juvenile, in addition to the
15 requirements of subsection (f), the court shall:

16 (1) Ask the juvenile, if the juvenile is able, by attendance at the
17 hearing or by report to the court, about the desired permanency outcome
18 for the juvenile;

19 (2) document the intensive, ongoing and, as of the date of the hearing,
20 unsuccessful permanency efforts made by the secretary to return the
21 juvenile home or secure a placement for the juvenile with a fit and willing
22 relative, a legal guardian or an adoptive parent. The secretary shall report
23 to the court the intensive, ongoing and, as of the date of the hearing,
24 unsuccessful efforts made by the secretary to return the juvenile home or
25 secure a placement for the juvenile with a fit and willing relative, a legal
26 guardian or an adoptive parent, including efforts that utilize search
27 technology, including social media, to find biological family members of
28 the children; and

29 (3) make a judicial determination explaining why, as of the date of
30 the hearing, another planned permanent living arrangement is the best
31 permanency plan for the juvenile and provide compelling reasons why it
32 continues to not be in the best interests of the juvenile to return home, be
33 placed for adoption, be placed with a legal guardian or be placed with a fit
34 and willing relative.

35 (h) Whenever a hearing is required under subsection (e), the court
36 shall notify all interested parties of the hearing date, the secretary, foster
37 parent and preadoptive parent or relatives providing care for the juvenile
38 and hold a hearing. If the juvenile is 14 years of age or older, the court
39 shall require notice of the time and place of the permanency hearing be
40 given to the juvenile. Such notice shall request the juvenile's participation
41 in the hearing by attendance or by report to the court. Individuals receiving
42 notice pursuant to this subsection shall not be made a party to the action
43 solely on the basis of this notice and opportunity to be heard. After

1 providing the persons receiving notice an opportunity to be heard, the
2 court shall determine whether the juvenile's needs are being adequately
3 met; whether services set out in the permanency plan necessary for the
4 safe return of the juvenile have been made available to the parent with
5 whom reintegration is planned; and whether reasonable efforts and
6 progress have been made to achieve the goals of the permanency plan.

7 (i) If the court finds reintegration continues to be a viable alternative,
8 the court shall determine whether and, if applicable, when the juvenile will
9 be returned to the parent. The court may rescind any of its prior
10 dispositional orders and enter any dispositional order authorized by this
11 code or may order that a new plan for the reintegration be prepared and
12 submitted to the court. If reintegration cannot be accomplished as
13 approved by the court, the court shall be informed and shall schedule a
14 hearing pursuant to subsection (j). No such hearing is required when the
15 parent voluntarily relinquishes parental rights or agrees to appointment of
16 a permanent guardian.

17 (j) When the court finds any of the following conditions exist, the
18 county or district attorney or the county or district attorney's designee shall
19 file a petition alleging the juvenile to be a child in need of care and
20 requesting termination of parental rights pursuant to the Kansas code for
21 care of children: (1) The court determines that reintegration is not a viable
22 alternative and either adoption or permanent guardianship might be in the
23 best interests of the juvenile;

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

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

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

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

35 (2) services set out in the case plan necessary for the safe return of
36 the juvenile have not been made available to the parent with whom
37 reintegration is planned; or

38 (3) there are one or more documented reasons why such filing would
39 not be in the best interests of the juvenile. Documented reasons may
40 include, but are not limited to: The juvenile has close emotional bonds
41 with a parent which should not be broken; the juvenile is 14 years of age
42 or older and, after advice and counsel, refuses to be adopted; insufficient
43 grounds exist for termination of parental rights; the juvenile is an

1 unaccompanied refugee minor; or there are international legal or
2 compelling foreign policy reasons precluding termination of parental
3 rights.

4 Sec. 19. K.S.A. 2016 Supp. 39-970 is hereby amended to read as
5 follows: 39-970. (a) (1) No person shall knowingly operate an adult care
6 home if, in the adult care home, there works any person who has been
7 convicted of or has been adjudicated a juvenile offender because of having
8 committed an act which if done by an adult would constitute the
9 commission of capital murder, pursuant to K.S.A. 21-3439, prior to its
10 repeal, or K.S.A. 2016 Supp. 21-5401, *prior to its repeal, aggravated*
11 *murder, section 2*, and amendments thereto, first degree murder, pursuant
12 to K.S.A. 21-3401, prior to its repeal, or K.S.A. 2016 Supp. 21-5402, and
13 amendments thereto, second degree murder, pursuant to K.S.A. 21-
14 3402(a), prior to its repeal, or K.S.A. 2016 Supp. 21-5403(a), and
15 amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403,
16 prior to its repeal, or K.S.A. 2016 Supp. 21-5404, and amendments
17 thereto, assisting suicide, pursuant to K.S.A. 21-3406, prior to its repeal, or
18 K.S.A. 2016 Supp. 21-5407, and amendments thereto, mistreatment of a
19 dependent adult or mistreatment of an elder person, pursuant to K.S.A. 21-
20 3437, prior to its repeal, or K.S.A. 2016 Supp. 21-5417, and amendments
21 thereto, human trafficking, pursuant to K.S.A. 21-3446, prior to its repeal,
22 or K.S.A. 2016 Supp. 21-5426(a), and amendments thereto, aggravated
23 human trafficking, pursuant to K.S.A. 21-3447, prior to its repeal, or
24 K.S.A. 2016 Supp. 21-5426(b), and amendments thereto, rape, pursuant to
25 K.S.A. 21-3502, prior to its repeal, or K.S.A. 2016 Supp. 21-5503, and
26 amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-
27 3503, prior to its repeal, or K.S.A. 2016 Supp. 21-5506(a), and
28 amendments thereto, aggravated indecent liberties with a child, pursuant to
29 K.S.A. 21-3504, prior to its repeal, or K.S.A. 2016 Supp. 21-5506(b), and
30 amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-
31 3506, prior to its repeal, or K.S.A. 2016 Supp. 21-5504(b), and
32 amendments thereto, indecent solicitation of a child, pursuant to K.S.A.
33 21-3510, prior to its repeal, or K.S.A. 2016 Supp. 21-5508(a), and
34 amendments thereto, aggravated indecent solicitation of a child, pursuant
35 to K.S.A. 21-3511, prior to its repeal, or K.S.A. 2016 Supp. 21-5508(b),
36 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A.
37 21-3516, prior to its repeal, or K.S.A. 2016 Supp. 21-5510, and
38 amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, prior to
39 its repeal, or K.S.A. 2016 Supp. 21-5505(a), and amendments thereto,
40 aggravated sexual battery, pursuant to K.S.A. 21-3518, prior to its repeal,
41 or K.S.A. 2016 Supp. 21-5505(b), and amendments thereto, commercial
42 sexual exploitation of a child, pursuant to K.S.A. 2016 Supp. 21-6422, and
43 amendments thereto, an attempt to commit any of the crimes listed in this

1 subsection (a)(1), pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A.
2 2016 Supp. 21-5301, and amendments thereto, a conspiracy to commit any
3 of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302,
4 prior to its repeal, or K.S.A. 2016 Supp. 21-5302, and amendments
5 thereto, or criminal solicitation of any of the crimes listed in this
6 subsection (a)(1), pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A.
7 2016 Supp. 21-5303, and amendments thereto, or similar statutes of other
8 states or the federal government. The provisions of subsection (a)(2)(C)
9 shall not apply to any person who is employed by an adult care home on
10 July 1, 2010, and while continuously employed by the same adult care
11 home.

12 (2) A person operating an adult care home may employ an applicant
13 who has been convicted of any of the following if five or more years have
14 elapsed since the applicant satisfied the sentence imposed or was
15 discharged from probation, a community correctional services program,
16 parole, postrelease supervision, conditional release or a suspended
17 sentence; or if five or more years have elapsed since the applicant has been
18 finally discharged from the custody of the commissioner of juvenile justice
19 or from probation or has been adjudicated a juvenile offender, whichever
20 time is longer: A felony conviction for a crime which is described in: (A)
21 Article 34 of chapter 21 of the Kansas Statutes Annotated, prior to their
22 repeal, or article 54 of chapter 21 of the Kansas Statutes Annotated, or
23 K.S.A. 2016 Supp. 21-6104, 21-6325, 21-6326 or 21-6418, and
24 amendments thereto, except those crimes listed in subsection (a)(1); (B)
25 articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to
26 their repeal, or article 55 or 56 of chapter 21 of the Kansas Statutes
27 Annotated, or K.S.A. 2016 Supp. 21-6419 through 21-6421, and
28 amendments thereto, except those crimes listed in subsection (a)(1) and
29 K.S.A. 21-3605, prior to its repeal, or K.S.A. 2016 Supp. 21-5606, and
30 amendments thereto; (C) K.S.A. 21-3701, prior to its repeal, or K.S.A.
31 2016 Supp. 21-5801, and amendments thereto; (D) an attempt to commit
32 any of the crimes listed in this subsection (a)(2), pursuant to K.S.A. 21-
33 3301, prior to its repeal, or K.S.A. 2016 Supp. 21-5301, and amendments
34 thereto; (E) a conspiracy to commit any of the crimes listed in subsection
35 (a)(2), pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2016
36 Supp. 21-5302, and amendments thereto; (F) criminal solicitation of any of
37 the crimes listed in subsection (a)(2), pursuant to K.S.A. 21-3303, prior to
38 its repeal, or K.S.A. 2016 Supp. 21-5303, and amendments thereto; or (G)
39 similar statutes of other states or the federal government.

40 (b) No person shall operate an adult care home if such person has
41 been found to be in need of a guardian or conservator, or both as provided
42 in K.S.A. 59-3050 through 59-3095, and amendments thereto. The
43 provisions of this subsection shall not apply to a minor found to be in need

1 of a guardian or conservator for reasons other than impairment.

2 (c) The secretary for aging and disability services shall have access to
3 any criminal history record information in the possession of the Kansas
4 bureau of investigation regarding any criminal history information,
5 convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their
6 repeal, or K.S.A. 2016 Supp. 21-5417, 21-5505(a) and 21-5801, and
7 amendments thereto, adjudications of a juvenile offender which if
8 committed by an adult would have been a felony conviction, and
9 adjudications of a juvenile offender for an offense described in K.S.A. 21-
10 3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2016 Supp. 21-
11 5417, 21-5505(a) and 21-5801, and amendments thereto, concerning
12 persons working in an adult care home. The secretary shall have access to
13 these records for the purpose of determining whether or not the adult care
14 home meets the requirements of this section. The Kansas bureau of
15 investigation may charge to the Kansas department for aging and disability
16 services a reasonable fee for providing criminal history record information
17 under this subsection.

18 (d) For the purpose of complying with this section, the operator of an
19 adult care home shall request from the Kansas department for aging and
20 disability services information regarding any criminal history information,
21 convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their
22 repeal, or K.S.A. 2016 Supp. 21-5417, 21-5505(a) and 21-5801, and
23 amendments thereto, adjudications of a juvenile offender which if
24 committed by an adult would have been a felony conviction, and
25 adjudications of a juvenile offender for an offense described in K.S.A. 21-
26 3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2016 Supp. 21-
27 5417, 21-5505(a) and 21-5801, and amendments thereto, and which relates
28 to a person who works in the adult care home, or is being considered for
29 employment by the adult care home, for the purpose of determining
30 whether such person is subject to the provision of this section. For the
31 purpose of complying with this section, the operator of an adult care home
32 shall receive from any employment agency which provides employees to
33 work in the adult care home written certification that such employees are
34 not prohibited from working in the adult care home under this section. For
35 the purpose of complying with this section, information relating to
36 convictions and adjudications by the federal government or to convictions
37 and adjudications in states other than Kansas shall not be required until
38 such time as the secretary for aging and disability services determines the
39 search for such information could reasonably be performed and the
40 information obtained within a two-week period. For the purpose of
41 complying with this section, a person who operates an adult care home
42 may hire an applicant for employment on a conditional basis pending the
43 results from the Kansas department for aging and disability services of a

1 request for information under this subsection. No adult care home, the
2 operator or employees of an adult care home or an employment agency, or
3 the operator or employees of an employment agency, shall be liable for
4 civil damages resulting from any decision to employ, to refuse to employ
5 or to discharge from employment any person based on such adult care
6 home's compliance with the provisions of this section if such adult care
7 home or employment agency acts in good faith to comply with this
8 section.

9 (e) The secretary for aging and disability services shall charge each
10 person requesting information under this section a fee equal to cost, not to
11 exceed \$10, for each name about which an information request has been
12 submitted to the department under this section.

13 (f) (1) The secretary for aging and disability services shall provide
14 each operator requesting information under this section with the criminal
15 history record information concerning any criminal history information
16 and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their
17 repeal, or K.S.A. 2016 Supp. 21-5417, 21-5505(a) and 21-5801, and
18 amendments thereto, in writing and within three working days of receipt of
19 such information from the Kansas bureau of investigation. The criminal
20 history record information shall be provided regardless of whether the
21 information discloses that the subject of the request has been convicted of
22 an offense enumerated in subsection (a).

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

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

40 (4) The secretary for aging and disability services shall not provide
41 each operator requesting information under this section with the juvenile
42 criminal history record information which relates to a person subject to a
43 background check as is provided by K.S.A. 2016 Supp. 38-2326, and

1 amendments thereto, except for adjudications of a juvenile offender for an
2 offense described in K.S.A. 21-3701, prior to its repeal, or K.S.A. 2016
3 Supp. 21-5801, and amendments thereto. The secretary shall notify the
4 operator that requested the information, in writing and within three
5 working days of receipt of such information from the Kansas bureau of
6 investigation, whether juvenile criminal history record information
7 received pursuant to this section reveals that the operator would or would
8 not be prohibited by this section from employing the subject of the request
9 for information and whether such information contains adjudications of a
10 juvenile offender for an offense described in K.S.A. 21-3701, prior to its
11 repeal, or K.S.A. 2016 Supp. 21-5801, and amendments thereto.

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

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

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

24 (i) An operator may request from the Kansas department for aging
25 and disability services criminal history information on persons employed
26 under subsections (g) and (h).

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

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

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

43 (m) For purposes of this section, the Kansas bureau of investigation

1 shall report any criminal history information, convictions under K.S.A. 21-
2 3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2016 Supp. 21-
3 5417, 21-5505(a) and 21-5801, and amendments thereto, adjudications of
4 a juvenile offender which if committed by an adult would have been a
5 felony conviction, and adjudications of a juvenile offender for an offense
6 described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal,
7 or K.S.A. 2016 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments
8 thereto, to the secretary for aging and disability services when a
9 background check is requested.

10 (n) This section shall be part of and supplemental to the adult care
11 home licensure act.

12 Sec. 20. K.S.A. 2016 Supp. 65-5117 is hereby amended to read as
13 follows: 65-5117. (a) (1) No person shall knowingly operate a home health
14 agency if, for the home health agency, there works any person who has
15 been convicted of or has been adjudicated a juvenile offender because of
16 having 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, or K.S.A. 2016 Supp. 21-5401, *prior to its repeal, aggravated*
19 *murder, pursuant to section 2*, and amendments thereto, first degree
20 murder, pursuant to K.S.A. 21-3401, prior to its repeal, or K.S.A. 2016
21 Supp. 21-5402, and amendments thereto, second degree murder, pursuant
22 to K.S.A. 21-3402(a), prior to its repeal, or K.S.A. 2016 Supp. 21-5403(a),
23 and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-
24 3403, prior to its repeal, or K.S.A. 2016 Supp. 21-5404, and amendments
25 thereto, assisting suicide, pursuant to K.S.A. 21-3406, prior to its repeal, or
26 K.S.A. 2016 Supp. 21-5407, and amendments thereto, mistreatment of a
27 dependent adult or mistreatment of an elder person, pursuant to K.S.A. 21-
28 3437, prior to its repeal, or K.S.A. 2016 Supp. 21-5417, and amendments
29 thereto, human trafficking, pursuant to K.S.A. 21-3446, prior to its repeal,
30 or K.S.A. 2016 Supp. 21-5426(a), and amendments thereto, aggravated
31 human trafficking, pursuant to K.S.A. 21-3447, prior to its repeal, or
32 K.S.A. 2016 Supp. 21-5426(b), and amendments thereto, rape, pursuant to
33 K.S.A. 21-3502, prior to its repeal, or K.S.A. 2016 Supp. 21-5503, and
34 amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-
35 3503, prior to its repeal, or K.S.A. 2016 Supp. 21-5506(a), and
36 amendments thereto, aggravated indecent liberties with a child, pursuant to
37 K.S.A. 21-3504, prior to its repeal, or K.S.A. 2016 Supp. 21-5506(b), and
38 amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-
39 3506, prior to its repeal, or K.S.A. 2016 Supp. 21-5504(b), and
40 amendments thereto, indecent solicitation of a child, pursuant to K.S.A.
41 21-3510, prior to its repeal, or K.S.A. 2016 Supp. 21-5508(a), and
42 amendments thereto, aggravated indecent solicitation of a child, pursuant
43 to K.S.A. 21-3511, prior to its repeal, or K.S.A. 2016 Supp. 21-5508(b),

1 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A.
2 21-3516, prior to its repeal, or K.S.A. 2016 Supp. 21-5510, and
3 amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, prior to
4 its repeal, or K.S.A. 2016 Supp. 21-5505(a), and amendments thereto,
5 aggravated sexual battery, pursuant to K.S.A. 21-3518, prior to its repeal,
6 or K.S.A. 2016 Supp. 21-5505(b), and amendments thereto, commercial
7 sexual exploitation of a child, pursuant to K.S.A. 2016 Supp. 21-6422, and
8 amendments thereto, an attempt to commit any of the crimes listed in this
9 subsection (a)(1), pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A.
10 2016 Supp. 21-5301, and amendments thereto, a conspiracy to commit any
11 of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302,
12 prior to its repeal, or K.S.A. 2016 Supp. 21-5302, and amendments
13 thereto, or criminal solicitation of any of the crimes listed in this
14 subsection (a)(1), pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A.
15 2016 Supp. 21-5303, and amendments thereto, or similar statutes of other
16 states or the federal government. The provisions of subsection (a)(2)(C)
17 shall not apply to any person who is employed by a home health agency on
18 July 1, 2010, and while continuously employed by the same home health
19 agency.

20 (2) A person operating a home health agency may employ an
21 applicant who has been convicted of any of the following if five or more
22 years have elapsed since the applicant satisfied the sentence imposed or
23 was discharged from probation, a community correctional services
24 program, parole, postrelease supervision, conditional release or a
25 suspended sentence; or if five or more years have elapsed since the
26 applicant has been finally discharged from the custody of the
27 commissioner of juvenile justice or from probation or has been adjudicated
28 a juvenile offender, whichever time is longer: A felony conviction for a
29 crime which is described in: (A) Article 34 of chapter 21 of the Kansas
30 Statutes Annotated, prior to their repeal, or article 54 of chapter 21 of the
31 Kansas Statutes Annotated, or K.S.A. 2016 Supp. 21-6104, 21-6325, 21-
32 6326 or 21-6418, and amendments thereto, except those crimes listed in
33 subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes
34 Annotated, prior to their repeal, or article 55 or 56 of chapter 21 of the
35 Kansas Statutes Annotated, or K.S.A. 2016 Supp. 21-6419 through 21-
36 6421, and amendments thereto, except those crimes listed in subsection (a)
37 (1) and K.S.A. 21-3605, prior to its repeal, or K.S.A. 2016 Supp. 21-5606,
38 and amendments thereto; (C) K.S.A. 21-3701, prior to its repeal, or K.S.A.
39 2016 Supp. 21-5801, and amendments thereto; (D) an attempt to commit
40 any of the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-
41 3301, prior to its repeal, or K.S.A. 2016 Supp. 21-5301, and amendments
42 thereto; (E) a conspiracy to commit any of the crimes listed in subsection
43 (a)(2) pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2016 Supp.

1 21-5302, and amendments thereto; (F) criminal solicitation of any of the
2 crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3303, prior to its
3 repeal, or K.S.A. 2016 Supp. 21-5303, and amendments thereto; or (G)
4 similar statutes of other states or the federal government.

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

10 (c) The secretary of health and environment shall have access to any
11 criminal history record information in the possession of the Kansas bureau
12 of investigation regarding any criminal history information, convictions
13 under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or
14 K.S.A. 2016 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments
15 thereto, adjudications of a juvenile offender which if committed by an
16 adult would have been a felony conviction, and adjudications of a juvenile
17 offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-
18 3701, prior to their repeal, or K.S.A. 2016 Supp. 21-5417, 21-5505(a) and
19 21-5801, and amendments thereto, concerning persons working for a home
20 health agency. The secretary shall have access to these records for the
21 purpose of determining whether or not the home health agency meets the
22 requirements of this section. The Kansas bureau of investigation may
23 charge to the department of health and environment a reasonable fee for
24 providing criminal history record information under this subsection.

25 (d) For the purpose of complying with this section, the operator of a
26 home health agency shall request from the department of health and
27 environment information regarding any criminal history information,
28 convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their
29 repeal, or K.S.A. 2016 Supp. 21-5417, 21-5505(a) and 21-5801, and
30 amendments thereto, adjudications of a juvenile offender which if
31 committed by an adult would have been a felony conviction, and
32 adjudications of a juvenile offender for an offense described in K.S.A. 21-
33 3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2016 Supp. 21-
34 5417, 21-5505(a) and 21-5801, and amendments thereto, and which relates
35 to a person who works for the home health agency or is being considered
36 for employment by the home health agency, for the purpose of determining
37 whether such person is subject to the provisions of this section. For the
38 purpose of complying with this section, information relating to convictions
39 and adjudications by the federal government or to convictions and
40 adjudications in states other than Kansas shall not be required until such
41 time as the secretary of health and environment determines the search for
42 such information could reasonably be performed and the information
43 obtained within a two-week period. For the purpose of complying with this

1 section, the operator of a home health agency shall receive from any
2 employment agency which provides employees to work for the home
3 health agency written certification that such employees are not prohibited
4 from working for the home health agency under this section. For the
5 purpose of complying with this section, a person who operates a home
6 health agency may hire an applicant for employment on a conditional basis
7 pending the results from the department of health and environment of a
8 request for information under this subsection. No home health agency, the
9 operator or employees of a home health agency or an employment agency,
10 or the operator or employees of an employment agency, which provides
11 employees to work for the home health agency shall be liable for civil
12 damages resulting from any decision to employ, to refuse to employ or to
13 discharge from employment any person based on such home health
14 agency's compliance with the provisions of this section if such home
15 health agency or employment agency acts in good faith to comply with
16 this section.

17 (e) The secretary of health and environment shall charge each person
18 requesting information under this section a fee equal to cost, not to exceed
19 \$10, for each name about which an information request has been submitted
20 under this section.

21 (f) (1) The secretary of health and environment shall provide each
22 operator requesting information under this section with the criminal
23 history record information concerning any criminal history information
24 and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their
25 repeal, or K.S.A. 2016 Supp. 21-5417, 21-5505(a) and 21-5801, and
26 amendments thereto, in writing and within three working days of receipt of
27 such information from the Kansas bureau of investigation. The criminal
28 history record information shall be provided regardless of whether the
29 information discloses that the subject of the request has been convicted of
30 an offense enumerated in subsection (a).

31 (2) When an offense enumerated in subsection (a) exists in the
32 criminal history record information, and when further confirmation
33 regarding criminal history record information is required from the
34 appropriate court of jurisdiction or Kansas department of corrections, the
35 secretary shall notify each operator that requests information under this
36 section in writing and within three working days of receipt from the
37 Kansas bureau of investigation that further confirmation is required. The
38 secretary shall provide to the operator requesting information under this
39 section information in writing and within three working days of receipt of
40 such information from the appropriate court of jurisdiction or Kansas
41 department of corrections regarding confirmation regarding the criminal
42 history record information.

43 (3) Whenever the criminal history record information reveals that the

1 subject of the request has no criminal history on record, the secretary shall
2 provide notice to each operator requesting information under this section,
3 in writing and within three working days after receipt of such information
4 from the Kansas bureau of investigation.

5 (4) The secretary of health and environment shall not provide each
6 operator requesting information under this section with the juvenile
7 criminal history record information which relates to a person subject to a
8 background check as is provided by K.S.A. 2016 Supp. 38-2326, and
9 amendments thereto, except for adjudications of a juvenile offender for an
10 offense described in K.S.A. 21-3701, prior to its repeal, or K.S.A. 2016
11 Supp. 21-5801, and amendments thereto. The secretary shall notify the
12 operator that requested the information, in writing and within three
13 working days of receipt of such information from the Kansas bureau of
14 investigation, whether juvenile criminal history record information
15 received pursuant to this section reveals that the operator would or would
16 not be prohibited by this section from employing the subject of the request
17 for information and whether such information contains adjudications of a
18 juvenile offender for an offense described in K.S.A. 21-3701, prior to its
19 repeal, or K.S.A. 2016 Supp. 21-5801, and amendments thereto.

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

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

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

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

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

39 (k) The operator of a home health agency shall not be required under
40 this section to conduct a background check on an applicant for
41 employment with the home health agency if the applicant has been the
42 subject of a background check under this act within one year prior to the
43 application for employment with the home health agency. The operator of

1 a home health agency where the applicant was the subject of such
2 background check may release a copy of such background check to the
3 operator of a home health agency where the applicant is currently
4 applying.

5 (l) For purposes of this section, the Kansas bureau of investigation
6 shall only report felony convictions, convictions under K.S.A. 21-3437,
7 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2016 Supp. 21-5417,
8 21-5505(a) and 21-5801, and amendments thereto, adjudications of a
9 juvenile offender which if committed by an adult would have been a
10 felony conviction, and adjudications of a juvenile offender for an offense
11 described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal,
12 or K.S.A. 2016 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments
13 thereto, to the secretary of health and environment when a background
14 check is requested.

15 (m) This section shall be part of and supplemental to the provisions
16 of article 51 of chapter 65 of the Kansas Statutes Annotated, and
17 amendments thereto.

18 Sec. 21. K.S.A. 2016 Supp. 72-1397 is hereby amended to read as
19 follows: 72-1397. (a) The state board of education shall not knowingly
20 issue a license to or renew the license of any person who has been
21 convicted of:

22 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
23 2016 Supp. 21-5503, and amendments thereto;

24 (2) indecent liberties with a child, as defined in K.S.A. 21-3503, prior
25 to its repeal, or K.S.A. 2016 Supp. 21-5506(a), and amendments thereto;

26 (3) aggravated indecent liberties with a child, as defined in K.S.A.
27 21-3504, prior to its repeal, or K.S.A. 2016 Supp. 21-5506(b), and
28 amendments thereto;

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

32 (5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
33 to its repeal, or K.S.A. 2016 Supp. 21-5504(b), and amendments thereto;

34 (6) indecent solicitation of a child, as defined in K.S.A. 21-3510,
35 prior to its repeal, or K.S.A. 2016 Supp. 21-5508(a), and amendments
36 thereto;

37 (7) aggravated indecent solicitation of a child, as defined in K.S.A.
38 21-3511, prior to its repeal, or K.S.A. 2016 Supp. 21-5508(b), and
39 amendments thereto;

40 (8) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
41 to its repeal, or K.S.A. 2016 Supp. 21-5510, and amendments thereto;

42 (9) aggravated incest, as defined in K.S.A. 21-3603, prior to its
43 repeal, or K.S.A. 2016 Supp. 21-5604(b), and amendments thereto;

- 1 (10) aggravated endangering a child, as defined in K.S.A. 21-3608a,
2 prior to its repeal, or K.S.A. 2016 Supp. 21-5601(b), and amendments
3 thereto;
- 4 (11) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal,
5 or K.S.A. 2016 Supp. 21-5602, and amendments thereto;
- 6 (12) capital murder, as defined in K.S.A. 21-3439, prior to its repeal,
7 or K.S.A. 2016 Supp. 21-5401, *prior to its repeal*;
- 8 (13) *aggravated murder, as defined in section 2*, and amendments
9 thereto;
- 10 ~~(13)~~ (14) murder in the first degree, as defined in K.S.A. 21-3401,
11 prior to its repeal, or K.S.A. 2016 Supp. 21-5402, and amendments
12 thereto;
- 13 ~~(14)~~ (15) murder in the second degree, as defined in K.S.A. 21-3402,
14 prior to its repeal, or K.S.A. 2016 Supp. 21-5403, and amendments
15 thereto;
- 16 ~~(15)~~ (16) voluntary manslaughter, as defined in K.S.A. 21-3403, prior
17 to its repeal, or K.S.A. 2016 Supp. 21-5404, and amendments thereto;
- 18 ~~(16)~~ (17) involuntary manslaughter, as defined in K.S.A. 21-3404,
19 prior to its repeal, or K.S.A. 2016 Supp. 21-5405, and amendments
20 thereto;
- 21 ~~(17)~~ (18) involuntary manslaughter while driving under the influence
22 of alcohol or drugs, as defined in K.S.A. 21-3442, prior to its repeal;
- 23 ~~(18)~~ (19) sexual battery, as defined in K.S.A. 21-3517, prior to its
24 repeal, or K.S.A. 2016 Supp. 21-5505(a), and amendments thereto, when,
25 at the time the crime was committed, the victim was less than 18 years of
26 age or a student of the person committing such crime;
- 27 ~~(19)~~ (20) aggravated sexual battery, as defined in K.S.A. 21-3518,
28 prior to its repeal, or K.S.A. 2016 Supp. 21-5505(b), and amendments
29 thereto;
- 30 ~~(20)~~ (21) commercial sexual exploitation of a child, as defined in
31 K.S.A. 2016 Supp. 21-6422, and amendments thereto;
- 32 ~~(21)~~ (22) human trafficking, as defined in K.S.A. 21-3446, prior to its
33 repeal, or K.S.A. 2016 Supp. 21-5426(a), and amendments thereto;
- 34 ~~(22)~~ (23) aggravated human trafficking, as defined in K.S.A. 21-
35 3447, prior to its repeal, or K.S.A. 2016 Supp. 21-5426(b), and
36 amendments thereto;
- 37 ~~(23)~~ (24) attempt under K.S.A. 21-3301, prior to its repeal, or K.S.A.
38 2016 Supp. 21-5301, and amendments thereto, to commit any act specified
39 in this subsection;
- 40 ~~(24)~~ (25) conspiracy under K.S.A. 21-3302, prior to its repeal, or
41 K.S.A. 2016 Supp. 21-5302, and amendments thereto, to commit any act
42 specified in this subsection;
- 43 ~~(25)~~ (26) an act in another state or by the federal government that is

- 1 comparable to any act described in this subsection; or
2 ~~(26)~~ (27) an offense in effect at any time prior to the effective date of
3 this act that is comparable to an offense as provided in this subsection.
- 4 (b) Except as provided in subsection (c), the state board of education
5 shall not knowingly issue a license to or renew the license of any person
6 who has been convicted of, or has entered into a criminal diversion
7 agreement after having been charged with:
- 8 (1) A felony under K.S.A. 2010 Supp. 21-36a01 through 21-36a17,
9 prior to their transfer, or article 57 of chapter 21 of the Kansas Statutes
10 Annotated, and amendments thereto, or any felony violation of any
11 provision of the uniform controlled substances act prior to July 1, 2009;
- 12 (2) a felony described in any section of article 34 of chapter 21 of the
13 Kansas Statutes Annotated, prior to their repeal, or article 54 of chapter 21
14 of the Kansas Statutes Annotated, or K.S.A. 2016 Supp. 21-6104, 21-6325,
15 21-6326 or 21-6418, and amendments thereto, other than an act specified
16 in subsection (a), or a battery, as described in K.S.A. 21-3412, prior to its
17 repeal, or K.S.A. 2016 Supp. 21-5413(a), and amendments thereto, or
18 domestic battery, as described in K.S.A. 21-3412a, prior to its repeal, or
19 K.S.A. 2016 Supp. 21-5414, and amendments thereto, if the victim is a
20 minor or student;
- 21 (3) a felony described in any section of article 35 of chapter 21 of the
22 Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21
23 of the Kansas Statutes Annotated, or K.S.A. 2016 Supp. 21-6419 through
24 21-6421, and amendments thereto, other than an act specified in
25 subsection (a);
- 26 (4) any act described in any section of article 36 of chapter 21 of the
27 Kansas Statutes Annotated, prior to their repeal, or article 56 of chapter 21
28 of the Kansas Statutes Annotated, and amendments thereto, other than an
29 act specified in subsection (a);
- 30 (5) a felony described in article 37 of chapter 21 of the Kansas
31 Statutes Annotated, prior to their repeal, or article 58 of chapter 21 of the
32 Kansas Statutes Annotated, or K.S.A. 2016 Supp. 21-6412(a)(6), and
33 amendments thereto;
- 34 (6) promoting obscenity, as described in K.S.A. 21-4301, prior to its
35 repeal, or K.S.A. 2016 Supp. 21-6401(a), and amendments thereto,
36 promoting obscenity to minors, as described in K.S.A. 21-4301a, prior to
37 its repeal, or K.S.A. 2016 Supp. 21-6401(b), and amendments thereto, or
38 promoting to minors obscenity harmful to minors, as described in K.S.A.
39 21-4301c, prior to its repeal, or K.S.A. 2016 Supp. 21-6402, and
40 amendments thereto;
- 41 (7) endangering a child, as defined in K.S.A. 21-3608, prior to its
42 repeal, or K.S.A. 2016 Supp. 21-5601(a), and amendments thereto;
- 43 (8) driving under the influence of alcohol or drugs in violation of

1 K.S.A. 8-1567 or 8-2,144, and amendments thereto, when the violation is
2 punishable as a felony;

3 (9) attempt under K.S.A. 21-3301, prior to its repeal, or K.S.A. 2016
4 Supp. 21-5301, and amendments thereto, to commit any act specified in
5 this subsection;

6 (10) conspiracy under K.S.A. 21-3302, prior to its repeal, or K.S.A.
7 2016 Supp. 21-5302, and amendments thereto, to commit any act specified
8 in this subsection; or

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

12 (c) The state board of education may issue a license to or renew the
13 license of a person who has been convicted of committing an offense or
14 act described in subsection (b) or who has entered into a criminal diversion
15 agreement after having been charged with an offense or act described in
16 subsection (b) if the state board determines, following a hearing, that the
17 person has been rehabilitated for a period of at least five years from the
18 date of conviction of the offense or commission of the act or, in the case of
19 a person who has entered into a criminal diversion agreement, that the
20 person has satisfied the terms and conditions of the agreement. The state
21 board of education may consider factors including, but not limited to, the
22 following in determining whether to grant a license:

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

24 (2) the conduct of the person subsequent to commission of the
25 offense or act;

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

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

28 (5) whether the offense or act was an isolated or recurring incident;
29 and

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

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

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

43 (f) The state board of education shall not be liable for civil damages

1 to any person refused issuance or renewal of a license by reason of the
2 state board's compliance, in good faith, with the provisions of this section.

3 Sec. 22. K.S.A. 2016 Supp. 75-52,148 is hereby amended to read as
4 follows: 75-52,148. (a) The department of corrections shall be required to
5 review and report on the following serious offenses committed by sex
6 offenders, as defined by K.S.A. 22-4902, and amendments thereto, while
7 such offenders are in the custody of the secretary of corrections:

8 (1) Murder in the first degree, as defined in K.S.A. 2016 Supp. 21-
9 5402, and amendments thereto;

10 (2) murder in the second degree, as defined in K.S.A. 2016 Supp. 21-
11 5403, and amendments thereto;

12 (3) ~~capital murder, as defined in K.S.A. 2016 Supp. 21-~~
13 ~~5401~~aggravated murder, as defined in section 2, and amendments thereto;

14 (4) rape, as defined in K.S.A. 2016 Supp. 21-5503, and amendments
15 thereto;

16 (5) aggravated criminal sodomy, as defined in ~~subsection (b) of~~
17 K.S.A. 2016 Supp. 21-5504(b), and amendments thereto;

18 (6) sexual exploitation of a child, as defined in K.S.A. 2016 Supp. 21-
19 5510, and amendments thereto;

20 (7) kidnapping as defined in ~~subsection (a) of~~ K.S.A. 2016 Supp. 21-
21 5408(a), and amendments thereto;

22 (8) aggravated kidnapping, as defined in ~~subsection (b) of~~ K.S.A.
23 2016 Supp. 21-5408(b), and amendments thereto;

24 (9) criminal restraint, as defined in K.S.A. 2016 Supp. 21-5411, and
25 amendments thereto;

26 (10) indecent solicitation of a child, as defined in ~~subsection (a) of~~
27 K.S.A. 2016 Supp. 21-5508(a), and amendments thereto;

28 (11) aggravated indecent solicitation of a child, as defined in
29 ~~subsection (b) of~~ K.S.A. 2016 Supp. 21-5508(b), and amendments thereto;

30 (12) indecent liberties with a child, as defined in ~~subsection (a) of~~
31 K.S.A. 2016 Supp. 21-5506(a), and amendments thereto;

32 (13) aggravated indecent liberties with a child, as defined in
33 ~~subsection (b) of~~ K.S.A. 2016 Supp. 21-5506(b), and amendments thereto;

34 (14) criminal sodomy, as defined in ~~subsection (a) of~~ K.S.A. 2016
35 Supp. 21-5504(a), and amendments thereto;

36 (15) child abuse, as defined in K.S.A. 2016 Supp. 21-5602, and
37 amendments thereto;

38 (16) aggravated robbery, as defined in ~~subsection (b) of~~ K.S.A. 2016
39 Supp. 21-5420(b), and amendments thereto;

40 (17) burglary, as defined in ~~subsection (a) of~~ K.S.A. 2016 Supp. 21-
41 5807(b), and amendments thereto;

42 (18) aggravated burglary, as defined in ~~subsection (b) of~~ K.S.A. 2016
43 Supp. 21-5807(b), and amendments thereto;

1 (19) theft, as defined in K.S.A. 2016 Supp. 21-5801, and amendments
2 thereto;

3 (20) vehicular homicide, as defined in K.S.A. 2016 Supp. 21-5406,
4 and amendments thereto;

5 (21) involuntary manslaughter while driving under the influence, as
6 defined in ~~subsection (a)(3)~~ of K.S.A. 2016 Supp. 21-5405(a)(3), and
7 amendments thereto; or

8 (22) stalking, as defined in K.S.A. 2016 Supp. 21-5427, and
9 amendments thereto.

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

13 Sec. 23. K.S.A. 2016 Supp. 21-5401, 21-5419, 21-6614, 21-6614g,
14 21-6614h, 21-6617, 21-6618, 21-6619, 21-6620, 21-6622, 21-6628, 21-
15 6629, 21-6806, 22-3717, 22-4902, 22-4906, 38-2255, 38-2271, 38-2312,
16 38-2365, 39-970, 65-5117, 72-1397 and 75-52,148 are hereby repealed.

17 Sec. 24. This act shall take effect and be in force from and after its
18 publication in the statute book.