

SENATE BILL No. 18

AN ACT concerning crimes, punishment and criminal procedure; relating to involuntary manslaughter; abuse of a child; counterfeiting currency; sentencing; conditions of probation; sanctions for violation; determination of offender's criminal history classification; comparable offense; appeal of sentence; correction of sentence; departure sentence; mitigating factors; certified drug abuse treatment program; requiring law enforcement to provide information to victims when an arrest is made for a domestic violence offense; presentence investigation report; diversion agreements; attorney general; amending K.S.A. 22-2906 and K.S.A. 2018 Supp. 21-5405, 21-5602, 21-5840, 21-6604, 21-6811, 21-6813, 21-6815, 21-6820, 21-6824, 22-2307, 22-2909, 22-3504, 22-3716 and 22-3717 and repealing the existing sections; also repealing K.S.A. 2018 Supp. 21-6811c.

WHEREAS, the provisions of K.S.A. 2018 Supp. 21-5405 and 21-5602, as amended by this act, shall be known as Mireya's law.

Now, therefore:

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

Section 1. On and after July 1, 2019, K.S.A. 2018 Supp. 21-5840 is hereby amended to read as follows: 21-5840. (a) Counterfeiting currency is, ~~with the intent to defraud:~~

(1) Making, forging or altering any note, *currency*, obligation or security of the United States *with the intent to defraud*;

(2) distributing, or possessing with the intent to distribute, any *note, currency*, obligation or security of the United States knowing such *note, currency*, obligation or security has been—~~so~~ made, forged or altered *with the intent to defraud*; or

(3) possessing any paper, ink, printer, press, currency plate, *computer* or other item with the intent to ~~produce any counterfeit~~ *make, forge or alter any note, currency, obligation or security of the United States*.

(b) Counterfeiting currency as defined in:

(1) Subsection (a)(1) or (a)(2) is a:

(A) Severity level 7, nonperson felony, if the total face value of the *notes, currency*, obligations or securities—~~seized~~ is \$25,000 or more; and

(B) severity level 8, nonperson felony, if the total face value of the *notes, currency*, obligations or securities—~~seized~~ is less than \$25,000; and

(2) subsection (a)(3) is a severity level 9, nonperson felony.

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

Sec. 2. On and after July 1, 2019, K.S.A. 2018 Supp. 21-6813 is hereby amended to read as follows: 21-6813. (a) The court shall order the preparation of the presentence investigation report by the court services officer as soon as possible after conviction of the defendant.

(b) Each presentence *investigation* report prepared for an offender to be sentenced for one or more felonies committed on or after July 1, 1993, shall be limited to the following information:

(1) A summary of the factual circumstances of the crime or crimes of conviction.

(2) If the defendant desires to do so, a summary of the defendant's version of the crime.

(3) When there is an identifiable victim, a victim report. The person preparing the victim report shall submit the report to the victim and request that the information be returned to be submitted as a part of the presentence investigation. To the extent possible, the report shall include a complete listing of restitution for damages suffered by the victim.

(4) An appropriate classification of each crime of conviction on the crime severity scale.

(5) A listing of prior adult convictions or juvenile adjudications for felony or misdemeanor crimes or violations of county resolutions or city ordinances comparable to any misdemeanor defined by state law.

Such listing shall include an assessment of the appropriate classification of the criminal history on the criminal history scale and the source of information regarding each listed prior conviction and any available source of journal entries or other documents through which the listed convictions may be verified. If any such journal entries or other documents are obtained by the court services officer, they shall be attached to the presentence investigation report. Any prior criminal history worksheets of the defendant shall also be attached.

(6) A proposed grid block classification for each crime, or crimes of conviction and the presumptive sentence for each crime, or crimes of conviction.

(7) If the proposed grid block classification is a grid block ~~which~~ *that* presumes imprisonment, the presumptive prison term range and the presumptive duration of postprison supervision as it relates to the crime severity scale.

(8) If the proposed grid block classification does not presume prison, the presumptive prison term range and the presumptive duration of the nonprison sanction as it relates to the crime severity scale and the court services officer's professional assessment as to recommendations for conditions to be mandated as part of the nonprison sanction.

(9) For defendants who are being sentenced for a conviction of a felony violation of K.S.A. 65-4160 or 65-4162, prior to their repeal, or K.S.A. 2018 Supp. 21-5706, and amendments thereto, and meet the requirements of K.S.A. 2018 Supp. 21-6824, and amendments thereto, the drug abuse assessment as provided in K.S.A. 2018 Supp. 21-6824, and amendments thereto.

(10) For defendants who are being sentenced for a third or subsequent felony conviction of a violation of K.S.A. 65-4160 or 65-4162, prior to their repeal, or K.S.A. 2018 Supp. 21-5706, and amendments thereto, the drug abuse assessment as provided in K.S.A. 2018 Supp. 21-6824, and amendments thereto.

(c) The presentence *investigation* report will become part of the court record and shall be accessible to the public, except that the official version, defendant's version and the victim's statement, any psychological reports, risk and needs assessments and drug and alcohol reports and assessments shall be accessible only to: The parties; the sentencing judge; the department of corrections; *community correctional services*; *any entity required to receive the information under the interstate compact for adult offender supervision*; and, if requested, the Kansas sentencing commission. If the offender is committed to the custody of the secretary of corrections, the report shall be sent to the secretary and, in accordance with K.S.A. 75-5220, and amendments thereto, to the warden of the state correctional institution to which the defendant is conveyed.

(d) The criminal history worksheet will not substitute as a presentence *investigation* report.

(e) The presentence *investigation* report will not include optional report components, which would be subject to the discretion of the sentencing court in each district except for psychological reports and drug and alcohol reports.

(f) Except as provided in K.S.A. 2018 Supp. 21-6814, and amendments thereto, the court may take judicial notice in a subsequent felony proceeding of an earlier presentence *investigation* report criminal history worksheet prepared for a prior sentencing of the defendant for a felony committed on or after July 1, 1993.

(g) All presentence *investigation* reports in any case in which the defendant has been convicted of a felony shall be on a form approved by the Kansas sentencing commission.

Sec. 3. On and after July 1, 2019, K.S.A. 22-2906 is hereby amended to read as follows: 22-2906. As used in K.S.A. 22-2907 ~~to~~ *through* 22-2911, ~~inclusive and amendments thereto:~~

~~(1)~~(a) "District attorney" means district attorney ~~or~~, county attorney or attorney general.

~~(2)~~(b) "Complaint" means complaint, indictment or information.

~~(3)~~(c) "Diversion" means referral of a defendant in a criminal case to a supervised performance program prior to adjudication.

~~(4)~~(d) "Diversion agreement" means the specification of formal terms and conditions which a defendant must fulfill in order to have the charges against him or her dismissed.

Sec. 4. On and after July 1, 2019, K.S.A. 2018 Supp. 22-2909 is hereby amended to read as follows: 22-2909. (a) *(1)* A diversion agreement shall provide that if the defendant fulfills the obligations of the program described therein, as determined by the attorney general or county or district attorney, such attorney shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment, preliminary examinations and hearings, and a speedy trial, and in the case of diversion under subsection (c) waiver of the rights to counsel and trial by jury. The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services.

(2) If a county creates a local fund under the property crime restitution and compensation act, a county or district attorney may require in all diversion agreements as a condition of diversion the payment of a diversion fee in an amount not to exceed \$100. Such fees shall be deposited into the local fund and disbursed pursuant to recommendations of the local board under the property crime restitution and victims compensation act.

(3) *If the attorney general enters into a diversion agreement: (A) Any diversion costs or fees collected pursuant to such agreement shall be deposited in the fraud and abuse criminal prosecution fund established by K.S.A. 75-765, and amendments thereto; and (B) the attorney general may enter into agreements with the appropriate county or district attorney or other appropriate parties regarding the supervision of conditions of such diversion agreement.*

(b) The diversion agreement shall state: (1) The defendant's full name; (2) the defendant's full name at the time the complaint was filed, if different from the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime with which the defendant is charged; (5) the date the complaint was filed; and (6) the district court with which the agreement is filed.

(c) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567, and amendments thereto, the diversion agreement shall include a stipulation, agreed to by the defendant, the defendant's attorney if the defendant is represented by an attorney and the attorney general or county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:

(1) Pay a fine specified by the agreement in an amount equal to an amount authorized by K.S.A. 8-1567, and amendments thereto, for a first offense or, in lieu of payment of the fine, perform community service specified by the agreement, in accordance with K.S.A. 8-1567, and amendments thereto; and

(2) participate in an alcohol and drug evaluation conducted by a licensed provider pursuant to K.S.A. 8-1008, and amendments thereto, and follow any recommendation made by the provider after such evaluation.

(d) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a domestic violence offense, as defined in K.S.A. 2018 Supp. 21-5111, and amendments thereto, the diversion agreement shall include a requirement that the defendant undergo a domestic violence offender assessment and follow all recommendations unless otherwise agreed to with the prosecutor in the diversion agreement. The defendant shall be required to pay for such assessment and, unless otherwise agreed to with the prosecutor in the diversion agreement, for completion of all recommendations.

(e) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation other than K.S.A. 8-1567, and amendments thereto, the diversion agreement may include a stipulation, agreed to by the defendant, the defendant's attorney if the defendant is represented by an attorney and the attorney general or county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint.

(f) If the person entering into a diversion agreement is a nonresident, the attorney general or county or district attorney shall transmit a copy of the diversion agreement to the division. The division shall forward a copy of the diversion agreement to the motor vehicle administrator of the person's state of residence.

(g) If the attorney general or county or district attorney elects to offer diversion in lieu of further criminal proceedings on the complaint and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement shall be filed with the district court and the district court shall stay further proceedings on the complaint. If the defendant declines to accept diversion, the district court shall resume the criminal proceedings on the complaint.

(h) Except as provided in subsection (i), if a diversion agreement is entered into in lieu of further criminal proceedings alleging commission of a misdemeanor by the defendant, while under 21 years of age, under K.S.A. 2018 Supp. 21-5701 through 21-5717, and amendments thereto, or K.S.A. 41-719, 41-727, 41-804, 41-2719 or 41-2720, and amendments thereto, the agreement shall require the defendant to participate in an alcohol and drug evaluation conducted by a licensed provider pursuant to K.S.A. 8-1008, and amendments thereto, and follow any recommendation made by the provider after such evaluation.

(i) If the defendant is 18 or more years of age but less than 21 years of age and allegedly committed a violation of K.S.A. 41-727, and amendments thereto, involving cereal malt beverage, the provisions of subsection (h) are permissive and not mandatory.

(j) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 2018 Supp. 21-6421, and amendments thereto, the agreement:

(1) Shall include a requirement that the defendant pay a fine specified by the agreement in an amount equal to an amount authorized by K.S.A. 2018 Supp. 21-6421, and amendments thereto; and

(2) may include a requirement that the defendant enter into and complete a suitable educational or treatment program regarding commercial sexual exploitation.

(k) Except diversion agreements reported under subsection (l), the attorney general or county or district attorney shall forward to the Kansas

bureau of investigation a copy of the diversion agreement at the time such agreement is filed with the district court. The copy of the agreement shall be made available upon request to the attorney general or any county, district or city attorney or court.

(l) At the time of filing the diversion agreement with the district court, the attorney general or county or district attorney shall forward to the division of vehicles of the state department of revenue a copy of any diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567, and amendments thereto. The copy of the agreement shall be made available upon request to the attorney general or any county, district or city attorney or court.

Sec. 5. On and after July 1, 2019, K.S.A. 2018 Supp. 21-5405 is hereby amended to read as follows: 21-5405. (a) Involuntary manslaughter is the killing of a human being committed:

(1) Recklessly;

(2) in the commission of, or attempt to commit, or flight from any felony, other than an inherently dangerous felony as defined in K.S.A. 2018 Supp. 21-5402, and amendments thereto, that is enacted for the protection of human life or safety or a misdemeanor that is enacted for the protection of human life or safety, including acts described in K.S.A. 8-1566 and 8-1568(a), and amendments thereto, but excluding the acts described in K.S.A. 8-1567, and amendments thereto;

(3) in the commission of, or attempt to commit, or flight from an act described in K.S.A. 8-1567, and amendments thereto;

(4) during the commission of a lawful act in an unlawful manner; or

(5) in the commission of, or attempt to commit, or flight from an act described in K.S.A. 8-1567, and amendments thereto, while:

(A) In violation of any restriction imposed on such person's driving privileges pursuant to article 10 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto;

(B) such person's driving privileges are suspended or revoked pursuant to article 10 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto; or

(C) such person has been deemed a habitual violator as defined in K.S.A. 8-285, and amendments thereto, including at least one violation of K.S.A. 8-1567, and amendments thereto, or violating an ordinance of any city in this state, any resolution of any county in this state or any law of another state, which ordinance, resolution or law declares to be unlawful the acts prohibited by that statute.

(b) Involuntary manslaughter as defined in:

(1) Subsection (a)(1), (a)(2) or (a)(4) is a:

(A) Severity level 5, person felony, *except as provided in subsection (b)(1)(B); and*

(B) *severity level 3, person felony, if the victim is under the age of six years;*

(2) subsection (a)(3) is a severity level 4, person felony; and

(3) subsection (a)(5) is a severity level 3, person felony.

Sec. 6. On and after July 1, 2019, K.S.A. 2018 Supp. 21-5602 is hereby amended to read as follows: 21-5602. (a) Abuse of a child is knowingly:

(1) Torturing or cruelly beating any child under the age of 18 years;

(2) shaking any child under the age of 18 years which results in great bodily harm to the child; or

(3) inflicting cruel and inhuman corporal punishment upon any child under the age of 18 years.

(b) Abuse of a child is a:

(1) Severity level 5, person felony, *except as provided in subsection (b)(2); and*

(2) *severity level 4, person felony, if the victim is under the age of six years.*

(c) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any form of battery or homicide.

Sec. 7. On and after July 1, 2019, K.S.A. 2018 Supp. 21-6815 is hereby amended to read as follows: 21-6815. (a) Except as provided in subsection (b), the sentencing judge shall impose the presumptive sentence provided by the sentencing guidelines unless the judge finds substantial and compelling reasons to impose a departure sentence. If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure.

(b) Subject to the provisions of K.S.A. 2018 Supp. 21-6817(b), and amendments thereto, any fact that would increase the penalty for a crime beyond the statutory maximum, other than a prior conviction, shall be submitted to a jury and proved beyond a reasonable doubt.

(c) (1) Subject to the provisions of subsections (c)(3) and (e), the following nonexclusive list of mitigating factors may be considered in determining whether substantial and compelling reasons for a departure exist:

(A) The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction, *except that this factor shall not apply to a sexually violent crime as defined in K.S.A. 22-3717, and amendments thereto, or electronic solicitation as defined in K.S.A. 2018 Supp. 21-5509, and amendments thereto, when: (i) The victim is less than 14 years of age and the offender is 18 or more years of age; or (ii) the offender hires any person by giving, or offering to or agreeing to give, anything of value to the person to engage in an unlawful sex act.*

(B) The offender played a minor or passive role in the crime or participated under circumstances of duress or compulsion. This factor may be considered when it is not sufficient as a complete defense.

(C) The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants, drugs or alcohol does not fall within the purview of this factor.

(D) The defendant, or the defendant's children, suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(E) The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.

(F) The offender committed such crime as a result of an injury, including major depressive disorder, polytrauma, post-traumatic stress disorder or traumatic brain injury, connected to service in a combat zone, as defined in section 112 of the federal internal revenue code of 1986, in the armed forces of the United States of America. As used in this subsection, "major depressive disorder," "polytrauma," "post-traumatic stress disorder" and "traumatic brain injury" shall mean the same as such terms are defined in K.S.A. 2018 Supp. 21-6630, and amendments thereto.

(2) Subject to the provisions of subsection (c)(3), the following nonexclusive list of aggravating factors may be considered in determining whether substantial and compelling reasons for departure exist:

(A) The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity which was known or should have been known to the offender.

(B) The defendant's conduct during the commission of the current offense manifested excessive brutality to the victim in a manner not normally present in that offense.

(C) The offense was motivated entirely or in part by the race, color, religion, ethnicity, national origin or sexual orientation of the victim or the offense was motivated by the defendant's belief or perception, entirely or

in part, of the race, color, religion, ethnicity, national origin or sexual orientation of the victim whether or not the defendant's belief or perception was correct.

(D) The offense involved a fiduciary relationship which existed between the defendant and the victim.

(E) The defendant, 18 or more years of age, employed, hired, used, persuaded, induced, enticed or coerced any individual under 16 years of age to:

- (i) Commit any person felony;
- (ii) assist in avoiding detection or apprehension for commission of any person felony; or
- (iii) attempt, conspire or solicit, as defined in K.S.A. 2018 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, to commit any person felony.

That the defendant did not know the age of the individual under 16 years of age shall not be a consideration.

(F) The defendant's current crime of conviction is a crime of extreme sexual violence and the defendant is a predatory sex offender. As used in this subsection:

(i) "Crime of extreme sexual violence" is a felony limited to the following:

(a) A crime involving a nonconsensual act of sexual intercourse or sodomy with any person;

(b) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is 14 or more years of age but less than 16 years of age and with whom a relationship has been established or promoted for the primary purpose of victimization;

(c) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is less than 14 years of age;

(d) aggravated human trafficking, as defined in K.S.A. 2018 Supp. 21-5426(b), and amendments thereto, if the victim is less than 14 years of age; or

(e) commercial sexual exploitation of a child, as defined in K.S.A. 2018 Supp. 21-6422, and amendments thereto, if the victim is less than 14 years of age.

(ii) "Predatory sex offender" is an offender who has been convicted of a crime of extreme sexual violence as the current crime of conviction and who:

(a) Has one or more prior convictions of any crimes of extreme sexual violence. Any prior conviction used to establish the defendant as a predatory sex offender pursuant to this subsection shall also be counted in determining the criminal history category; or

(b) suffers from a mental condition or personality disorder which makes the offender likely to engage in additional acts constituting crimes of extreme sexual violence.

(iii) "Mental condition or personality disorder" means an emotional, mental or physical illness, disease, abnormality, disorder, pathology or condition which motivates the person, affects the predisposition or desires of the person, or interferes with the capacity of the person to control impulses to commit crimes of extreme sexual violence.

(G) The defendant was incarcerated during the commission of the offense.

(H) The crime involved two or more participants in the criminal conduct, and the defendant played a major role in the crime as the organizer, leader, recruiter, manager or supervisor.

In determining whether aggravating factors exist as provided in this section, the court shall review the victim impact statement.

(3) If a factual aspect of a crime is a statutory element of the crime or is used to subclassify the crime on the crime severity scale, that aspect of the current crime of conviction may be used as an aggravating or

mitigating factor only if the criminal conduct constituting that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime.

(d) In determining aggravating or mitigating circumstances, the court shall consider:

- (1) Any evidence received during the proceeding;
- (2) the presentence report;
- (3) written briefs and oral arguments of either the state or counsel for the defendant; and
- (4) any other evidence relevant to such aggravating or mitigating circumstances that the court finds trustworthy and reliable.

(e) Upon motion of the prosecutor stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who is alleged to have committed an offense, the court may consider such mitigation in determining whether substantial and compelling reasons for a departure exist. In considering this mitigating factor, the court may consider the following:

- (1) The court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the prosecutor's evaluation of the assistance rendered;
- (2) the truthfulness, completeness and reliability of any information or testimony provided by the defendant;
- (3) the nature and extent of the defendant's assistance;
- (4) any injury suffered, or any danger or risk of injury to the defendant or the defendant's family resulting from such assistance; and
- (5) the timeliness of the defendant's assistance.

Sec. 8. On and after July 1, 2019, K.S.A. 2018 Supp. 21-6604 is hereby amended to read as follows: 21-6604. (a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

- (1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;
- (2) impose the fine applicable to the offense and may impose the provisions of subsection (q);
- (3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases except for violations of K.S.A. 8-1567 or 8-2,144, and amendments thereto, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence;
- (4) assign the defendant to a community correctional services program as provided in K.S.A. 75-5291, and amendments thereto, or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;
- (5) assign the defendant to a conservation camp for a period not to exceed six months as a condition of probation followed by a six-month period of follow-up through adult intensive supervision by a community correctional services program, if the offender successfully completes the conservation camp program;
- (6) assign the defendant to a house arrest program pursuant to K.S.A. 2018 Supp. 21-6609, and amendments thereto;
- (7) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by K.S.A. 2018 Supp. 21-6602(c), and amendments thereto;

(8) order the defendant to repay the amount of any reward paid by any crime stoppers chapter, individual, corporation or public entity ~~which~~ *that* materially aided in the apprehension or conviction of the defendant; repay the amount of any costs and expenses incurred by any law enforcement agency in the apprehension of the defendant, if one of the current crimes of conviction of the defendant includes escape from custody or aggravated escape from custody, as defined in K.S.A. 2018 Supp. 21-5911, and amendments thereto; repay expenses incurred by a fire district, fire department or fire company responding to a fire ~~which~~ *that* has been determined to be arson or aggravated arson as defined in K.S.A. 2018 Supp. 21-5812, and amendments thereto, if the defendant is convicted of such crime; repay the amount of any public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation ~~which~~ *that* leads to the defendant's conviction; or repay the amount of any medical costs and expenses incurred by any law enforcement agency or county. Such repayment of the amount of any such costs and expenses incurred by a county, law enforcement agency, fire district, fire department or fire company or any public funds utilized by a law enforcement agency shall be deposited and credited to the same fund from which the public funds were credited to prior to use by the county, law enforcement agency, fire district, fire department or fire company;

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

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

(11) if the defendant is convicted of a misdemeanor or convicted of a felony specified in K.S.A. 2018 Supp. 21-6804(i), and amendments thereto, assign the defendant to work release program, other than a program at a correctional institution under the control of the secretary of corrections as defined in K.S.A. 75-5202, and amendments thereto, provided such work release program requires such defendant to return to confinement at the end of each day in the work release program. On a second or subsequent conviction of K.S.A. 8-1567, and amendments thereto, an offender placed into a work release program shall serve the total number of hours of confinement mandated by that section;

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

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

(14) suspend imposition of sentence in misdemeanor cases.

(b) (1) In addition to or in lieu of any of the above, the court shall order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime, unless the court finds compelling circumstances ~~which~~ *that* would render a plan of restitution unworkable. In regard to a violation of K.S.A. 2018 Supp. 21-6107, and amendments thereto, such damage or loss shall include, but not be limited to, attorney fees and costs incurred to repair the credit history or rating of the person whose personal identification documents were obtained and used in violation of such section, and to satisfy a debt, lien or other obligation incurred by the person whose personal identification documents were obtained and used in violation of such section. In regard to a violation of K.S.A. 2018 Supp. 21-5801, 21-5807 or 21-5813, and amendments thereto, such damage or loss shall include the cost of repair or replacement of the property that was damaged, the reasonable cost of any loss of production, crops and livestock, reasonable labor costs of any kind, reasonable material costs of any kind and any reasonable costs that are attributed to equipment that is used to abate or repair the damage to the property. If the court finds a plan of restitution unworkable, the court

shall state on the record in detail the reasons therefor.

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

(c) In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by K.S.A. 2018 Supp. 21-6602(d), and amendments thereto.

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

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

(f) (1) When a new felony is committed while the offender is incarcerated and serving a sentence for a felony, or while the offender is on probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision for a felony, a new sentence shall be imposed consecutively pursuant to the provisions of K.S.A. 2018 Supp. 21-6606, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(2) When a new felony is committed during a period of time ~~during~~ ~~which~~ *when* the defendant would have been on probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision for a felony had the defendant not been granted release by the court pursuant to K.S.A. 2018 Supp. 21-6608(d), and amendments thereto, or the prisoner review board pursuant to K.S.A. 22-3717, and amendments thereto, the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(3) When a new felony is committed while the offender is

incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671, prior to its repeal, or K.S.A. 2018 Supp. 38-2373, and amendments thereto, for an offense, which if committed by an adult would constitute the commission of a felony, upon conviction, the court shall sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure. The conviction shall operate as a full and complete discharge from any obligations, except for an order of restitution, imposed on the offender arising from the offense for which the offender was committed to a juvenile correctional facility.

(4) When a new felony is committed while the offender is on release for a felony pursuant to the provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto, or similar provisions of the laws of another jurisdiction, a new sentence may be imposed consecutively pursuant to the provisions of K.S.A. 2018 Supp. 21-6606, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(g) Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, and whose offense does not meet the requirements of K.S.A. 2018 Supp. 21-6824, and amendments thereto, prior to revocation of a nonprison sanction of a defendant whose offense is classified in grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, and whose offense does not meet the requirements of K.S.A. 2018 Supp. 21-6824, and amendments thereto, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, the court shall consider placement of the defendant in the Labette correctional conservation camp, conservation camps established by the secretary of corrections pursuant to K.S.A. 75-52,127, and amendments thereto, or a community intermediate sanction center. Pursuant to this subsection the defendant shall not be sentenced to imprisonment if space is available in a conservation camp or community intermediate sanction center and the defendant meets all of the conservation camp's or community intermediate sanction center's placement criteria unless the court states on the record the reasons for not placing the defendant in a conservation camp or community intermediate sanction center.

(h) In committing a defendant to the custody of the secretary of corrections, the court shall fix a term of confinement within the limits

provided by law. In those cases where the law does not fix a term of confinement for the crime for which the defendant was convicted, the court shall fix the term of such confinement.

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

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

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

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

(1) Has been sentenced to the secretary for a probation revocation, as a departure from the presumptive nonimprisonment grid block of either sentencing grid, for an offense ~~which~~ *that* is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, or for an offense ~~which~~ *that* is classified in grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, and such offense does not meet the requirements of K.S.A. 2018 Supp. 21-6824, and amendments thereto; and

(2) otherwise meets admission criteria of the camp.

If the inmate successfully completes a conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district attorney. The inmate shall then be assigned by the court to six months of follow-up supervision conducted by the appropriate community corrections services program. The court may also order that supervision continue thereafter for the length of time authorized by K.S.A. 2018 Supp. 21-6608, and amendments thereto.

(m) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions

of this section shall not apply.

(n) (1) Except as provided by K.S.A. 2018 Supp. 21-6630 and 21-6805(f), and amendments thereto, in addition to any of the above, for felony violations of K.S.A. 2018 Supp. 21-5706, and amendments thereto, the court shall require the defendant who meets the requirements established in K.S.A. 2018 Supp. 21-6824, and amendments thereto, to participate in a certified drug abuse treatment program, as provided in K.S.A. 2018 Supp. 75-52,144, and amendments thereto, including, but not limited to, an approved after-care plan. The amount of time spent participating in such program shall not be credited as service on the underlying prison sentence.

(2) If the defendant fails to participate in or has a pattern of intentional conduct that demonstrates the defendant's refusal to comply with or participate in the treatment program, as established by judicial finding, the defendant shall be subject to sanction or revocation pursuant to the provisions of K.S.A. 22-3716, and amendments thereto. If the defendant's probation is revoked, the defendant shall serve the underlying prison sentence as established in K.S.A. 2018 Supp. 21-6805, and amendments thereto.

(A) Except as provided in subsection (n)(2)(B), for those offenders who are convicted on or after July 1, 2003, but prior to July 1, 2013, upon completion of the underlying prison sentence, the offender shall not be subject to a period of postrelease supervision.

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

(o) (1) Except as provided in paragraph (3), in addition to any other penalty or disposition imposed by law, upon a conviction for unlawful possession of a controlled substance or controlled substance analog in violation of K.S.A. 2018 Supp. 21-5706, and amendments thereto, in which the trier of fact makes a finding that the unlawful possession occurred while transporting the controlled substance or controlled substance analog in any vehicle upon a highway or street, the offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state shall be suspended for one year.

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

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

(B) Upon entering an order restricting a person's license hereunder, the judge shall require such person to surrender such person's driver's license to the judge who shall cause it to be transmitted to the division of

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

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

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

(p) In addition to any of the above, for any criminal offense that includes the domestic violence designation pursuant to K.S.A. 2018 Supp. 22-4616, and amendments thereto, the court shall require the defendant to: (1) Undergo a domestic violence offender assessment conducted by a certified batterer intervention program; and (2) follow all recommendations made by such program, unless otherwise ordered by the court or the department of corrections. The court may order a domestic violence offender assessment and any other evaluation prior to sentencing if the assessment or evaluation would assist the court in determining an appropriate sentence. The entity completing the assessment or evaluation shall provide the assessment or evaluation and recommendations to the court and the court shall provide the domestic violence offender assessment to any entity responsible for supervising such defendant. A defendant ordered to undergo a domestic violence offender assessment shall be required to pay for the assessment and, unless otherwise ordered by the court or the department of corrections, for completion of all recommendations.

(q) In imposing a fine, the court may authorize the payment thereof in installments. In lieu of payment of any fine imposed, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed by the later of one year after the fine is imposed or one year after release from imprisonment or jail, or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance shall become due on that date. If conditional reduction of any fine is rescinded by the court for any reason, then pursuant to the court's order the person may be

ordered to perform community service by one year after the date of such rescission or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date. All credits for community service shall be subject to review and approval by the court.

(r) In addition to any other penalty or disposition imposed by law, for any defendant sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2018 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, the court shall order that the defendant be electronically monitored upon release from imprisonment for the duration of the defendant's natural life and that the defendant shall reimburse the state for all or part of the cost of such monitoring as determined by the prisoner review board.

(s) Whenever the court has released the defendant on probation pursuant to subsection (a)(3), the defendant's supervising court services officer, with the concurrence of the chief court services officer, may impose the violation sanctions as provided in K.S.A. 22-3716(c)(1)(B), and amendments thereto, without further order of the court, unless: ~~(1) The court has specifically withheld this authority in its sentencing order;~~

~~or~~
(2) the defendant, after being apprised of the right to a revocation hearing before the court pursuant to K.S.A. 22-3716(b), and amendments thereto, refuses to waive such right.

(t) Whenever the court has assigned the defendant to a community correctional services program pursuant to subsection (a)(4), the defendant's community corrections officer, with the concurrence of the community corrections director, may impose the violation sanctions as provided in K.S.A. 22-3716(c)(1)(B), and amendments thereto, without further order of the court unless:

~~(1) The court has specifically withheld this authority in its sentencing order; or~~

~~(2) the defendant, after being apprised of the right to a revocation hearing before the court pursuant to K.S.A. 22-3716(b), and amendments thereto, refuses to waive such right.~~

(u) In addition to any of the above, the court shall authorize an additional 18 days of confinement in a county jail to be reserved for sanctions as set forth in K.S.A. 22-3716(b)(3)(B), (b)(4) or (c)(1)(B), and amendments thereto.

Sec. 9. On and after July 1, 2019, K.S.A. 2018 Supp. 21-6824 is hereby amended to read as follows: 21-6824. (a) There is hereby established a nonprison sanction of certified drug abuse treatment programs for certain offenders who are sentenced on or after November 1, 2003. Placement of offenders in certified drug abuse treatment programs by the court shall be limited to placement of adult offenders, convicted of a felony violation of K.S.A. 2018 Supp. 21-5705 or 21-5706, and amendments thereto, whose offense is classified in grid blocks:

(1) 5-C, 5-D, 5-E, 5-F, 5-G, 5-H or 5-I of the sentencing guidelines grid for drug crimes and such offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 2018 Supp. 21-5703, 21-5705 or 21-5716, and amendments thereto, or any substantially similar offense from another jurisdiction; or

(2) 5-A, 5-B, 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes, such offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 2018 Supp. 21-5703, 21-5705 or 21-5716, and amendments

thereto, or any substantially similar offense from another jurisdiction, if the person felonies in the offender's criminal history were severity level 8, 9 or 10 or nongrid offenses of the sentencing guidelines grid for nondrug crimes, and the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will not be jeopardized by such placement in a drug abuse treatment program.

(b) As a part of the presentence investigation pursuant to K.S.A. 2018 Supp. 21-6813, and amendments thereto, offenders who meet the requirements of subsection (a), unless otherwise specifically ordered by the court, shall be subject to:

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

(2) a criminal risk-need assessment. The criminal risk-need assessment shall assign a high or low risk status to the offender.

(c) If the offender is assigned a high risk status as determined by the drug abuse assessment performed pursuant to subsection (b)(1) and a moderate or high risk status as determined by the criminal risk-need assessment performed pursuant to subsection (b)(2), the sentencing court shall commit the offender to treatment in a drug abuse treatment program until the court determines the offender is suitable for discharge by the court. The term of treatment shall not exceed 18 months. The court may extend the term of probation, pursuant to K.S.A. 2018 Supp. 21-6608(c) (3), and amendments thereto. The term of treatment may not exceed the term of probation.

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

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

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

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

(A) Is convicted of a new felony; or

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

(2) Offenders who are discharged from such program shall be subject to the revocation provisions of K.S.A. 2018 Supp. 21-6604(n), and amendments thereto.

(g) As used in this section, "mental health professional" includes licensed social workers, persons licensed to practice medicine and surgery, licensed psychologists, licensed professional counselors or registered alcohol and other drug abuse counselors licensed or certified as addiction counselors who have been certified by the secretary of corrections to treat offenders pursuant to K.S.A. 2018 Supp. 75-52,144, and amendments thereto.

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

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

(B) are not lawfully present in the United States and being detained for deportation; or

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

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

(i) The court may order an offender who otherwise does not meet the requirements of subsection (c) to undergo one additional drug abuse assessment while such offender is on probation. Such offender may be ordered to undergo drug abuse treatment pursuant to subsection (a) if such offender is determined to meet the requirements of subsection (c). The cost of such assessment shall be paid by such offender.

Sec. 10. On and after July 1, 2019, K.S.A. 2018 Supp. 22-3716 is hereby amended to read as follows: 22-3716. (a) At any time during probation, assignment to a community correctional services program, suspension of sentence or pursuant to subsection (e) for defendants who committed a crime prior to July 1, 1993, and at any time ~~during which~~ *when* a defendant is serving a nonprison sanction for a crime committed on or after July 1, 1993, or pursuant to subsection (e), the court may issue a warrant for the arrest of a defendant for violation of any of the conditions of release or assignment, a notice to appear to answer to a charge of violation or a violation of the defendant's nonprison sanction. The notice shall be personally served upon the defendant. The warrant shall authorize all officers named in the warrant to return the defendant to the custody of the court or to any certified detention facility designated by the court. Any court services officer or community correctional services officer may arrest the defendant without a warrant or may deputize any other officer with power of arrest to do so by giving the officer a written or verbal statement setting forth that the defendant has, in the judgment of the court services officer or community correctional services officer, violated the conditions of the defendant's release or a nonprison sanction. A written statement delivered to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the defendant. After making an arrest, the court services officer or community correctional services officer shall present to the detaining authorities a similar statement of the circumstances of violation. Provisions regarding release on bail of persons charged with a crime shall be applicable to defendants arrested under these provisions.

(b) (1) Upon arrest and detention pursuant to subsection (a), the court services officer or community correctional services officer shall immediately notify the court and shall submit in writing a report showing in what manner the defendant has violated the conditions of release or assignment or a nonprison sanction.

(2) Unless the defendant, after being apprised of the right to a hearing by the supervising court services or community correctional services officer, waives such hearing, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing shall be in open court and the state shall have the burden of establishing the violation. The defendant shall have the right to be represented by counsel and shall be informed by the judge that, if the defendant is financially unable to obtain counsel, an attorney will be appointed to represent the defendant. The defendant shall have the right to present the testimony of witnesses and other evidence on the defendant's behalf. Relevant written statements made under oath may be admitted and considered by the court along with other evidence presented at the hearing.

(3) (A) Except as otherwise provided, if the original crime of conviction was a felony, other than a felony specified in K.S.A. 2018 Supp. 21-6804(i), and amendments thereto, and a violation is established, the court may impose the violation sanctions as provided in subsection (c) (1).

(B) Except as otherwise provided, if the original crime of conviction was a misdemeanor or a felony specified in K.S.A. 2018 Supp. 21-6804(i), and amendments thereto, and a violation is established, the court

may:

(i) Continue or modify the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction and impose confinement in a county jail not to exceed 60 days. If an offender is serving multiple probation terms concurrently, any confinement periods imposed shall be imposed concurrently;

(ii) impose an intermediate sanction of confinement in a county jail, to be imposed as a two-day or three-day consecutive period. The total of all such sanctions imposed pursuant to this subparagraph and ~~subsections subsection (b)(4)(A) and (b)(4)(B)~~ shall not exceed 18 total days during the term of supervision, *except as provided in subsection (h)*; or

(iii) revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction and require the defendant to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence ~~which~~ *that* might originally have been imposed.

(4) Except as otherwise provided, if the defendant waives the right to a hearing ~~and the sentencing court has not specifically withheld the authority from court services or community correctional services to impose sanctions~~, the following sanctions may be imposed without further order of the court:

(A) If the defendant was on probation at the time of the violation, the defendant's supervising court services officer, with the concurrence of the chief court services officer, may impose an intermediate sanction of confinement in a county jail, to be imposed as a two-day or three-day consecutive period. The total of all such sanctions imposed pursuant to this subparagraph and subsections (b)(4)(B) and (c)(1)(B) shall not exceed 18 total days during the term of supervision, *except as provided in subsection (h)*; and

(B) if the defendant was assigned to a community correctional services program at the time of the violation, the defendant's community corrections officer, with the concurrence of the community corrections director, may impose an intermediate sanction of confinement in a county jail, to be imposed as a two-day or three-day consecutive period. The total of all such sanctions imposed pursuant to this subparagraph and subsections (b)(4)(A) and (c)(1)(B) shall not exceed 18 total days during the term of supervision, *except as provided in subsection (h)*.

(c) (1) Except as otherwise provided, if the original crime of conviction was a felony, other than a felony specified in K.S.A. 2018 Supp. 21-6804(i), and amendments thereto, and a violation is established, the court may impose the following sanctions:

(A) Continuation or modification of the release conditions of the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction;

(B) continuation or modification of the release conditions of the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction and an intermediate sanction of confinement in a county jail to be imposed as a two-day or three-day consecutive period. The total of all such sanctions imposed pursuant to this subparagraph and ~~subsections subsection (b)(4)(A) and (b)(4)(B)~~ shall not exceed 18 total days during the term of supervision, *except as provided in subsection (h)*; or

(C) ~~if the violator already had at least one intermediate sanction imposed pursuant to subsection (b)(4)(A), (b)(4)(B) or (c)(1)(B) related to the crime for which the original supervision was imposed, continuation or modification of the release conditions of the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction and remanding the defendant to the custody of the secretary of corrections for a period of 120 days, subject to a reduction of up to 60 days in the discretion of the secretary. This sanction shall not be~~

~~imposed more than once during the term of supervision. The sanction imposed pursuant to this subparagraph shall begin upon pronouncement by the court and shall not be served by prior confinement credit, except as provided in subsection (e)(7);~~

~~(D) if the violator already had a sanction imposed pursuant to subsection (b)(4)(A), (b)(4)(B), (e)(1)(B) or (e)(1)(C) related to the crime for which the original supervision was imposed, continuation or modification of the release conditions of the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction and remanding the defendant to the custody of the secretary of corrections for a period of 180 days, subject to a reduction of up to 90 days in the discretion of the secretary. This sanction shall not be imposed more than once during the term of supervision. The sanction imposed pursuant to this subparagraph shall begin upon pronouncement by the court and shall not be served by prior confinement credit, except as provided in subsection (e)(7); or~~

~~(E) if the violator already had a sanction imposed pursuant to subsection (e)(1)(C) or (e)(1)(D) (c)(1)(B) related to the crime for which the original supervision was imposed, revocation of the probation, assignment to a community corrections services program, suspension of sentence or nonprison sanction and requiring such violator to serve the sentence imposed, or any lesser sentence and, if imposition of sentence was suspended, imposition of any sentence which that might originally have been imposed.~~

(2) Except as otherwise provided in subsections (c)(3), ~~(e)(8)~~ and (c) ~~(9)(7)~~, no offender for whom a violation of conditions of release or assignment or a nonprison sanction has been established as provided in this section shall be required to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections for such violation, unless such person has already had at least one prior assignment to a community correctional services program related to the crime for which the original sentence was imposed.

(3) The provisions of subsection (c)(2) shall not apply to adult felony offenders as described in K.S.A. 75-5291(a)(3), and amendments thereto.

(4) The court may require an offender for whom a violation of conditions of release or assignment or a nonprison sanction has been established as provided in this section to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections without a prior assignment to a community correctional services program if the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will be jeopardized or that the welfare of the inmate will not be served by such assignment to a community correctional services program.

(5) When a new felony is committed while the offender is on probation or assignment to a community correctional services program, the new sentence shall be imposed consecutively pursuant to the provisions of K.S.A. 2018 Supp. 21-6606, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

~~(6) Except as provided in subsection (f), upon completion of a violation sanction imposed pursuant to subsection (e)(1)(C) or (e)(1)(D) such offender shall return to community correctional services supervision. The sheriff shall not be responsible for the return of the offender to the county where the community correctional services supervision is assigned.~~

~~(7) A violation sanction imposed pursuant to subsection (c)(1)(B), (e)(1)(C) or (e)(1)(D) shall not be longer than the amount of time~~

remaining on the offender's underlying prison sentence.

~~(8) (A) If the offender commits a new felony or misdemeanor while the offender is on probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction, the court may revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction of an offender pursuant to subsection (e)(1)(E) without having previously imposed a sanction pursuant to subsection (e)(1)(B), (e)(1)(C) or (e)(1)(D).~~

~~(B) If the offender absconds from supervision while the offender is on probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction, the court may: (i) Revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction of an offender pursuant to subsection (e)(1)(E) without having previously imposed a sanction pursuant to subsection (e)(1)(B), (e)(1)(C) or (e)(1)(D); or~~

~~(ii) sanction the offender under subsection (e)(1)(A), (e)(1)(C) or (e)(1)(D) without imposing a sanction under (e)(1)(B).~~

~~(9)(7) The court may revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction of an offender pursuant to subsection (c)(1)(E) without having previously imposed a sanction pursuant to subsection (c)(1)(B), (e)(1)(C) or (e)(1)(D) if:~~

~~(A) The court finds and sets forth with particularity the reasons for finding that the safety of members of the public will be jeopardized or that the welfare of the offender will not be served by such sanction; or~~

~~(B) the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction was originally granted as the result of a dispositional departure granted by the sentencing court pursuant to K.S.A. 2018 Supp. 21-6815, and amendments thereto;~~

~~(C) the offender commits a new felony or misdemeanor while the offender is on probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction; or~~

~~(D) the offender absconds from supervision while the offender is on probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction.~~

~~(10)(8) If an offender is serving multiple probation terms concurrently, any violation sanctions imposed pursuant to subsection (c)(1)(B), (e)(1)(C) or (e)(1)(D), or any sanction imposed pursuant to subsection (c)(1)(9), shall be imposed concurrently.~~

~~(11)(9) If the original crime of conviction was a felony, except for violations of K.S.A. 8-1567 or 8-2,144, and amendments thereto, and the court makes a finding that the offender has committed one or more violations of the release conditions of the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction, the court may impose confinement in a county jail not to exceed 60 days upon each such finding. Such confinement is separate and distinct from the violation sanctions provided in subsection (c)(1)(B), (e)(1)(C), (e)(1)(D) and (e)(1)(E) and shall not be imposed at the same time as any such violation sanction.~~

~~(12)(10) The violation sanctions provided in this subsection shall apply to any violation of conditions of release or assignment or a nonprison sanction occurring on and after July 1, 2013, regardless of when the offender was sentenced for the original crime or committed the original crime for which sentenced.~~

~~(d) A defendant who is on probation, assigned to a community correctional services program, under suspension of sentence or serving a nonprison sanction and for whose return a warrant has been issued by the court shall be considered a fugitive from justice if it is found that the warrant cannot be served. If it appears that the defendant has violated the~~

provisions of the defendant's release or assignment or a nonprison sanction, the court shall determine whether the time from the issuing of the warrant to the date of the defendant's arrest, or any part of it, shall be counted as time served on probation, assignment to a community correctional services program, suspended sentence or pursuant to a nonprison sanction.

(e) The court shall have 30 days following the date probation, assignment to a community correctional service program, suspension of sentence or a nonprison sanction was to end to issue a warrant for the arrest or notice to appear for the defendant to answer a charge of a violation of the conditions of probation, assignment to a community correctional service program, suspension of sentence or a nonprison sanction.

(f) For crimes committed on and after July 1, 2013, a felony offender whose nonprison sanction is revoked pursuant to subsection (c) or whose underlying prison term expires while serving a sanction pursuant to subsection (c)(1)(C) ~~or (e)(1)(D)~~ shall serve a period of postrelease supervision upon the completion of the prison portion of the underlying sentence.

(g) Offenders who have been sentenced pursuant to K.S.A. 2018 Supp. 21-6824, and amendments thereto, and who subsequently violate a condition of the drug and alcohol abuse treatment program shall be subject to an additional nonprison sanction for any such subsequent violation. Such nonprison sanctions shall include, but not be limited to, up to 60 days in a county jail, fines, community service, intensified treatment, house arrest and electronic monitoring.

(h) *If the court continues or modifies the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction, pursuant to subsection (b) or (c), the court shall authorize an additional 18 days of sanction time in a county jail to be reserved for sanctions as set forth in subsection (b)(3), (b)(4) or (c)(1).*

Sec. 11. On and after July 1, 2019, K.S.A. 2018 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A. 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4624, 21-4635 through 21-4638 and 21-4642, prior to their repeal; K.S.A. 2018 Supp. 21-6617, 21-6620, 21-6623, 21-6624, 21-6625 and 21-6626, and amendments thereto; and K.S.A. 8-1567, and amendments thereto; an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2018 Supp. 21-6707, and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) An inmate sentenced to imprisonment for life without the possibility of parole pursuant to K.S.A. 2018 Supp. 21-6617, and amendments thereto, shall not be eligible for parole.

(2) Except as provided by K.S.A. 21-4635 through 21-4638, prior to their repeal, and K.S.A. 2018 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments thereto, an inmate sentenced to imprisonment for the crime of: (A) Capital murder committed on or after July 1, 1994, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits; (B) murder in the first degree based upon a finding of premeditated murder committed on or after July 1, 1994, but prior to July 1, 2014, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits; and (C) murder in the first degree as described in K.S.A. 2018 Supp. 21-5402(a) (2), and amendments thereto, committed on or after July 1, 2014, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(3) Except as provided by subsections (b)(1), (b)(2) and (b)(5), K.S.A. 1993 Supp. 21-4628, prior to its repeal, K.S.A. 21-4635 through 21-4638, prior to their repeal, and K.S.A. 2018 Supp. 21-6620, 21-6623,

21-6624 and 21-6625, and amendments thereto, an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1993, but prior to July 1, 1999, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits and an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1999, shall be eligible for parole after serving 20 years of confinement without deduction of any good time credits.

(4) Except as provided by K.S.A. 1993 Supp. 21-4628, prior to its repeal, an inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2018 Supp. 21-6707, and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

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

(6) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2018 Supp. 21-6627, and amendments thereto, committed on or after July 1, 2006, shall be eligible for parole after serving the mandatory term of imprisonment without deduction of any good time credits.

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

(A) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608, prior to its repeal, or K.S.A. 2018 Supp. 21-6606, and amendments thereto, less good time credits for those crimes which are not class A felonies; and

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

(2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2018 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, the inmate shall be eligible for parole after serving the mandatory term of imprisonment.

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

(A) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity levels 1 through 4 crimes, drug severity levels 1 and 2 crimes committed on or after July 1, 1993, but prior to July 1, 2012, and drug severity levels 1, 2 and 3 crimes committed on or after July 1, 2012, must serve 36 months on postrelease supervision.

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

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

(D) Persons sentenced to a term of imprisonment that includes a sentence for a sexually violent crime as defined in K.S.A. 22-3717, and amendments thereto, committed on or after July 1, 1993, but prior to July 1, 2006, a sexually motivated crime in which the offender has been

ordered to register pursuant to K.S.A. 22-3717(d)(1)(D)(vii), and amendments thereto, electronic solicitation, K.S.A. 21-3523, prior to its repeal, or K.S.A. 2018 Supp. 21-5509, and amendments thereto, or unlawful sexual relations, K.S.A. 21-3520, prior to its repeal, or K.S.A. 2018 Supp. 21-5512, and amendments thereto, shall serve the period of postrelease supervision as provided in subsections (d)(1)(A), (d)(1)(B) or (d)(1)(C), plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2018 Supp. 21-6821, and amendments thereto, on postrelease supervision.

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

(ii) If the sentencing judge departs from the presumptive postrelease supervision period, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. Departures in this section are subject to appeal pursuant to K.S.A. 21-4721, prior to its repeal, or K.S.A. 2018 Supp. 21-6820, and amendments thereto.

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

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

(b) any evidence received during the proceeding;

(c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant to K.S.A. 21-4714(e), prior to its repeal, or K.S.A. 2018 Supp. 21-6813(e), and amendments thereto; and

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

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

(v) In carrying out the provisions of subsection (d)(1)(D), the court shall refer to K.S.A. 21-4718, prior to its repeal, or K.S.A. 2018 Supp. 21-6817, and amendments thereto.

(vi) Upon petition and payment of any restitution ordered pursuant to K.S.A. 2018 Supp. 21-6604, and amendments thereto, the prisoner review board may provide for early discharge from the postrelease supervision period imposed pursuant to subsection (d)(1)(D)(i) upon completion of court ordered programs and completion of the presumptive postrelease supervision period, as determined by the crime of conviction, pursuant to subsection (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from postrelease supervision is at the discretion of the board.

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

(viii) Persons convicted of K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2018 Supp. 21-5508, and amendments thereto, shall be required to participate in a treatment program for sex offenders during the postrelease supervision period.

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

(F) In cases where sentences for crimes from more than one severity

level have been imposed, the offender shall serve the longest period of postrelease supervision as provided by this section available for any crime upon which sentence was imposed irrespective of the severity level of the crime. Supervision periods will not aggregate.

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

(ii) Persons sentenced to imprisonment for a sexually violent crime committed on or after the effective date of this act, when the offender was under 18 years of age, and who are released from prison, shall be released to a mandatory period of postrelease supervision for 60 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2018 Supp. 21-6821, and amendments thereto.

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

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

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

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

(A) Rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 2018 Supp. 21-5503, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, prior to its repeal, or K.S.A. 2018 Supp. 21-5506(a), and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, prior to its repeal, or K.S.A. 2018 Supp. 21-5506(b), and amendments thereto;

(D) criminal sodomy, K.S.A. 21-3505(a)(2) and (a)(3), prior to its repeal, or K.S.A. 2018 Supp. 21-5504(a)(3) and (a)(4), and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, prior to its repeal, or K.S.A. 2018 Supp. 21-5504(b), and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, prior to its repeal, or K.S.A. 2018 Supp. 21-5508(a), and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, prior to its repeal, or K.S.A. 2018 Supp. 21-5508(b), and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, prior to its repeal, or K.S.A. 2018 Supp. 21-5510, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, prior to its repeal, or K.S.A. 2018 Supp. 21-5505(b), and amendments thereto;

(J) aggravated incest, K.S.A. 21-3603, prior to its repeal, or K.S.A. 2018 Supp. 21-5604(b), and amendments thereto;

(K) aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2018 Supp. 21-5426(b), and amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another;

(L) internet trading in child pornography, as defined in K.S.A. 2018 Supp. 21-5514(a), and amendments thereto;

(M) aggravated internet trading in child pornography, as defined in

K.S.A. 2018 Supp. 21-5514(b), and amendments thereto;

(N) commercial sexual exploitation of a child, as defined in K.S.A. 2018 Supp. 21-6422, and amendments thereto; or

(O) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2018 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a sexually violent crime as defined in this section.

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

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

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

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

(h) The prisoner review board shall hold a parole hearing at least the month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (c). At least one month preceding the parole hearing, the county or district attorney of the county where the inmate was convicted shall give written notice of the time and place of the public comment sessions for the inmate to any victim of the inmate's crime who

is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's family if the family's address is known to the county or district attorney. Except as otherwise provided, failure to notify pursuant to this section shall not be a reason to postpone a parole hearing. In the case of any inmate convicted of an off-grid felony or a class A felony, the secretary of corrections shall give written notice of the time and place of the public comment session for such inmate at least one month preceding the public comment session to any victim of such inmate's crime or the victim's family pursuant to K.S.A. 74-7338, and amendments thereto. If notification is not given to such victim or such victim's family in the case of any inmate convicted of an off-grid felony or a class A felony, the board shall postpone a decision on parole of the inmate to a time at least 30 days after notification is given as provided in this section. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section. If granted parole, the inmate may be released on parole on the date specified by the board, but not earlier than the date the inmate is eligible for parole under subsections (a), (b) and (c). At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the board shall consider: (1) Whether the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a, and amendments thereto, or any revision of such agreement; and (2) all pertinent information regarding such inmate, including, but not limited to, the circumstances of the offense of the inmate; the presentence report; the previous social history and criminal record of the inmate; the conduct, employment, and attitude of the inmate in prison; the reports of such physical and mental examinations as have been made, including, but not limited to, risk factors revealed by any risk assessment of the inmate; comments of the victim and the victim's family including in person comments, contemporaneous comments and prerecorded comments made by any technological means; comments of the public; official comments; any recommendation by the staff of the facility where the inmate is incarcerated; proportionality of the time the inmate has served to the sentence a person would receive under the Kansas sentencing guidelines for the conduct that resulted in the inmate's incarceration; and capacity of state correctional institutions.

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

(j) (1) Before ordering the parole of any inmate, the prisoner review board shall have the inmate appear either in person or via a video conferencing format and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the board formally considers placing an inmate on parole and no agreement has been entered into with the inmate under K.S.A. 75-5210a, and amendments thereto, the board shall notify the inmate in writing of the reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in

writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If parole is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in writing the reasons for not granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than one year after the denial unless the board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next three years or during the interim period of a deferral. In such case, the board may defer subsequent parole hearings for up to three years but any such deferral by the board shall require the board to state the basis for its findings. If parole is denied for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three years after the denial unless the board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the interim period of a deferral. In such case, the board may defer subsequent parole hearings for up to 10 years, but any such deferral shall require the board to state the basis for its findings.

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

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

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

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

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

revocation hearings, orders of restitution, reimbursement of expenditures by the state board of indigents' defense services and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.

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

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

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

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

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

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

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

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

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

render a plan of restitution unworkable.

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

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

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

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

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

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

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

(A) Severity levels 9 and 10 crimes on the sentencing guidelines grid for nondrug crimes;

(B) severity level 4 crimes on the sentencing guidelines grid for drug crimes committed prior to July 1, 2012; and

(C) severity level 5 crimes on the sentencing guidelines grid for drug crimes committed on and after July 1, 2012;

(2) on or before November 1, 2013, for offenders convicted of:

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

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

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

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

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

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

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

(u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2018 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, shall be placed on parole for life and shall not be discharged from supervision by the prisoner review board. When the board orders the parole of an inmate pursuant to this subsection, the board shall order as a condition of parole that the inmate be electronically monitored for the duration of the inmate's natural life.

(v) Whenever the prisoner review board orders a person to be electronically monitored pursuant to this section, or the court orders a person to be electronically monitored pursuant to K.S.A. 2018 Supp. 21-6604(r), and amendments thereto, the board shall order the person to reimburse the state for all or part of the cost of such monitoring. In

determining the amount and method of payment of such sum, the board shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose.

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

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

(B) As used in this subsection, all other terms have the meanings provided by K.S.A. 2018 Supp. 21-5510, and amendments thereto.

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

Sec. 12. On and after July 1, 2019, K.S.A. 2018 Supp. 22-2307 is hereby amended to read as follows: 22-2307. (a) All law enforcement agencies in this state shall adopt written policies regarding domestic violence calls as provided in ~~subsection~~ subsections (b) and (c). These policies shall be made available to all officers of such agency.

(b) Such written policies shall include, but not be limited to, the following:

(1) A statement directing that when a law enforcement officer determines that there is probable cause to believe that a crime or offense involving domestic violence, as defined in K.S.A. 2018 Supp. 21-5111, and amendments thereto, has been committed, the officer shall, without undue delay, arrest the person for which the officer has probable cause to believe committed the crime or offense if such person's actions were not an act of defense of a person or property as provided in K.S.A. 2018 Supp. 21-5222, 21-5223, 21-5225, 21-5230 or 21-5231, and amendments thereto;

(2) a statement that nothing shall be construed to require a law enforcement officer to:

(A) Arrest either party involved in an alleged act of domestic violence when the law enforcement officer determines there is no probable cause to believe that a crime or offense has been committed; or

(B) arrest both parties involved in an alleged act of domestic violence when both claim to have been victims of such domestic violence;

(3) a statement directing that if a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine if there is probable cause that each accused person committed a crime or offense and their actions were not an act of defense of a person or property as provided in K.S.A. 2018 Supp. 21-5222, 21-5223, 21-5225, 21-5230 or 21-5231, and amendments thereto;

(4) a statement defining domestic violence in accordance with K.S.A. 2018 Supp. 21-5111, and amendments thereto;

(5) a statement describing the dispatchers' responsibilities;

(6) a statement describing the responding officers' responsibilities and procedures to follow when responding to a domestic violence call and the suspect is at the scene;

(7) a statement regarding procedures when the suspect has left the scene of the crime;

(8) procedures for both misdemeanor and felony cases;

(9) procedures for law enforcement officers to follow when handling domestic violence calls involving court orders, including protection from

abuse orders, restraining orders and a protective order issued by a court of any state or Indian tribe;

(10) a statement that the law enforcement agency shall provide the following information to victims, in writing:

(A) Availability of emergency and medical telephone numbers, if needed;

(B) the law enforcement agency's report number;

(C) the address and telephone number of the prosecutor's office the victim should contact to obtain information about victims' rights pursuant to K.S.A. 74-7333 and 74-7335, and amendments thereto;

(D) the name and address of the crime victims' compensation board and information about possible compensation benefits;

(E) advise the victim that the details of the crime may be made public;

(F) advise the victim of such victims' rights under K.S.A. 74-7333 and 74-7335, and amendments thereto; and

(G) advise the victim of known available resources which may assist the victim; and

(11) whether an arrest is made or not, a standard offense report shall be completed on all such incidents and sent to the Kansas bureau of investigation.

(c) Such written policies shall provide that when an arrest is made for a domestic violence offense as defined in K.S.A. 2018 Supp. 21-5111, and amendments thereto, including an arrest for violation of a protection order as defined in K.S.A. 2018 Supp. 21-5924, and amendments thereto, the officer shall provide the victim information related to:

(A) The fact that in some cases the person arrested can be released from custody in a short amount of time;

(B) the fact that in some cases a bond condition may be imposed on the person arrested that prohibits contact with the victim for 72 hours, and that if the person arrested contacts the victim during that time, the victim should notify law enforcement immediately; and

(C) any available services within the jurisdiction to monitor custody changes of the person being arrested, including, but not limited to, the Kansas victim information and notification everyday service if available in such jurisdiction.

(d) All law enforcement agencies shall provide training to law enforcement officers about the policies adopted pursuant to this section.

Sec. 13. K.S.A. 2018 Supp. 21-6811 is hereby amended to read as follows: 21-6811. In addition to the provisions of K.S.A. 2018 Supp. 21-6810, and amendments thereto, the following shall apply in determining an offender's criminal history classification as contained in the presumptive sentencing guidelines grids:

(a) Every three prior adult convictions or juvenile adjudications of class A and class B person misdemeanors in the offender's criminal history, or any combination thereof, shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes. Every three prior adult convictions or juvenile adjudications of assault as defined in K.S.A. 21-3408, prior to its repeal, or K.S.A. 2018 Supp. 21-5412(a), and amendments thereto, occurring within a period commencing three years prior to the date of conviction for the current crime of conviction shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes.

(b) A conviction of criminal possession of a firearm as defined in K.S.A. 21-4204(a)(1) or (a)(5), prior to its repeal, criminal use of weapons as defined in K.S.A. 2018 Supp. 21-6301(a)(10) or (a)(11), and amendments thereto, or unlawful possession of a firearm as in effect on June 30, 2005, and as defined in K.S.A. 21-4218, prior to its repeal, will be scored as a select class B nonperson misdemeanor conviction or adjudication and shall not be scored as a person misdemeanor for criminal

history purposes.

(c) (1) If the current crime of conviction was committed before July 1, 1996, and is for K.S.A. 21-3404(b), as in effect on June 30, 1996, involuntary manslaughter in the commission of driving under the influence, then, each prior adult conviction or juvenile adjudication for K.S.A. 8-1567, and amendments thereto, shall count as one person felony for criminal history purposes.

(2) If the current crime of conviction was committed on or after July 1, 1996, and is for a violation of K.S.A. 2018 Supp. 21-5405(a)(3) *or* (a)(5), and amendments thereto, each prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for: (A) Any act described in K.S.A. 8-2,144 or 8-1567, and amendments thereto; or (B) a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits any act described in K.S.A. 8-2,144 or 8-1567, and amendments thereto, shall count as one person felony for criminal history purposes.

(3) If the current crime of conviction is for a violation of K.S.A. 2018 Supp. 21-5413(b)(3) *or* (b)(4), and amendments thereto:

(A) The first prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for the following shall count as one nonperson felony for criminal history purposes: (i) Any act described in K.S.A. 8-2,144 or 8-1567, and amendments thereto; or (ii) a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits any act described in K.S.A. 8-2,144 or 8-1567, and amendments thereto; and

(B) each second or subsequent prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for the following shall count as one person felony for criminal history purposes: (i) Any act described in K.S.A. 8-2,144 or 8-1567, and amendments thereto; or (ii) a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits any act described in K.S.A. 8-2,144 or 8-1567, and amendments thereto.

(d) Prior burglary adult convictions and juvenile adjudications will be scored for criminal history purposes as follows:

(1) As a prior person felony if the prior conviction or adjudication was classified as a burglary as defined in K.S.A. 21-3715(a), prior to its repeal, or K.S.A. 2018 Supp. 21-5807(a)(1), and amendments thereto.

(2) As a prior nonperson felony if the prior conviction or adjudication was classified as a burglary as defined in K.S.A. 21-3715(b) or (c), prior to its repeal, or K.S.A. 2018 Supp. 21-5807(a)(2) or (a)(3), and amendments thereto.

The facts required to classify prior burglary adult convictions and juvenile adjudications shall be established by the state by a preponderance of the evidence.

(e) (1) Out-of-state convictions and juvenile adjudications shall be used in classifying the offender's criminal history.

(2) An out-of-state crime will be classified as either a felony or a misdemeanor according to the convicting jurisdiction.

(A) If a crime is a felony in the convicting jurisdiction, it will be counted as a felony in Kansas.

(B) If a crime is a misdemeanor in the convicting jurisdiction, the state of Kansas shall refer to the comparable offense under the Kansas criminal code in effect on the date the current crime of conviction was committed to classify the out-of-state crime as a class A, B or C misdemeanor. If the comparable offense in the state of Kansas is a felony, the out-of-state crime shall be classified as a class A misdemeanor. If the state of Kansas does not have a comparable offense in effect on the date the current crime of conviction was committed, the out-of-state crime shall not be used in classifying the offender's criminal history.

(C) If a crime is not classified as either a felony or a misdemeanor in

the convicting jurisdiction, the state of Kansas shall refer to the comparable offense under the Kansas criminal code in effect on the date the current crime of conviction was committed to classify the out-of-state crime as either a felony or a misdemeanor. If the state of Kansas does not have a comparable offense in effect on the date the current crime of conviction was committed, the out-of-state crime shall not be used in classifying the offender's criminal history.

(3) The state of Kansas shall classify the crime as person or nonperson.

(A) In designating a ~~crime~~ *misdemeanor* as person or nonperson, comparable offenses under the Kansas criminal code in effect on the date the current crime of conviction was committed shall be referred to. If the state of Kansas does not have a comparable *person* offense in effect on the date the current crime of conviction was committed, the out-of-state crime shall be classified as a nonperson crime.

(B) *In designating a felony crime as person or nonperson, the felony crime shall be classified as follows:*

(i) *An out-of-state conviction or adjudication for the commission of a felony offense, or an attempt, conspiracy or criminal solicitation to commit a felony offense, shall be classified as a person felony if one or more of the following circumstances is present as defined by the convicting jurisdiction in the elements of the out-of-state offense:*

(a) *Death or killing of any human being;*

(b) *threatening or causing fear of bodily or physical harm or violence, causing terror, physically intimidating or harassing any person;*

(c) *bodily harm or injury, physical neglect or abuse, restraint, confinement or touching of any person, without regard to degree;*

(d) *the presence of a person, other than the defendant, a charged accomplice or another person with whom the defendant is engaged in the sale, distribution or transfer of a controlled substance or non-controlled substance;*

(e) *possessing, viewing, depicting, distributing, recording or transmitting an image of any person;*

(f) *lewd fondling or touching, sexual intercourse or sodomy with or by any person or an unlawful sexual act involving a child under the age of consent;*

(g) *being armed with, using, displaying or brandishing a firearm or other weapon, excluding crimes of mere unlawful possession; or*

(h) *entering or remaining within any residence, dwelling or habitation.*

(ii) *An out-of-state conviction or adjudication for the commission of a felony offense, or an attempt, conspiracy or criminal solicitation to commit a felony offense, shall be classified as a person felony if the elements of the out-of-state felony offense that resulted in the conviction or adjudication necessarily prove that a person was present during the commission of the offense. For purposes of this clause, the person present must be someone other than the defendant, a charged accomplice or another person with whom the defendant is engaged in the sale, distribution or transfer of a controlled substance or non-controlled substance. The presence of a person includes physical presence and presence by electronic or telephonic communication.*

(iii) *An out-of-state conviction or adjudication for the commission of a felony offense, or an attempt, conspiracy or criminal solicitation to commit a felony offense, shall be classified as a nonperson felony if the elements of the offense do not require proof of any of the circumstances in subparagraph (B)(i) or (ii).*

(4) Convictions or adjudications occurring within the federal system, other state systems, the District of Columbia, foreign, tribal or military courts are considered out-of-state convictions or adjudications.

(5) The facts required to classify out-of-state adult convictions and

juvenile adjudications shall be established by the state by a preponderance of the evidence.

(f) Except as provided in K.S.A. 21-4710(d)(4), (d)(5) and (d)(6), prior to its repeal, or K.S.A. 2018 Supp. 21-6810(d)(3)(B), (d)(3)(C), (d)(3)(D), (d)(4) and (d)(5), and amendments thereto, juvenile adjudications will be applied in the same manner as adult convictions. Out-of-state juvenile adjudications will be treated as juvenile adjudications in Kansas.

(g) A prior felony conviction of an attempt, a conspiracy or a solicitation as provided in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2018 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, to commit a crime shall be treated as a person or nonperson crime in accordance with the designation assigned to the underlying crime.

(h) Drug crimes are designated as nonperson crimes for criminal history scoring.

(i) If the current crime of conviction is for a violation of K.S.A. 8-1602(b)(3) through (b)(5), and amendments thereto, each of the following prior convictions for offenses committed on or after July 1, 2011, shall count as a person felony for criminal history purposes: K.S.A. 8-235, 8-262, 8-287, 8-291, 8-1566, 8-1567, 8-1568, 8-1602, 8-1605 and 40-3104, and amendments thereto, and K.S.A. 2018 Supp. 21-5405(a)(3) *or* (a)(5) and 21-5406, and amendments thereto, or a violation of a city ordinance or law of another state which would also constitute a violation of such sections.

(j) The amendments made to this section by chapter 5 of the 2015 Session Laws of Kansas are procedural in nature and shall be construed and applied retroactively.

Sec. 14. K.S.A. 2018 Supp. 21-6820 is hereby amended to read as follows: 21-6820. (a) A departure sentence is subject to appeal by the defendant or the state. The appeal shall be to the appellate courts in accordance with rules adopted by the supreme court.

(b) Pending review of the sentence, the sentencing court or the appellate court may order the defendant confined or placed on conditional release, including bond.

(c) On appeal from a judgment ~~or~~ of conviction entered for a felony committed on or after July 1, 1993, the appellate court shall not review:

(1) Any sentence that is within the presumptive sentence for the crime; or

(2) any sentence resulting from an agreement between the state and the defendant which the sentencing court approves on the record.

(d) In any appeal from a judgment of conviction imposing a sentence that departs from the presumptive sentence prescribed by the sentencing grid for a crime, sentence review shall be limited to whether the sentencing court's findings of fact and reasons justifying a departure:

(1) Are supported by the evidence in the record; and

(2) constitute substantial and compelling reasons for departure.

(e) In any appeal *from a judgment of conviction*, the appellate court may review a claim that:

(1) A sentence that departs from the presumptive sentence resulted from partiality, prejudice, oppression or corrupt motive;

(2) the sentencing court erred in either including or excluding recognition of a prior conviction or juvenile adjudication for criminal history scoring purposes; or

(3) the sentencing court erred in ranking the crime severity level of the current crime or in determining the appropriate classification of a prior conviction or juvenile adjudication for criminal history purposes.

(f) The appellate court may reverse or affirm the sentence. If the appellate court concludes that the trial court's factual findings are not supported by evidence in the record or do not establish substantial and compelling reasons for a departure, it shall remand the case to the trial

court for resentencing.

(g) The appellate court shall issue a written opinion whenever the judgment of the sentencing court is reversed. The court may issue a written opinion in any other case when it is believed that a written opinion will provide guidance to sentencing judges and others in implementing the sentencing guidelines adopted by the Kansas sentencing commission. The appellate courts may provide by rule for summary disposition of cases arising under this section when no substantial question is presented by the appeal.

(h) A review under summary disposition shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required unless ordered by the appellate court and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(i) The sentencing court shall retain authority irrespective of any notice of appeal for 90 days after entry of judgment of conviction to modify its judgment and sentence to correct any arithmetic or clerical errors.

(j) *The amendments made to this section by this act are procedural in nature and shall be construed and applied retroactively.*

Sec. 15. K.S.A. 2018 Supp. 22-3504 is hereby amended to read as follows: 22-3504. ~~(1)~~ (a) The court may correct an illegal sentence at any time *while the defendant is serving such sentence*. The defendant shall receive full credit for time spent in custody under the sentence prior to correction. Unless the motion and the files and records of the case conclusively show that the defendant is entitled to no relief, the defendant shall have a right to a hearing, after reasonable notice to be fixed by the court, to be personally present and to have the assistance of counsel in any proceeding for the correction of an illegal sentence.

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

~~(3)~~(c) *For the purposes of this section:*

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

(2) *"Change in the law" means a statutory change or an opinion by an appellate court of the state of Kansas, unless the opinion is issued while the sentence is pending an appeal from the judgment of conviction.*

(d) *The amendments made to this section by this act are procedural in nature and shall be construed and applied retroactively.*

New Sec. 16. If the amendments made to K.S.A. 2018 Supp. 21-6811, 21-6820 and 22-3504 are, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the amendments made to K.S.A. 2018 Supp. 21-6811, 21-6820 and 22-3504 that can be given effect without the invalid provision or provisions or application, and to this end the amendments made to K.S.A. 2018 Supp. 21-6811, 21-6820 and 22-3504 are severable.

Sec. 17. K.S.A. 2018 Supp. 21-6811, 21-6811c, 21-6820 and 22-3504 are hereby repealed.

Sec. 18. On and after July 1, 2019, K.S.A. 22-2906 and K.S.A. 2018 Supp. 21-5405, 21-5602, 21-5840, 21-6604, 21-6813, 21-6815, 21-6824, 22-2307, 22-2909, 22-3716 and 22-3717 are hereby repealed.

Sec. 19. This act shall take effect and be in force from and after its publication in the Kansas register.

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

SENATE adopted

Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE

as amended _____

HOUSE adopted

Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.