

Senate Substitute for Substitute HOUSE BILL No. 2318

By Committee on Judiciary

3-19

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to controlled substances; sentencing guidelines grid for drug crimes;
3 drug treatment programs; disposition and supervision of offenders;
4 amending K.S.A. 2011 Supp. 21-5701, 21-5703, 21-5705, 21-5706, 21-
5 5708, 21-5709, 21-5710, 21-5713, 21-5714, 21-5716, 21-6604, 21-
6 6608, 21-6611, 21-6614, 21-6805, 21-6808, 21-6810, 21-6821, 21-
7 6824, 22-2802, 22-2908, 22-3412, 22-3604, 22-3717, 38-2346, 38-
8 2347, 38-2369, 38-2374, 38-2376, 75-5291 and 75-52,144 and
9 repealing the existing sections; also repealing K.S.A. 2011 Supp. 21-
10 6614a, 21-6614b, 21-6614c and 75-5291b.

11

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

13 Section 1. K.S.A. 2011 Supp. 21-5701 is hereby amended to read as
14 follows: 21-5701. As used in K.S.A. 2011 Supp. 21-5701 through 21-5717,
15 and amendments thereto:

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

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

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

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

30 (C) with respect to a particular individual, which the individual
31 represents or intends to have a stimulant, depressant or hallucinogenic
32 effect on the central nervous system substantially similar to the stimulant,
33 depressant or hallucinogenic effect on the central nervous system of a
34 controlled substance included in the schedules designated in K.S.A. 65-
35 4105 or 65-4107, and amendments thereto.

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

1 (A) A controlled substance;

2 (B) a substance for which there is an approved new drug application;
3 or

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

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

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

18 (e) "Drug" means:

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

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

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

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

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

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

40 (2) kits used or intended for use in manufacturing, compounding,
41 converting, producing, processing or preparing controlled substances;

42 (3) isomerization devices used or intended for use in increasing the
43 potency of any species of plant which is a controlled substance;

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

1 (O) wired cigarette papers; or

2 (P) cocaine freebase kits.

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

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

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

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

20 (⊕) (A) By a practitioner or the practitioner's agent pursuant to a
21 lawful order of a practitioner as an incident to the practitioner's
22 administering or dispensing of a controlled substance in the course of the
23 practitioner's professional practice; or

24 (⊖) (B) by a practitioner or by the practitioner's authorized agent
25 under such practitioner's supervision for the purpose of or as an incident to
26 research, teaching or chemical analysis or by a pharmacist or medical care
27 facility as an incident to dispensing of a controlled substance ; or

28 (2) *the addition of diluents or adulterants, including, but not limited*
29 *to, quinine hydrochloride, mannitol, mannite, dextrose or lactose, which*
30 *are intended for use in cutting a controlled substance.*

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

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

41 (l) "Narcotic drug" means any of the following whether produced
42 directly or indirectly by extraction from substances of vegetable origin or
43 independently by means of chemical synthesis or by a combination of

1 extraction and chemical synthesis:

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

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

8 (3) opium poppy and poppy straw;

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

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

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

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

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

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

33 (r) "School property" means property upon which is located a
34 structure used by a unified school district or an accredited nonpublic
35 school for student instruction or attendance or extracurricular activities of
36 pupils enrolled in kindergarten or any of the grades one through 12. This
37 definition shall not be construed as requiring that school be in session or
38 that classes are actually being held at the time of the offense or that
39 children must be present within the structure or on the property during the
40 time of any alleged criminal act. If the structure or property meets the
41 above definition, the actual use of that structure or property at the time
42 alleged shall not be a defense to the crime charged or the sentence
43 imposed.

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

6 Sec. 2. K.S.A. 2011 Supp. 21-5703 is hereby amended to read as
7 follows: 21-5703. (a) It shall be unlawful for any person to manufacture
8 any controlled substance or controlled substance analog.

9 (b) Violation or attempted violation of subsection (a) is a ~~drug~~
10 ~~severity level 1 felony~~ :

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

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

16 (3) *drug severity level 1 felony if the controlled substance is*
17 *methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-*
18 *4107, and amendments thereto, or an analog thereof.*

19 (c) The provisions of subsection (d) of K.S.A. 2011 Supp. 21-5301,
20 and amendments thereto, shall not apply to a violation of attempting to
21 unlawfully manufacture any controlled substance *or controlled substance*
22 *analog* pursuant to this section.

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

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

31 ~~(e)~~ (f) The sentence of a person who violates this section or K.S.A.
32 65-4159 prior to its repeal, shall not be reduced because these sections
33 prohibit conduct identical to that prohibited by K.S.A. 65-4161 or 65-
34 4163, prior to ~~such sections~~ *their* repeal, or K.S.A. 2011 Supp. 21-5705,
35 and amendments thereto.

36 Sec. 3. K.S.A. 2011 Supp. 21-5705 is hereby amended to read as
37 follows: 21-5705. (a) It shall be unlawful for any person to ~~cultivate,~~
38 distribute or possess with the intent to distribute any of the following
39 controlled substances or controlled substance analogs thereof:

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

43 (2) any depressant designated in subsection (e) of K.S.A. 65-4105,

1 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109
2 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

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

6 (4) any hallucinogenic drug designated in subsection (d) of K.S.A.
7 65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-
8 4109, and amendments thereto;

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

12 (6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
13 4109, and amendments thereto; or

14 (7) any substance designated in subsection (h) of K.S.A. 65-4105,
15 and amendments thereto.

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

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

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

26 ~~(B) violation of subsection (a)(1) is a drug severity level 2 felony if~~
27 ~~that person has one prior conviction under subsection (a)(1), under K.S.A.~~
28 ~~65-4161 prior to its repeal, or under a substantially similar offense from~~
29 ~~another jurisdiction; and~~

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

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

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

41 ~~(c) It shall be unlawful for any person to cultivate any controlled~~
42 ~~substance or controlled substance analog listed in subsection (a).~~

43 ~~(d) (1) Except as provided further, violation of subsection (a) is a:~~

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

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

5 (C) drug severity level 2 felony if the quantity of the material was at
6 least 100 grams but less than 1 kilogram; and

7 (D) drug severity level 1 felony if the quantity of the material was 1
8 kilogram or more.

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

11 (A) Drug severity level 4 felony if the quantity of the material was
12 less than 25 grams;

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

15 (C) drug severity level 2 felony if the quantity of the material was at
16 least 450 grams but less than 30 kilograms; and

17 (D) drug severity level 1 felony if the quantity of the material was 30
18 kilograms or more.

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

24 (A) Drug severity level 4 felony if the quantity of the material was
25 less than 1 gram;

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

28 (C) drug severity level 2 felony if the quantity of the material was at
29 least 3.5 grams but less than 100 grams; and

30 (D) drug severity level 1 felony if the quantity of the material was
31 100 grams or more.

32 (4) Violation of subsection (a) with respect to material containing any
33 quantity of a controlled substance designated in K.S.A. 65-4105, 65-4107,
34 65-4109 or 65-4111, and amendments thereto, or an analog thereof,
35 distributed by dosage unit, is a:

36 (A) Drug severity level 4 felony if the number of dosage units was
37 fewer than 10;

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

40 (C) drug severity level 2 felony if the number of dosage units was at
41 least 100 but less than 1,000; and

42 (D) drug severity level 1 felony if the number of dosage units was
43 1,000 or more.

- 1 (5) *For any violation of subsection (a), the severity level of the*
2 *offense shall be increased one level if the controlled substance or*
3 *controlled substance analog was distributed or possessed with the intent*
4 *to distribute on or within 1,000 feet of any school property.*
- 5 (6) *Violation of subsection (b) is a:*
- 6 (A) *Class A person misdemeanor, except as provided in subsection (d)*
7 *(6)(B); and*
- 8 (B) *nondrug severity level 7, person felony if the substance was*
9 *distributed to or possessed with the intent to distribute to a minor.*
- 10 (7) *Violation of subsection (c) is a:*
- 11 (A) *Drug severity level 3 felony if the number of plants cultivated was*
12 *more than 4 but fewer than 50;*
- 13 (B) *drug severity level 2 felony if the number of plants cultivated was*
14 *at least 50 but fewer than 100; and*
- 15 (C) *drug severity level 1 felony if the number of plants cultivated was*
16 *100 or more.*
- 17 (e) *In any prosecution under this section, there shall be a rebuttable*
18 *presumption of an intent to distribute if any person possesses the following*
19 *quantities of controlled substances or analogs thereof:*
- 20 (1) *450 grams or more of marijuana;*
- 21 (2) *3.5 grams or more of heroin or methamphetamine;*
- 22 (3) *100 dosage units or more containing a controlled substance; or*
- 23 (4) *100 grams or more of any other controlled substance.*
- 24 (f) *It shall not be a defense to charges arising under this section that*
25 *the defendant:*
- 26 (1) *Was acting in an agency relationship on behalf of any other party*
27 *in a transaction involving a controlled substance or controlled substance*
28 *analog;*
- 29 (2) *did not know the quantity of the controlled substance or*
30 *controlled substance analog; or*
- 31 (3) *did not know the specific controlled substance or controlled*
32 *substance analog contained in the material that was distributed or*
33 *possessed with the intent to distribute.*
- 34 (g) *As used in this section:*
- 35 (1) *"Material" means the total amount of any substance, including a*
36 *compound or a mixture, which contains any quantity of a controlled*
37 *substance or controlled substance analog.*
- 38 (2) *"Dosage unit" means a controlled substance or controlled*
39 *substance analog distributed or possessed with the intent to distribute as a*
40 *discrete unit, including but not limited to, one pill, one capsule or one*
41 *microdot, and not distributed by weight.*
- 42 (A) *For steroids, or controlled substances in liquid solution legally*
43 *manufactured for prescription use, or an analog thereof, "dosage unit"*

1 *means the smallest medically approved dosage unit, as determined by the*
2 *label, materials provided by the manufacturer, a prescribing authority,*
3 *licensed health care professional or other qualified health authority.*

4 *(B) For illegally manufactured controlled substances in liquid*
5 *solution, or controlled substances in liquid products not intended for*
6 *ingestion by human beings, or an analog thereof, "dosage unit" means 10*
7 *milligrams, including the liquid carrier medium, except as provided in*
8 *subsection (g)(2)(C).*

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

12 Sec. 4. K.S.A. 2011 Supp. 21-5706 is hereby amended to read as
13 follows: 21-5706. (a) It shall be unlawful for any person to possess any
14 opiates, opium or narcotic drugs, or any stimulant designated in subsection
15 (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or a
16 controlled substance analog thereof.

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

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

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

25 (3) any hallucinogenic drug designated in subsection (d) of K.S.A.
26 65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-
27 4109, and amendments thereto;

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

31 (5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
32 4109, and amendments thereto;

33 (6) any substance designated in K.S.A. 65-4113, and amendments
34 thereto; or

35 (7) any substance designated in subsection (h) of K.S.A. 65-4105,
36 and amendments thereto.

37 (c) (1) Violation of subsection (a) is a drug severity level 4 5 felony;
38 *and*

39 (2) (A) violation of subsection (b) is a class A nonperson
40 misdemeanor, except ~~that~~, *as provided in subsection (c)(2)(B); and*

41 (B) violation of subsection (b)(1) through (b)(5) or (b)(7) is a drug
42 severity level 4 5 felony if that person has a prior conviction under such
43 subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially

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

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

11 Sec. 5. K.S.A. 2011 Supp. 21-5708 is hereby amended to read as
12 follows: 21-5708. (a) Unlawfully obtaining a prescription-only drug is:

13 (1) Making, altering or signing of a prescription order by a person
14 other than a practitioner or a mid-level practitioner;

15 (2) distribution of a prescription order, knowing it to have been made,
16 altered or signed by a person other than a practitioner or a mid-level
17 practitioner;

18 (3) possession of a prescription order with intent to distribute it and
19 knowing it to have been made, altered or signed by a person other than a
20 practitioner or a mid-level practitioner;

21 (4) possession of a prescription-only drug knowing it to have been
22 obtained pursuant to a prescription order made, altered or signed by a
23 person other than a practitioner or a mid-level practitioner; or

24 (5) providing false information, with the intent to deceive, to a
25 practitioner or mid-level practitioner for the purpose of obtaining a
26 prescription-only drug.

27 (b) Unlawfully selling a prescription-only drug is unlawfully
28 obtaining a prescription-only drug, as defined in subsection (a), and:

29 (1) Selling the prescription-only drug so obtained;

30 (2) offering for sale the prescription-only drug so obtained; or

31 (3) possessing with intent to sell the prescription-only drug so
32 obtained.

33 (c) (1) Unlawfully obtaining a prescription-only drug is a :

34 (A) Class A nonperson misdemeanor, except ~~that~~; *as provided in*
35 *subsection (c)(1)(B); and*

36 ~~(2) (B) Unlawfully obtaining a prescription-only drug is a nondrug~~
37 ~~severity level 9, nonperson felony if that person has a prior conviction of~~
38 ~~paragraph (1) under this section, K.S.A. 2010 Supp. 21-36a08, prior to its~~
39 ~~transfer, or K.S.A. 21-4214, prior to its repeal.~~

40 ~~(2) Unlawfully selling a prescription-only drug is a nondrug~~
41 ~~severity level 6, nonperson felony.~~

42 (d) As used in this section:

43 (1) "Pharmacist," "practitioner," "mid-level practitioner" and

1 "prescription-only drug" shall have the meanings ascribed thereto by
2 K.S.A. 65-1626, and amendments thereto.

3 (2) "Prescription order" means an order transmitted in writing, orally,
4 telephonically or by other means of communication for a prescription-only
5 drug to be filled by a pharmacist. "Prescription order" does not mean a
6 drug dispensed pursuant to such an order.

7 (e) The provisions of this section shall not be applicable to
8 prosecutions involving prescription-only drugs which could be brought
9 under K.S.A. 2011 Supp. 21-5705 or 21-5706, and amendments thereto.

10 Sec. 6. K.S.A. 2011 Supp. 21-5709 is hereby amended to read as
11 follows: 21-5709. (a) It shall be unlawful for any person to possess
12 ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal,
13 iodine, anhydrous ammonia, pressurized ammonia or
14 phenylpropanolamine, or their salts, isomers or salts of isomers with an
15 intent to use the product to manufacture a controlled substance.

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

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

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

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

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

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

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

33 (A) Drug severity level 4 5 felony, except that violation of subsection
34 (b)(1) is as provided in subsection (e)(2)(B); and

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

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

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

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

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

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

3 Sec. 7. K.S.A. 2011 Supp. 21-5710 is hereby amended to read as
4 follows: 21-5710. (a) It shall be unlawful for any person to advertise,
5 market, label, distribute or possess with the intent to distribute:

6 (1) Any product containing ephedrine, pseudoephedrine, red
7 phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia,
8 pressurized ammonia or phenylpropanolamine or their salts, isomers or
9 salts of isomers if the person knows or reasonably should know that the
10 purchaser will use the product to manufacture a controlled substance *or*
11 *controlled substance analog*; or

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

18 (b) It shall be unlawful for any person to distribute, possess with the
19 intent to distribute or manufacture with intent to distribute any drug
20 paraphernalia, knowing or under circumstances where one reasonably
21 should know that it will be used to manufacture or distribute a controlled
22 substance *or controlled substance analog* in violation of K.S.A. 2011
23 Supp. 21-5701 through 21-5717, and amendments thereto.

24 (c) It shall be unlawful for any person to distribute, possess with
25 intent to distribute or manufacture with intent to distribute any drug
26 paraphernalia, knowing or under circumstances where one reasonably
27 should know, that it will be used as such in violation of K.S.A. 2011 Supp.
28 21-5701 through 21-5717, and amendments thereto, except subsection (b)
29 of K.S.A. 2011 Supp. 21-5706, and amendments thereto.

30 (d) It shall be unlawful for any person to distribute, possess with
31 intent to distribute or manufacture with intent to distribute any drug
32 paraphernalia, knowing, or under circumstances where one reasonably
33 should know, that it will be used as such in violation of subsection (b) of
34 K.S.A. 2011 Supp. 21-5706, and amendments thereto.

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

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

37 (A) Drug severity level ~~4~~ 5 felony, ~~except that violation of subsection~~
38 ~~(b) is a as provided in subsection (e)(2)(B); and~~

39 (B) drug severity level ~~3~~ 4 felony if the trier of fact makes a finding
40 that ~~the offender is 18 or more years of age and~~ the offender distributed or
41 caused drug paraphernalia to be distributed to a minor or on or within
42 1,000 feet of any school property;

43 (3) violation of subsection (c) is a :

1 (A) *Nondrug* severity level 9, nonperson felony, except ~~that violation~~
2 ~~of subsection (e) is a~~ *as provided in subsection (e)(3)(B); and*

3 (B) drug severity level 4 5 felony if the trier of fact makes a finding
4 that ~~the offender is 18 or more years of age and~~ the offender distributed or
5 caused drug paraphernalia to be distributed to a minor or on or within
6 1,000 feet of any school property; *and*

7 (4) violation of subsection (d) is a :

8 (A) Class A nonperson misdemeanor, except ~~that violation of~~
9 ~~subsection (d) is a~~ *as provided in subsection (e)(4)(B); and*

10 (B) *nondrug* severity level 9, nonperson felony if the trier of fact
11 makes a finding that ~~the offender is 18 or more years of age and~~ the
12 offender distributed or caused drug paraphernalia to be distributed to a
13 minor or on or within 1,000 feet of any school property.

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

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

22 (1) Actual knowledge from prior experience or statements by
23 customers;

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

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

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

32 Sec. 8. K.S.A. 2011 Supp. 21-5713 is hereby amended to read as
33 follows: 21-5713. (a) It shall be unlawful for any person to distribute,
34 possess with the intent to distribute, or manufacture with the intent to
35 distribute any simulated controlled substance.

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

38 (c) (1) Violation of subsection (a) is a :

39 (A) *Nondrug* severity level 9, nonperson felony, except ~~that violation~~
40 ~~of subsection (a) is a~~ *as provided in subsection (c)(1)(B); and*

41 (B) *nondrug* severity level 7, nonperson felony if the trier of fact
42 makes a finding that the offender is 18 or more years of age and the
43 violation occurred on or within 1,000 feet of any school property; and

1 (2) violation of subsection (b) is a class A nonperson misdemeanor.

2 Sec. 9. K.S.A. 2011 Supp. 21-5714 is hereby amended to read as
3 follows: 21-5714. (a) It shall be unlawful for any person to distribute or
4 possess with the intent to distribute any substance which is not a controlled
5 substance:

6 (1) Upon an express representation that the substance is a controlled
7 substance or that the substance is of such nature or appearance that the
8 recipient will be able to distribute the substance as a controlled substance;
9 or

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

12 (b) Violation of subsection (a) is a :

13 (1) Class A nonperson misdemeanor, ~~except that violation of~~
14 ~~subsection (a) is a~~ *as provided in subsection (b)(2); and*

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

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

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

25 (2) the distribution of the substance included an exchange of or
26 demand for money or other consideration for distribution of the substance
27 and the amount of the consideration was substantially in excess of the
28 reasonable value of the substance; or

29 (3) the physical appearance of the capsule or other material
30 containing the substance is substantially identical to a specific controlled
31 substance.

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

34 Sec. 10. K.S.A. 2011 Supp. 21-5716 is hereby amended to read as
35 follows: 21-5716. (a) It shall be unlawful for any person to receive or
36 acquire proceeds or engage in transactions involving proceeds, known to
37 be derived from a violation of K.S.A. 2011 Supp. 21-5701 through 21-
38 5717, and amendments thereto, or any substantially similar offense from
39 another jurisdiction. The provisions of this subsection do not apply to any
40 transaction between an individual and that individual's counsel necessary
41 to preserve that individual's right to representation, as guaranteed by
42 section 10 of the bill of rights of the constitution of the state of Kansas and
43 by the sixth amendment to the United States constitution. This exception

1 does not create any presumption against or prohibition of the right of the
2 state to seek and obtain forfeiture of any proceeds derived from a violation
3 of K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto.

4 (b) It shall be unlawful for any person to distribute, invest, conceal,
5 transport or maintain an interest in or otherwise make available anything
6 of value which that person knows is intended to be used for the purpose of
7 committing or furthering the commission of any crime in K.S.A. 2011
8 Supp. 21-5701 through 21-5717, and amendments thereto, or any
9 substantially similar offense from another jurisdiction.

10 (c) It shall be unlawful for any person to direct, plan, organize,
11 initiate, finance, manage, supervise or facilitate the transportation or
12 transfer of proceeds known to be derived from commission of any crime in
13 K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto, or
14 any substantially similar offense from another jurisdiction.

15 (d) It shall be unlawful for any person to conduct a financial
16 transaction involving proceeds derived from commission of any crime in
17 K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto, or
18 any substantially similar offense from another jurisdiction, when the
19 transaction is designed in whole or in part to conceal or disguise the
20 nature, location, source, ownership or control of the proceeds known to be
21 derived from commission of any crime in K.S.A. 2011 Supp. 21-5701
22 through 21-5717, and amendments thereto, or any substantially similar
23 offense from another jurisdiction, or to avoid a transaction reporting
24 requirement under state or federal law.

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

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

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

30 (3) ~~violation of this section shall be a~~ drug severity level 2 3 felony if
31 the value of the proceeds is at least \$100,000 but less than ~~\$500,000-~~
32 ~~\$250,000;~~

33 (4) *drug severity level 2 felony if the value of the proceeds is at least*
34 *\$250,000 but less than \$500,000; and*

35 ~~(4) (5) violation of this section shall be a~~ drug severity level 1 felony
36 if the value of the proceeds is \$500,000 or more.

37 Sec. 11. K.S.A. 2011 Supp. 21-6604 is hereby amended to read as
38 follows: 21-6604. (a) Whenever any person has been found guilty of a
39 crime, the court may adjudge any of the following:

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

1 for the term provided by law;

2 (2) impose the fine applicable to the offense and may impose the
3 provisions of subsection (q);

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

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

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

23 (6) assign the defendant to a house arrest program pursuant to K.S.A.
24 2011 Supp. 21-6609, and amendments thereto;

25 (7) order the defendant to attend and satisfactorily complete an
26 alcohol or drug education or training program as provided by subsection
27 (c) of K.S.A. 2011 Supp. 21-6602, and amendments thereto;

28 (8) order the defendant to repay the amount of any reward paid by
29 any crime stoppers chapter, individual, corporation or public entity which
30 materially aided in the apprehension or conviction of the defendant; repay
31 the amount of any costs and expenses incurred by any law enforcement
32 agency in the apprehension of the defendant, if one of the current crimes
33 of conviction of the defendant includes escape from custody or aggravated
34 escape from custody, as defined in K.S.A. 2011 Supp. 21-5911, and
35 amendments thereto; repay expenses incurred by a fire district, fire
36 department or fire company responding to a fire which has been
37 determined to be arson or aggravated arson as defined in K.S.A. 2011
38 Supp. 21-5812, and amendments thereto, if the defendant is convicted of
39 such crime; repay the amount of any public funds utilized by a law
40 enforcement agency to purchase controlled substances from the defendant
41 during the investigation which leads to the defendant's conviction; or repay
42 the amount of any medical costs and expenses incurred by any law
43 enforcement agency or county. Such repayment of the amount of any such

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

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

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

10 (11) if the defendant is convicted of a misdemeanor or convicted of a
11 felony specified in subsection (i) of K.S.A. 2011 Supp. 21-6804, and
12 amendments thereto, assign the defendant to work release program, other
13 than a program at a correctional institution under the control of the
14 secretary of corrections as defined in K.S.A. 75-5202, and amendments
15 thereto, provided such work release program requires such defendant to
16 return to confinement at the end of each day in the work release program.
17 On a second conviction of K.S.A. 8-1567, and amendments thereto, an
18 offender placed into a work release program must serve a total of 120
19 hours of confinement. Such 120 hours of confinement shall be a period of
20 at least 48 consecutive hours of imprisonment followed by confinement
21 hours at the end of and continuing to the beginning of the offender's work
22 day. On a third or subsequent conviction of K.S.A. 8-1567, and
23 amendments thereto, an offender placed into a work release program must
24 serve a total of 240 hours of confinement. Such 240 hours of confinement
25 shall be a period of at least 48 consecutive hours of imprisonment
26 followed by confinement hours at the end of and continuing to the
27 beginning of the offender's work day;

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

31 (13) impose any appropriate combination of (1), (2), (3), (4), (5), (6),
32 (7), (8), (9), (10), (11) and (12); or

33 (14) suspend imposition of sentence in misdemeanor cases.

34 (b) (1) In addition to or in lieu of any of the above, the court shall
35 order the defendant to pay restitution, which shall include, but not be
36 limited to, damage or loss caused by the defendant's crime, unless the
37 court finds compelling circumstances which would render a plan of
38 restitution unworkable. In regard to a violation of K.S.A. 2011 Supp. 21-
39 6107, and amendments thereto, such damage or loss shall include, but not
40 be limited to, attorney fees and costs incurred to repair the credit history or
41 rating of the person whose personal identification documents were
42 obtained and used in violation of such section, and to satisfy a debt, lien or
43 other obligation incurred by the person whose personal identification

1 documents were obtained and used in violation of such section. If the court
2 finds a plan of restitution unworkable, the court shall state on the record in
3 detail the reasons therefor.

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

16 (c) In addition to or in lieu of any of the above, the court shall order
17 the defendant to submit to and complete an alcohol and drug evaluation,
18 and pay a fee therefor, when required by subsection (d) of K.S.A. 2011
19 Supp. 21-6602, and amendments thereto.

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

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

41 (f) (1) When a new felony is committed while the offender is
42 incarcerated and serving a sentence for a felony, or while the offender is on
43 probation, assignment to a community correctional services program,

1 parole, conditional release or postrelease supervision for a felony, a new
2 sentence shall be imposed pursuant to the consecutive sentencing
3 requirements of K.S.A. 2011 Supp. 21-6606, and amendments thereto, and
4 the court may sentence the offender to imprisonment for the new
5 conviction, even when the new crime of conviction otherwise presumes a
6 nonprison sentence. In this event, imposition of a prison sentence for the
7 new crime does not constitute a departure.

8 (2) When a new felony is committed while the offender is
9 incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671,
10 prior to its repeal, or K.S.A. 2011 Supp. 38-2373, and amendments thereto,
11 for an offense, which if committed by an adult would constitute the
12 commission of a felony, upon conviction, the court shall sentence the
13 offender to imprisonment for the new conviction, even when the new
14 crime of conviction otherwise presumes a nonprison sentence. In this
15 event, imposition of a prison sentence for the new crime does not
16 constitute a departure. The conviction shall operate as a full and complete
17 discharge from any obligations, except for an order of restitution, imposed
18 on the offender arising from the offense for which the offender was
19 committed to a juvenile correctional facility.

20 (3) When a new felony is committed while the offender is on release
21 for a felony pursuant to the provisions of article 28 of chapter 22 of the
22 Kansas Statutes Annotated, and amendments thereto, or similar provisions
23 of the laws of another jurisdiction, a new sentence may be imposed
24 pursuant to the consecutive sentencing requirements of K.S.A. 2011 Supp.
25 21-6606, and amendments thereto, and the court may sentence the offender
26 to imprisonment for the new conviction, even when the new crime of
27 conviction otherwise presumes a nonprison sentence. In this event,
28 imposition of a prison sentence for the new crime does not constitute a
29 departure.

30 (g) Prior to imposing a dispositional departure for a defendant whose
31 offense is classified in the presumptive nonprison grid block of either
32 sentencing guideline grid, prior to sentencing a defendant to incarceration
33 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing
34 guidelines grid for nondrug crimes ~~or~~, in grid blocks 3-E, 3-F, 3-G, 3-H or
35 3-I of the sentencing guidelines grid for drug crimes *committed prior to*
36 *July 1, 2012, or in grid blocks 4-C, 4-D, 4-E, 4-F, 4-G, 4-H or 4-I of the*
37 *sentencing guidelines grid for drug crimes committed on or after July 1,*
38 *2012, prior to sentencing a defendant to incarceration whose offense is*
39 *classified in grid blocks 4-E or 4-F of the sentencing guideline guidelines*
40 *grid for drug crimes committed prior to July 1, 2012, or in grid blocks 5-*
41 *C, 5-D, 5-E or 5-F of the sentencing guidelines grid for drug crimes*
42 *committed on or after July 1, 2012, and whose offense does not meet the*
43 requirements of K.S.A. 2011 Supp. 21-6824, and amendments thereto,

1 prior to revocation of a nonprison sanction of a defendant whose offense is
2 classified in grid blocks 4-E or 4-F of the sentencing ~~guideline~~ *guidelines*
3 grid for drug crimes *committed prior to July 1, 2012, or in grid blocks 5-*
4 *C, 5-D, 5-E or 5-F of the sentencing guidelines grid for drug crimes*
5 *committed on or after July 1, 2012,* and whose offense does not meet the
6 requirements of K.S.A. 2011 Supp. 21-6824, and amendments thereto, or
7 prior to revocation of a nonprison sanction of a defendant whose offense is
8 classified in the presumptive nonprison grid block of either sentencing
9 guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines
10 grid for nondrug crimes ~~or~~ , in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the
11 sentencing guidelines grid for drug crimes *committed prior to July 1,*
12 *2012, or in grid blocks 4-C, 4-D, 4-E, 4-F, 4-G, 4-H or 4-I of the*
13 *sentencing guidelines grid for drug crimes committed on or after July 1,*
14 *2012,* the court shall consider placement of the defendant in the Labette
15 correctional conservation camp, conservation camps established by the
16 secretary of corrections pursuant to K.S.A. 75-52,127, and amendment
17 thereto, or a community intermediate sanction center. Pursuant to this
18 paragraph the defendant shall not be sentenced to imprisonment if space is
19 available in a conservation camp or a community intermediate sanction
20 center and the defendant meets all of the conservation camp's or a
21 community intermediate sanction center's placement criteria unless the
22 court states on the record the reasons for not placing the defendant in a
23 conservation camp or a community intermediate sanction center.

24 (h) The court in committing a defendant to the custody of the
25 secretary of corrections shall fix a term of confinement within the limits
26 provided by law. In those cases where the law does not fix a term of
27 confinement for the crime for which the defendant was convicted, the
28 court shall fix the term of such confinement.

29 (i) In addition to any of the above, the court shall order the defendant
30 to reimburse the state general fund for all or a part of the expenditures by
31 the state board of indigents' defense services to provide counsel and other
32 defense services to the defendant. In determining the amount and method
33 of payment of such sum, the court shall take account of the financial
34 resources of the defendant and the nature of the burden that payment of
35 such sum will impose. A defendant who has been required to pay such sum
36 and who is not willfully in default in the payment thereof may at any time
37 petition the court which sentenced the defendant to waive payment of such
38 sum or any unpaid portion thereof. If it appears to the satisfaction of the
39 court that payment of the amount due will impose manifest hardship on the
40 defendant or the defendant's immediate family, the court may waive
41 payment of all or part of the amount due or modify the method of
42 payment. The amount of attorney fees to be included in the court order for
43 reimbursement shall be the amount claimed by appointed counsel on the

1 payment voucher for indigents' defense services or the amount prescribed
2 by the board of indigents' defense services reimbursement tables as
3 provided in K.S.A. 22-4522, and amendments thereto, whichever is less.

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

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

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

19 (1) Has been sentenced to the secretary for a probation revocation, as
20 a departure from the presumptive nonimprisonment grid block of either
21 sentencing grid, for an offense which is classified in grid blocks 5-H, 5-I,
22 or 6-G of the sentencing guidelines grid for nondrug crimes ~~or~~ , in grid
23 blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug
24 crimes *committed prior to July 1, 2012, or in grid blocks 4-C, 4-D, 4-E, 4-*
25 *F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes*
26 *committed on or after July 1, 2012,* or for an offense which is classified in
27 grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes
28 *committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of*
29 *the sentencing guidelines grid for drug crimes committed on or after July*
30 *1, 2012,* and such offense does not meet the requirements of K.S.A. 2011
31 Supp. 21-6824, and amendments thereto; and

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

33 If the inmate successfully completes a conservation camp program, the
34 secretary of corrections shall report such completion to the sentencing
35 court and the county or district attorney. The inmate shall then be assigned
36 by the court to six months of follow-up supervision conducted by the
37 appropriate community corrections services program. The court may also
38 order that supervision continue thereafter for the length of time authorized
39 by K.S.A. 2011 Supp. 21-6608, and amendments thereto.

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

43 (n) Except as provided by subsection (f) of K.S.A. 2011 Supp. 21-

1 6805, and amendments thereto, in addition to any of the above, for felony
2 violations of K.S.A. 2011 Supp. 21-5706, and amendments thereto, the
3 court shall require the defendant who meets the requirements established
4 in K.S.A. 2011 Supp. 21-6824, and amendments thereto, to participate in a
5 certified drug abuse treatment program, as provided in K.S.A. 2011 Supp.
6 75-52,144, and amendments thereto, including, but not limited to, an
7 approved after-care plan. If the defendant fails to participate in or has a
8 pattern of intentional conduct that demonstrates the offender's refusal to
9 comply with or participate in the treatment program, as established by
10 judicial finding, the defendant shall be subject to revocation of probation
11 and the defendant shall serve the underlying prison sentence as established
12 in K.S.A. 2011 Supp. 21-6805, and amendments thereto. For those
13 offenders who are convicted on or after July 1, 2003, upon completion of
14 the underlying prison sentence, the defendant shall not be subject to a
15 period of postrelease supervision. The amount of time spent participating
16 in such program shall not be credited as service on the underlying prison
17 sentence.

18 (o) (1) Except as provided in paragraph (3), in addition to any other
19 penalty or disposition imposed by law, upon a conviction for unlawful
20 possession of a controlled substance or controlled substance analog in
21 violation of K.S.A. 2011 Supp. 21-5706, and amendments thereto, in
22 which the trier of fact makes a finding that the unlawful possession
23 occurred while transporting the controlled substance or controlled
24 substance analog in any vehicle upon a highway or street, the offender's
25 driver's license or privilege to operate a motor vehicle on the streets and
26 highways of this state shall be suspended for one year.

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

37 (3) (A) In lieu of suspending the driver's license or privilege to
38 operate a motor vehicle on the highways of this state of any person as
39 provided in paragraph (1), the judge of the court in which such person was
40 convicted may enter an order which places conditions on such person's
41 privilege of operating a motor vehicle on the highways of this state, a
42 certified copy of which such person shall be required to carry any time
43 such person is operating a motor vehicle on the highways of this state. Any

1 such order shall prescribe the duration of the conditions imposed, which in
2 no event shall be for a period of more than one year.

3 (B) Upon entering an order restricting a person's license hereunder,
4 the judge shall require such person to surrender such person's driver's
5 license to the judge who shall cause it to be transmitted to the division of
6 vehicles, together with a copy of the order. Upon receipt thereof, the
7 division of vehicles shall issue without charge a driver's license which
8 shall indicate on its face that conditions have been imposed on such
9 person's privilege of operating a motor vehicle and that a certified copy of
10 the order imposing such conditions is required to be carried by the person
11 for whom the license was issued any time such person is operating a motor
12 vehicle on the highways of this state. If the person convicted is a
13 nonresident, the judge shall cause a copy of the order to be transmitted to
14 the division and the division shall forward a copy of it to the motor vehicle
15 administrator, of such person's state of residence. Such judge shall furnish
16 to any person whose driver's license has had conditions imposed on it
17 under this paragraph a copy of the order, which shall be recognized as a
18 valid Kansas driver's license until such time as the division shall issue the
19 restricted license provided for in this paragraph.

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

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

35 (p) In addition to any of the above, for any criminal offense that
36 includes the domestic violence designation pursuant to K.S.A. 2011 Supp.
37 22-4616, and amendments thereto, the court shall require the defendant to
38 undergo a domestic violence offender assessment and follow all
39 recommendations unless otherwise ordered by the court or the department
40 of corrections. The court may order a domestic violence offender
41 assessment and any other evaluation prior to sentencing if the assessment
42 or evaluation would assist the court in determining an appropriate
43 sentence. The entity completing the assessment or evaluation shall provide

1 the assessment or evaluation and recommendations to the court and the
2 court shall provide the domestic violence assessment and any other
3 evaluation to any entity responsible for supervising such defendant. A
4 defendant ordered to undergo a domestic violence offender assessment
5 shall be required to pay for the assessment and, unless otherwise ordered
6 by the court or the department of corrections, for completion of all
7 recommendations.

8 (q) In imposing a fine, the court may authorize the payment thereof in
9 installments. In lieu of payment of any fine imposed, the court may order
10 that the person perform community service specified by the court. The
11 person shall receive a credit on the fine imposed in an amount equal to \$5
12 for each full hour spent by the person in the specified community service.
13 The community service ordered by the court shall be required to be
14 performed by the later of one year after the fine is imposed or one year
15 after release from imprisonment or jail, or by an earlier date specified by
16 the court. If by the required date the person performs an insufficient
17 amount of community service to reduce to zero the portion of the fine
18 required to be paid by the person, the remaining balance shall become due
19 on that date. If conditional reduction of any fine is rescinded by the court
20 for any reason, then pursuant to the court's order the person may be
21 ordered to perform community service by one year after the date of such
22 rescission or by an earlier date specified by the court. If by the required date
23 the person performs an insufficient amount of community service to
24 reduce to zero the portion of the fine required to be paid by the person, the
25 remaining balance of the fine shall become due on that date. All credits for
26 community service shall be subject to review and approval by the court.

27 Sec. 12. K.S.A. 2011 Supp. 21-6608 is hereby amended to read as
28 follows: 21-6608. (a) The period of suspension of sentence, probation or
29 assignment to community corrections fixed by the court shall not exceed
30 two years in misdemeanor cases, subject to renewal and extension for
31 additional fixed periods of two years. Probation, suspension of sentence or
32 assignment to community corrections may be terminated by the court at
33 any time and upon such termination or upon termination by expiration of
34 the term of probation, suspension of sentence or assignment to community
35 corrections, an order to this effect shall be entered by the court.

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

41 (c) For all crimes committed on or after July 1, 1993, the duration of
42 probation in felony cases sentenced for the following severity levels on the
43 sentencing guidelines grid for nondrug crimes and the sentencing

1 guidelines grid for drug crimes is as follows:

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

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

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

5 (2) for drug crimes the recommended duration of probation is 36
6 months for crimes in crime severity levels 1 and 2 *committed prior to July*
7 *1, 2012, and crimes in crime severity levels 1, 2 and 3 committed on or*
8 *after July 1, 2012;*

9 (3) except as provided further, in felony cases sentenced at severity
10 levels 9 and 10 on the sentencing guidelines grid for nondrug crimes ~~and~~,
11 severity level 4 on the sentencing guidelines grid for drug crimes
12 *committed prior to July 1, 2012, and severity level 5 of the sentencing*
13 *guidelines grid for drug crimes committed on or after July 1, 2012,* if a
14 nonprison sanction is imposed, the court shall order the defendant to serve
15 a period of probation of up to 12 months in length;

16 (4) in felony cases sentenced at severity level 8 on the sentencing
17 guidelines grid for nondrug crimes, severity level 3 on the sentencing
18 guidelines grid for drug crimes *committed prior to July 1, 2012, and*
19 *severity level 4 of the sentencing guidelines grid for drug crimes*
20 *committed on or after July 1, 2012,* and felony cases sentenced pursuant to
21 K.S.A. 2011 Supp. 21-6824, and amendments thereto, if a nonprison
22 sanction is imposed, the court shall order the defendant to serve a period of
23 probation, or assignment to a community correctional services program, as
24 provided under K.S.A. 75-5291 *et seq.*, and amendments thereto, of up to
25 18 months in length;

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

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

36 (7) if the defendant is convicted of nonsupport of a child, the period
37 may be continued as long as the responsibility for support continues. If the
38 defendant is ordered to pay full or partial restitution, the period may be
39 continued as long as the amount of restitution ordered has not been paid;
40 and

41 (8) the court may modify or extend the offender's period of
42 supervision, pursuant to a modification hearing and a judicial finding of
43 necessity. Such extensions may be made for a maximum period of five

1 years or the maximum period of the prison sentence that could be imposed,
2 whichever is longer, inclusive of the original supervision term.

3 Sec. 13. K.S.A. 2011 Supp. 21-6611 is hereby amended to read as
4 follows: 21-6611. (a) A person who has been convicted of a felony may, in
5 addition to the sentence authorized by law, be ordered to pay a fine which
6 shall be fixed by the court as follows:

7 (1) For any off-grid felony crime, or any felony ranked in severity
8 level 1 of the drug grid *committed prior to July 1, 2012, or in severity*
9 *levels 1 or 2 of the drug grid committed on or after July 1, 2012,* as
10 provided in K.S.A. 2011 Supp. 21-6805, and amendments thereto, a sum
11 not exceeding \$500,000;

12 (2) for any felony ranked in severity levels 1 through 5 of the
13 nondrug grid as provided in K.S.A. 2011 Supp. 21-6804, and amendments
14 thereto, or in severity levels 2 or 3 of the drug grid *committed prior to July*
15 *1, 2012, or in severity levels 3 or 4 of the drug grid committed on or after*
16 *July 1, 2012,* as provided in K.S.A. 2011 Supp. 21-6805, and amendments
17 thereto, a sum not exceeding \$300,000; and

18 (3) for any felony ranked in severity levels 6 through 10 of the
19 nondrug grid as provided in K.S.A. 2011 Supp. 21-6804, and amendments
20 thereto, or in severity level 4 of the drug grid *committed prior to July 1,*
21 *2012, or in severity level 5 of the drug grid committed on or after July 1,*
22 *2012,* as provided in K.S.A. 2011 Supp. 21-6805, and amendments thereto,
23 a sum not exceeding \$100,000.

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

27 (1) For a class A misdemeanor, a sum not exceeding \$2,500;

28 (2) for a class B misdemeanor, a sum not exceeding \$1,000;

29 (3) for a class C misdemeanor, a sum not exceeding \$500; and

30 (4) for an unclassified misdemeanor, any sum authorized by the
31 statute that defines the crime. If no penalty is provided in such law, the fine
32 shall not exceed the fine provided herein for a class C misdemeanor.

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

36 (d) A person who has been convicted of a traffic infraction may be
37 sentenced to pay a fine which shall be fixed by the court, not exceeding
38 \$500.

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

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

43 Sec. 14. K.S.A. 2011 Supp. 21-6614 is hereby amended to read as

1 follows: 21-6614. (a) (1) Except as provided in subsections (b), (c) ~~and~~ ,
2 (d) *and* (e), any person convicted in this state of a traffic infraction,
3 cigarette or tobacco infraction, misdemeanor or a class D or E felony, or
4 for crimes committed on or after July 1, 1993, nondrug crimes ranked in
5 severity levels 6 through 10 ~~or~~ , *or for crimes committed on or after July*
6 *1, 1993, but prior to July 1, 2012, any felony ranked in severity level 4 of*
7 *the drug grid, or for crimes committed on or after July 1, 2012, any felony*
8 *ranked in level 5 of the drug grid, may petition the convicting court for the*
9 *expungement of such conviction or related arrest records if three or more*
10 *years have elapsed since the person: (A) Satisfied the sentence imposed; or*
11 *(B) was discharged from probation, a community correctional services*
12 *program, parole, postrelease supervision, conditional release or a*
13 *suspended sentence.*

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

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

31 (1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its
32 repeal, or K.S.A. 2011 Supp. 21-5406, and amendments thereto, or as
33 prohibited by any law of another state which is in substantial conformity
34 with that statute;

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

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

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

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

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

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

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

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

13 (c) No person may petition for expungement until 10 or more years
14 have elapsed since the person satisfied the sentence imposed, the terms of
15 a diversion agreement or was discharged from probation, a community
16 correctional services program, parole, postrelease supervision, conditional
17 release or a suspended sentence, if such person was convicted of a
18 violation of K.S.A. 8-1567, and amendments thereto, including any
19 diversion for such violation.

20 (d) There shall be no expungement of convictions for the following
21 offenses or of convictions for an attempt to commit any of the following
22 offenses:

23 (1) Rape as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
24 2011 Supp. 21-5503, and amendments thereto;

25 (2) indecent liberties with a child or aggravated indecent liberties
26 with a child as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal,
27 or K.S.A. 2011 Supp. 21-5506, and amendments thereto;

28 (3) criminal sodomy as defined in subsection (a)(2) or (a)(3) of
29 K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of K.S.A.
30 2011 Supp. 21-5504, and amendments thereto;

31 (4) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior
32 to its repeal, or K.S.A. 2011 Supp. 21-5504, and amendments thereto;

33 (5) indecent solicitation of a child or aggravated indecent solicitation
34 of a child as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or
35 K.S.A. 2011 Supp. 21-5508, and amendments thereto;

36 (6) sexual exploitation of a child as defined in K.S.A. 21-3516, prior
37 to its repeal, or K.S.A. 2011 Supp. 21-5510, and amendments thereto;

38 (7) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal,
39 or K.S.A. 2011 Supp. 21-5604, and amendments thereto;

40 (8) endangering a child or aggravated endangering a child as defined
41 in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2011 Supp.
42 21-5601, and amendments thereto;

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

1 or K.S.A. 2011 Supp. 21-5602, and amendments thereto;

2 (10) capital murder as defined in K.S.A. 21-3439, prior to its repeal,
3 or K.S.A. 2011 Supp. 21-5401, and amendments thereto;

4 (11) murder in the first degree as defined in K.S.A. 21-3401, prior to
5 its repeal, or K.S.A. 2011 Supp. 21-5402, and amendments thereto;

6 (12) murder in the second degree as defined in K.S.A. 21-3402, prior
7 to its repeal, or K.S.A. 2011 Supp. 21-5403, and amendments thereto;

8 (13) voluntary manslaughter as defined in K.S.A. 21-3403, prior to its
9 repeal, or K.S.A. 2011 Supp. 21-5404, and amendments thereto;

10 (14) involuntary manslaughter as defined in K.S.A. 21-3404, prior to
11 its repeal, or K.S.A. 2011 Supp. 21-5405, and amendments thereto;

12 (15) sexual battery as defined in K.S.A. 21-3517, prior to its repeal,
13 or K.S.A. 2011 Supp. 21-5505, and amendments thereto, when the victim
14 was less than 18 years of age at the time the crime was committed;

15 (16) aggravated sexual battery as defined in K.S.A. 21-3518, prior to
16 its repeal, or K.S.A. 2011 Supp. 21-5505, and amendments thereto;

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

19 (18) any conviction for any offense in effect at any time prior to July
20 1, 2011, that is comparable to any offense as provided in this subsection.

21 *(e) Notwithstanding any other law to the contrary, for any offender
22 who is required to register as provided in the Kansas offender registration
23 act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no
24 expungement of any conviction or any part of the offender's criminal
25 record while the offender is required to register as provided in the Kansas
26 offender registration act.*

27 ~~(e)~~ (f) (1) When a petition for expungement is filed, the court shall
28 set a date for a hearing of such petition and shall cause notice of such
29 hearing to be given to the prosecutor and the arresting law enforcement
30 agency. The petition shall state the:

31 (A) Defendant's full name;

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

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

35 (D) crime for which the defendant was arrested, convicted or
36 diverted;

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

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

40 (2) Except as otherwise provided by law, a petition for expungement
41 shall be accompanied by a docket fee in the amount of \$100. On and after
42 ~~April 15, 2010 through June 30, 2011~~ *May 19, 2011, through June 30,*
43 *2012,* the supreme court may impose a charge, not to exceed ~~\$15~~ *\$19* per

1 case, to fund the costs of non-judicial personnel. The charge established in
2 this section shall be the only fee collected or moneys in the nature of a fee
3 collected for the case. Such charge shall only be established by an act of
4 the legislature and no other authority is established by law or otherwise to
5 collect a fee.

6 (3) All petitions for expungement shall be docketed in the original
7 criminal action. Any person who may have relevant information about the
8 petitioner may testify at the hearing. The court may inquire into the
9 background of the petitioner and shall have access to any reports or
10 records relating to the petitioner that are on file with the secretary of
11 corrections or the ~~Kansas parole~~ *prisoner review board*.

12 ~~(f)~~ (g) At the hearing on the petition, the court shall order the
13 petitioner's arrest record, conviction or diversion expunged if the court
14 finds that:

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

18 (2) the circumstances and behavior of the petitioner warrant the
19 expungement;

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

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

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

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

35 (A) In any application for licensure as a private detective, private
36 detective agency, certification as a firearms trainer pursuant to K.S.A.
37 2011 Supp. 75-7b21, and amendments thereto, or employment as a
38 detective with a private detective agency, as defined by K.S.A. 75-7b01,
39 and amendments thereto; as security personnel with a private patrol
40 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
41 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
42 the department of social and rehabilitation services;

43 (B) in any application for admission, or for an order of reinstatement,

1 to the practice of law in this state;

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

6 (D) to aid in determining the petitioner's qualifications for executive
7 director of the Kansas racing and gaming commission, for employment
8 with the commission or for work in sensitive areas in parimutuel racing as
9 deemed appropriate by the executive director of the commission, or to aid
10 in determining qualifications for licensure or renewal of licensure by the
11 commission;

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

17 (F) upon application for a commercial driver's license under K.S.A.
18 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

29 (K) for applications received on and after July 1, 2006, to aid in
30 determining the petitioner's qualifications for a license to carry a concealed
31 weapon pursuant to the personal and family protection act, K.S.A. 2011
32 Supp. 75-7c01 *et seq.*, and amendments thereto;

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

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

38 (5) upon commitment to the custody of the secretary of corrections,
39 any previously expunged record in the possession of the secretary of
40 corrections may be reinstated and the expungement disregarded, and the
41 record continued for the purpose of the new commitment.

42 ~~(h)~~ (i) Whenever a person is convicted of a crime, pleads guilty and
43 pays a fine for a crime, is placed on parole, postrelease supervision or

1 probation, is assigned to a community correctional services program, is
2 granted a suspended sentence or is released on conditional release, the
3 person shall be informed of the ability to expunge the arrest records or
4 conviction. Whenever a person enters into a diversion agreement, the
5 person shall be informed of the ability to expunge the diversion.

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

14 ~~(j)~~ (k) Whenever the record of any arrest, conviction or diversion has
15 been expunged under the provisions of this section or under the provisions
16 of any other existing or former statute, the custodian of the records of
17 arrest, conviction, diversion and incarceration relating to that crime shall
18 not disclose the existence of such records, except when requested by:

19 (1) The person whose record was expunged;

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

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

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

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

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

36 (7) the supreme court, the clerk or disciplinary administrator thereof,
37 the state board for admission of attorneys or the state board for discipline
38 of attorneys, and the request is accompanied by a statement that the
39 request is being made in conjunction with an application for admission, or
40 for an order of reinstatement, to the practice of law in this state by the
41 person whose record has been expunged;

42 (8) the Kansas lottery, and the request is accompanied by a statement
43 that the request is being made to aid in determining qualifications for

1 employment with the Kansas lottery or for work in sensitive areas within
2 the Kansas lottery as deemed appropriate by the executive director of the
3 Kansas lottery;

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

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

18 (11) the Kansas sentencing commission;

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

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

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

34 (15) a law enforcement agency and the request is accompanied by a
35 statement that the request is being made to aid in determining eligibility
36 for employment as a law enforcement officer as defined by K.S.A. 22-
37 2202, and amendments thereto; ~~or~~

38 (16) the attorney general and the request is accompanied by a
39 statement that the request is being made to aid in determining
40 qualifications for a license to carry a concealed weapon pursuant to the
41 personal and family protection act; *or*

42 (17) *the Kansas bureau of investigation for the purposes of:*

43 (A) *Completing a person's criminal history record information within*

1 *the central repository, in accordance with K.S.A. 22-4701 et seq., and*
2 *amendments thereto; or*

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

6 *(l) The provisions of subsection (k)(17) shall apply to records created*
7 *prior to, on and after July 1, 2011.*

8 Sec. 15. K.S.A. 2011 Supp. 21-6805 is hereby amended to read as
9 follows: 21-6805. (a) The provisions of this section shall be applicable to
10 the sentencing guidelines grid for drug crimes. The following sentencing
11 guidelines grid for drug crimes shall be applicable to felony crimes under
12 K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto,
13 except as otherwise provided by law:
14

SENTENCING RANGE - DRUG OFFENSES

| Category → | A | B | C | D | E | F | G | H | I |
|---------------------|---------------------------|-------------------------|---------------------------------------|-----------------------|------------------------------|----------------------------|--------------------------|--------------------|-------------------------------|
| Severity Level ↓ | 3 + Person Felonies | 2 Person Felonies | 1 Person & 1 Nonperson Felonies | 1 Person Felony | 3 + Nonperson Felonies | 2 Nonperson Felonies | 1 Nonperson Felony | 2+ Misdemeanors | 1 Misdemeanor No Record |
| I | 204 194 185 | 196 186 176 | 187 178 169 | 179 170 161 | 170 162 154 | 167 158 150 | 162 154 146 | 161 150 142 | 154 146 138 |
| II | 83 78 74 | 77 73 68 | 72 68 64 | 68 64 60 | 82 79 75 | 59 56 52 | 57 54 51 | 54 51 49 | 51 49 46 |
| III | 51 49 | 47 46 | 42 40 | 36 34 | 32 30 28 | 26 24 23 | 22 20 18 | 16 15 14 | 12 11 10 |
| IV | 42 40 37 | 36 34 32 | 32 30 28 | 26 24 23 | 22 20 18 | 16 15 14 | 14 13 12 | 12 11 10 | |

| |
|--------------------------|
| LEGEND |
| Presumptive Probation |
| Presumptive Imprisonment |

SENTENCING RANGE - DRUG OFFENSES

| Category ↓ | A | B | C | D | E | F | G | H | I |
|---------------------|---------------------------|-------------------------|---------------------------------------|-----------------------|------------------------------|----------------------------|--------------------------|--------------------|-------------------------------|
| Severity Level ↓ | 3 + Person Felonies | 2 Person Felonies | 1 Person & 1 Nonperson Felonies | 1 Person Felony | 3 + Nonperson Felonies | 2 Nonperson Felonies | 1 Nonperson Felony | 2+ Misdemeanors | 1 Misdemeanor No Record |
| I | 204 194 185 | 196 186 176 | 187 178 169 | 179 170 161 | 170 162 154 | 167 158 150 | 162 154 146 | 161 150 142 | 154 146 138 |
| II | 144 136 130 | 137 130 122 | 130 123 117 | 124 117 111 | 116 111 105 | 113 108 101 | 110 104 99 | 108 100 96 | 103 98 92 |
| III | 83 78 74 | 77 73 68 | 72 66 65 | 68 64 60 | 62 59 55 | 59 56 52 | 57 54 51 | 54 51 49 | 51 49 46 |
| IV | 51 49 46 | 47 44 41 | 43 40 37 | 40 37 34 | 38 35 32 | 36 33 30 | 34 31 28 | 32 29 26 | 30 27 24 |
| V | 42 40 37 | 36 34 32 | 32 30 28 | 26 24 23 | 22 20 18 | 18 17 16 | 16 15 14 | 14 13 12 | 12 11 10 |

| LEGEND |
|--------------------------|
| Presumptive Probation |
| Presumptive Imprisonment |

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

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

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

13 (A) Prison sentence;

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

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

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

22 (d) Each grid block states the presumptive sentencing range for an
23 offender whose crime of conviction and criminal history place such
24 offender in that grid block. If an offense is classified in a grid block below
25 the dispositional line, the presumptive disposition shall be
26 nonimprisonment. If an offense is classified in a grid block above the
27 dispositional line, the presumptive disposition shall be imprisonment. If an
28 offense is classified in grid blocks ~~3-E, 3-F, 3-G, 3-H or 3-I~~ 4-C, 4-D, 4-E,
29 4-F, 4-G, 4-H or 4-I, the court may impose an optional nonprison sentence
30 as provided in subsection (q) of K.S.A. 2011 Supp. 21-6804, and
31 amendments thereto.

32 (e) The sentence for a second or subsequent conviction of K.S.A. 65-
33 4159, prior to its repeal, ~~or~~ K.S.A. 2010 Supp. 21-36a03, *prior to its*
34 *transfer, or* K.S.A. 2011 Supp. 21-5703, and amendments thereto,
35 manufacture of any controlled substance or controlled substance analog,
36 shall be a presumptive term of imprisonment of two times the maximum
37 duration of the presumptive term of imprisonment. The court may impose
38 an optional reduction in such sentence of not to exceed 50% of the
39 mandatory increase provided by this subsection upon making a finding on
40 the record that one or more of the mitigating factors as specified in K.S.A.
41 2011 Supp. 21-6815, and amendments thereto, justify such a reduction in
42 sentence. Any decision made by the court regarding the reduction in such
43 sentence shall not be considered a departure and shall not be subject to

1 appeal.

2 (f) (1) The sentence for a third or subsequent felony conviction of
3 K.S.A. 65-4160 or 65-4162, prior to their repeal, ~~or~~ K.S.A. 2010 Supp. 21-
4 36a06, *prior to its transfer, or K.S.A. 2011 Supp. 21-5706*, and
5 amendments thereto, shall be a presumptive term of imprisonment and the
6 defendant shall be sentenced to prison as provided by this section. The
7 defendant's term of imprisonment shall be served in the custody of the
8 secretary of corrections in a facility designated by the secretary. Subject to
9 appropriations therefore, the defendant shall participate in an intensive
10 substance abuse treatment program, of at least four months duration,
11 selected by the secretary of corrections. If the secretary determines that
12 substance abuse treatment resources are otherwise available, such term of
13 imprisonment may be served in a facility designated by the secretary of
14 corrections in the custody of the secretary of corrections to participate in
15 an intensive substance abuse treatment program. The secretary's
16 determination regarding the availability of treatment resources shall not be
17 subject to review. Upon the successful completion of such intensive
18 treatment program, the offender shall be returned to the court and the court
19 may modify the sentence by directing that a less severe penalty be
20 imposed in lieu of that originally adjudged. If the offender's term of
21 imprisonment expires, the offender shall be placed under the applicable
22 period of postrelease supervision.

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

25 (A) The defendant has previously completed a certified drug abuse
26 treatment program, as provided in K.S.A. 2011 Supp. 75-52,144, and
27 amendments thereto;

28 (B) has been discharged or refused to participate in a certified drug
29 abuse treatment program, as provided in K.S.A. 2011 Supp. 75-52,144,
30 and amendments thereto;

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

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

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

37 (g) (1) Except as provided further, if the trier of fact makes a finding
38 that an offender carried a firearm to commit a drug felony, or in
39 furtherance of a drug felony, possessed a firearm, in addition to the
40 sentence imposed pursuant to K.S.A. 2011 Supp. 21-6801 through 21-
41 6824, and amendments thereto, the offender shall be sentenced to:

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

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

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

6 (3) The provisions of this subsection shall not apply to violations of
7 K.S.A. 2011 Supp. 21-5706 or 21-5713, and amendments thereto.

8 Sec. 16. K.S.A. 2011 Supp. 21-6808 is hereby amended to read as
9 follows: 21-6808. (a) The crime severity scale contained in the sentencing
10 guidelines grid for drug offenses as provided in K.S.A. 2011 Supp. 21-
11 6805, and amendments thereto, consists of 4 5 levels of crimes. Crimes
12 listed within each level are considered to be relatively equal in severity.
13 Level 1 crimes are the most severe crimes and level 4 5 crimes are the
14 least severe crimes.

15 (b) The provisions of this section shall also be applicable to the
16 presumptive sentences for anticipatory crimes as provided in K.S.A. 2011
17 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto.

18 Sec. 17. K.S.A. 2011 Supp. 21-6810 is hereby amended to read as
19 follows: 21-6810. (a) Criminal history categories contained in the
20 sentencing guidelines grids are based on the following types of prior
21 convictions: Person felony adult convictions, nonperson felony adult
22 convictions, person felony juvenile adjudications, nonperson felony
23 juvenile adjudications, person misdemeanor adult convictions, nonperson
24 class A misdemeanor adult convictions, person misdemeanor juvenile
25 adjudications, nonperson class A misdemeanor juvenile adjudications,
26 select class B nonperson misdemeanor adult convictions, select class B
27 nonperson misdemeanor juvenile adjudications and convictions and
28 adjudications for violations of municipal ordinances or county resolutions
29 which are comparable to any crime classified under the state law of
30 Kansas as a person misdemeanor, select nonperson class B misdemeanor
31 or nonperson class A misdemeanor. A prior conviction is any conviction,
32 other than another count in the current case which was brought in the same
33 information or complaint or which was joined for trial with other counts in
34 the current case pursuant to K.S.A. 22-3203, and amendments thereto,
35 which occurred prior to sentencing in the current case regardless of
36 whether the offense that led to the prior conviction occurred before or after
37 the current offense or the conviction in the current case.

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

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

1 (d) Except as provided in K.S.A. 2011 Supp. 21-6815, and
2 amendments thereto, the following are applicable to determining an
3 offender's criminal history classification:

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

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

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

8 (A) Adult convictions;

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

11 (C) a juvenile adjudication for an offense committed before July 1,
12 1993, which would have been a class A, B or C felony, if committed by an
13 adult; or

14 (D) a juvenile adjudication for an offense committed on or after July
15 1, 1993, which would be an off-grid felony, a nondrug severity level 1, 2,
16 3, 4 or 5 felony, ~~or a drug severity level 1, 2 or 3 felony~~ *for an offense*
17 *committed on or after July 1, 1993, but prior to July 1, 2012, or a drug*
18 *severity level 1, 2, 3 or 4 felony for an offense committed on or after July*
19 *1, 2012, if committed by an adult.*

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

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

25 (B) committed on or after July 1, 1993, which would be a nondrug
26 *severity level 6, 7, 8, 9 or 10, or drug level 4, nonperson felony a drug*
27 *severity level 4 felony for an offense committed on or after July 1, 1993,*
28 *but prior to July 1, 2012, or a drug severity level 5 felony for an offense*
29 *committed on or after July 1, 2012 if committed by an adult; or*

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

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

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

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

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

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

6 Sec. 18. K.S.A. 2011 Supp. 21-6821 is hereby amended to read as
7 follows: 21-6821. (a) The secretary of corrections is hereby authorized to
8 adopt rules and regulations providing for a system of good time
9 calculations. Such rules and regulations shall provide circumstances upon
10 which an inmate may earn good time credits and for the forfeiture of
11 earned credits. Such circumstances may include factors related to program
12 and work participation and conduct and the inmate's willingness to
13 examine and confront past behavioral patterns that resulted in the
14 commission of the inmate's crimes.

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

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

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

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

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

26 (C) *for a drug severity level 3 or 4 crime committed on or after*
27 *January 1, 2008, but prior to July 1, 2012, or a drug severity level 4 or 5*
28 *crime committed on or after July 1, 2012, an amount equal to 20% of the*
29 *prison part of the sentence.*

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

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

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

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

40 (3) testified falsely or otherwise submitted false evidence or
41 information to the court;

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

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

2 (e) (1) For purposes of determining release of an inmate who is
3 serving only a sentence for a nondrug severity level 4 through 10 crime or
4 a drug severity level 3 or 4 crime committed on or after January 1, 2008,
5 *but prior to July 1, 2012, or an inmate who is serving only a sentence for a*
6 *nondrug severity level 4 through 10 crime or a drug severity level 4 or 5*
7 *crime committed on or after July 1, 2012, the secretary of corrections is*
8 hereby authorized to adopt rules and regulations regarding program credit
9 calculations. Such rules and regulations shall provide circumstances upon
10 which an inmate may earn program credits and for the forfeiture of earned
11 credits and such circumstances may include factors substantially related to
12 program participation and conduct. In addition to any good time credits
13 earned and retained, the following shall apply with regard to program
14 credit calculations:

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

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

23 (2) Any time which is earned and subtracted from the prison part of
24 the sentence of any inmate pursuant to program credit calculation shall be
25 added to such inmate's postrelease supervision term, if applicable.

26 (3) When separate sentences of imprisonment for different crimes are
27 imposed on a defendant on the same date, a defendant shall only be
28 eligible for program credits if such crimes are a nondrug severity level 4
29 through 10 ~~or~~ , a drug severity level 3 or 4 *committed prior to July 1,*
30 *2012, or a drug severity level 4 or 5 committed on or after July 1, 2012.*

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

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

36 Sec. 19. K.S.A. 2011 Supp. 21-6824 is hereby amended to read as
37 follows: 21-6824.. (a) There is hereby established a nonprison sanction of
38 certified drug abuse treatment programs for certain offenders who are
39 sentenced on or after November 1, 2003. Placement of offenders in
40 certified drug abuse treatment programs by the court shall be limited to
41 placement of adult offenders, convicted of a felony violation of K.S.A. 65-
42 4160 or 65-4162, prior to their repeal ~~or~~ , K.S.A. 2010 Supp. 21-36a06,
43 *prior to its transfer; or K.S.A. 2011 Supp. 21-5706, and amendments*

1 thereto:

2 (1) Whose offense is classified in grid blocks ~~4-E, 4-F, 4-G, 4-H or 4-~~
3 ~~† 5-C, 5-D, 5-E, 5-F, 5-G, 5-H or 5-I~~ of the sentencing guidelines grid for
4 drug crimes and such offender has no felony conviction of K.S.A. 65-
5 4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their repeal ~~or~~ ,
6 K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, *prior to their*
7 *transfer, or K.S.A. 2011 Supp. 21-5703, 21-5705 or 21-5716*, and
8 amendments thereto, or any substantially similar offense from another
9 jurisdiction; or

10 (2) whose offense is classified in grid blocks ~~4-A, 4-B, 4-C or 4-D~~ ~~5-~~
11 ~~A or 5-B~~ of the sentencing guidelines grid for drug crimes, such offender
12 has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163
13 or 65-4164, prior to their repeal, ~~or~~ K.S.A. 2010 Supp. 21-36a03, 21-
14 36a05 or 21-36a16, *prior to their transfer, or K.S.A. 2011 Supp. 21-5703,*
15 *21-5705 or 21-5716*, and amendments thereto, or any substantially similar
16 offense from another jurisdiction, if the person felonies in the offender's
17 criminal history were severity level 8, 9 or 10 or nongrid offenses of the
18 sentencing guidelines grid for nondrug crimes, and the court finds and sets
19 forth with particularity the reasons for finding that the safety of the
20 members of the public will not be jeopardized by such placement in a drug
21 abuse treatment program.

22 (b) As a part of the presentence investigation pursuant to K.S.A. 2011
23 Supp. 21-6813, and amendments thereto, offenders who meet the
24 requirements of subsection (a), *unless otherwise specifically ordered by*
25 *the court*, shall be subject to:

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

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

32 (c) *If the offender is assigned a high risk status as determined by the*
33 *drug abuse assessment performed pursuant to subsection (b)(1) and a*
34 *moderate or high risk status as determined by the criminal risk-need*
35 *assessment performed pursuant to subsection (b)(2)*, the sentencing court
36 shall commit the offender to treatment in a drug abuse treatment program
37 until the court determines the offender is suitable for discharge by the
38 court. The term of treatment shall not exceed 18 months. The court may
39 extend the term of probation, pursuant to subsection (c)(3) of K.S.A. 2011
40 Supp. 21-6608, and amendments thereto. The term of treatment may not
41 exceed the term of probation.

42 (d) (1) *Offenders who are committed to a drug abuse treatment*
43 *program pursuant to subsection (c)* shall be supervised by community

1 correctional services.

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

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

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

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

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

15 (2) Offenders who are discharged from such program shall be subject
16 to the revocation provisions of subsection (n) of K.S.A. 2011 Supp. 21-
17 6604, and amendments thereto.

18 (g) As used in this section, "mental health professional" includes
19 licensed social workers, ~~licensed psychiatrists~~ *persons licensed to practice*
20 *medicine and surgery*, licensed psychologists, licensed professional
21 counselors or registered alcohol and other drug abuse counselors licensed
22 or certified as addiction counselors who have been certified by the
23 secretary of corrections to treat offenders pursuant to K.S.A. 2011 Supp.
24 75-52,144, and amendments thereto.

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

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

31 (B) ~~offenders who~~ are not lawfully present in the United States and
32 being detained for deportation; *or*

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

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

36 Sec. 20. K.S.A. 2011 Supp. 22-2802 is hereby amended to read as
37 follows: 22-2802. (1) Any person charged with a crime shall, at the
38 person's first appearance before a magistrate, be ordered released pending
39 preliminary examination or trial upon the execution of an appearance bond
40 in an amount specified by the magistrate and sufficient to assure the
41 appearance of such person before the magistrate when ordered and to
42 assure the public safety. If the person is being bound over for a felony, the
43 bond shall also be conditioned on the person's appearance in the district

1 court or by way of a two-way electronic audio-video communication as
2 provided in subsection (14) at the time required by the court to answer the
3 charge against such person and at any time thereafter that the court
4 requires. Unless the magistrate makes a specific finding otherwise, if the
5 person is being bonded out for a person felony or a person misdemeanor,
6 the bond shall be conditioned on the person being prohibited from having
7 any contact with the alleged victim of such offense for a period of at least
8 72 hours. The magistrate may impose such of the following additional
9 conditions of release as will reasonably assure the appearance of the
10 person for preliminary examination or trial:

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

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

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

18 (d) place the person under a house arrest program pursuant to K.S.A.
19 2011 Supp. 21-6609, and amendments thereto; or

20 (e) place the person under the supervision of a court services officer
21 responsible for monitoring the person's compliance with any conditions of
22 release ordered by the magistrate. The magistrate may order the person to
23 pay for any costs associated with the supervision provided by the court
24 services department in an amount not to exceed \$15 per week of such
25 supervision. The magistrate may also order the person to pay for all other
26 costs associated with the supervision and conditions for compliance in
27 addition to the \$15 per week.

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

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

40 (4) A deposit of cash in the amount of the bond may be made in lieu
41 of the execution of the bond pursuant to subsection (3). Except as provided
42 in subsection (5), such deposit shall be in the full amount of the bond and
43 in no event shall a deposit of cash in less than the full amount of bond be

1 permitted. Any person charged with a crime who is released on a cash
2 bond shall be entitled to a refund of all moneys paid for the cash bond,
3 after deduction of any outstanding restitution, costs, fines and fees, after
4 the final disposition of the criminal case if the person complies with all
5 requirements to appear in court. The court may not exclude the option of
6 posting bond pursuant to subsection (3).

7 (5) Except as provided further, the amount of the appearance bond
8 shall be the same whether executed as described in subsection (3) or
9 posted with a deposit of cash as described in subsection (4). When the
10 appearance bond has been set at \$2,500 or less and the most serious charge
11 against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson
12 felony, a drug severity level 4 felony *committed prior to July 1, 2012, a*
13 *drug severity level 5 felony committed on or after July 1, 2012, or a*
14 *violation of K.S.A. 8-1567, and amendments thereto, the magistrate may*
15 *allow the person to deposit cash with the clerk in the amount of 10% of the*
16 *bond, provided the person meets at least the following qualifications:*

17 (A) Is a resident of the state of Kansas;

18 (B) has a criminal history score category of G, H or I;

19 (C) has no prior history of failure to appear for any court
20 appearances;

21 (D) has no detainer or hold from any other jurisdiction;

22 (E) has not been extradited from, and is not awaiting extradition to,
23 another state; and

24 (F) has not been detained for an alleged violation of probation.

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

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

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

1 from a previous offense at the time of the alleged commission of the
2 subsequent offense.

3 (9) The appearance bond shall set forth all of the conditions of
4 release.

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

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

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

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

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

37 (15) The magistrate may order the person to pay for any costs
38 associated with the supervision of the conditions of release of the
39 appearance bond in an amount not to exceed \$15 per week of such
40 supervision. As a condition of sentencing under K.S.A. 2011 Supp. 21-
41 6604, and amendments thereto, the court may impose the full amount of
42 any such costs in addition to the \$15 per week, including, but not limited to,
43 to, costs for treatment and evaluation under subsection (2).

1 Sec. 21. K.S.A. 2011 Supp. 22-2908 is hereby amended to read as
2 follows: 22-2908. (a) In determining whether diversion of a defendant is in
3 the interests of justice and of benefit to the defendant and the community,
4 the county or district attorney shall consider at least the following factors
5 among all factors considered:

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

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

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

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

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

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

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

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

21 (9) provisions for restitution; and

22 (10) any mitigating circumstances.

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

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

35 (2) the complaint alleges that the defendant committed a class A or B
36 felony or for crimes committed on or after July 1, 1993, an off-grid crime,
37 a severity level 1, 2 or 3 felony for nondrug crimes ~~or~~, a drug severity
38 level 1 or 2 felony for drug crimes *committed on or after July 1, 1993, but*
39 *prior to July 1, 2012, or a drug severity level 1, 2 or 3 felony committed*
40 *on or after July 1, 2012;* or

41 (3) the complaint alleges a domestic violence offense, as defined in
42 K.S.A. 2011 Supp. 21-5111, and amendments thereto, and the defendant
43 has participated in two or more diversions in the previous five year period

1 upon complaints alleging a domestic violence offense.

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

11 Sec. 22. K.S.A. 2011 Supp. 22-3412 is hereby amended to read as
12 follows: 22-3412. (a) (1) For crimes committed before July 1, 1993,
13 peremptory challenges shall be allowed as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Sec. 23. K.S.A. 2011 Supp. 22-3604 is hereby amended to read as
2 follows: 22-3604. (1) Except as provided in subsection (3), a defendant
3 shall not be held in jail nor subject to an appearance bond during the
4 pendency of an appeal by the prosecution.

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

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

26 Sec. 24. K.S.A. 2011 Supp. 22-3717 is hereby amended to read as
27 follows: 22-3717.(a) Except as otherwise provided by this section; K.S.A.
28 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4635 through 21-4638,
29 prior to their repeal; K.S.A. 21-4624, prior to its repeal; K.S.A. 21-4642,
30 prior to its repeal; K.S.A. 2011 Supp. 21-6617, 21-6620, 21-6623, 21-
31 6624, 21-6625 and 21-6626, and amendments thereto; and K.S.A. 8-1567,
32 and amendments thereto; an inmate, including an inmate sentenced
33 pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2011 Supp. 21-
34 6707, and amendments thereto, shall be eligible for parole after serving the
35 entire minimum sentence imposed by the court, less good time credits.

36 (b) (1) Except as provided by K.S.A. 21-4635 through 21-4638, prior
37 to their repeal, and K.S.A. 2011 Supp. 21-6620, 21-6623, 21-6624 and 21-
38 6625, and amendments thereto, an inmate sentenced to imprisonment for
39 the crime of capital murder, or an inmate sentenced for the crime of
40 murder in the first degree based upon a finding of premeditated murder,
41 committed on or after July 1, 1994, shall be eligible for parole after
42 serving 25 years of confinement, without deduction of any good time
43 credits.

1 (2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993
2 Supp. 21-4628, prior to its repeal, K.S.A. 21-4635 through 21-4638, prior
3 to their repeal, and K.S.A. 2011 Supp. 21-6620, 21-6623, 21-6624 and 21-
4 6625, and amendments thereto, an inmate sentenced to imprisonment for
5 an off-grid offense committed on or after July 1, 1993, but prior to July 1,
6 1999, shall be eligible for parole after serving 15 years of confinement,
7 without deduction of any good time credits and an inmate sentenced to
8 imprisonment for an off-grid offense committed on or after July 1, 1999,
9 shall be eligible for parole after serving 20 years of confinement without
10 deduction of any good time credits.

11 (3) Except as provided by K.S.A. 1993 Supp. 21-4628, prior to its
12 repeal, an inmate sentenced for a class A felony committed before July 1,
13 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to
14 its repeal, or K.S.A. 2011 Supp. 21-6707, and amendments thereto, shall
15 be eligible for parole after serving 15 years of confinement, without
16 deduction of any good time credits.

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

22 (5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
23 4643, prior to its repeal, or K.S.A. 2011 Supp. 21-6627, and amendments
24 thereto, committed on or after July 1, 2006, shall be eligible for parole
25 after serving the mandatory term of imprisonment without deduction of
26 any good time credits.

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

31 (A) The aggregate minimum sentences, as determined pursuant to
32 K.S.A. 21-4608, prior to its repeal, or K.S.A. 2011 Supp. 21-6606, and
33 amendments thereto, less good time credits for those crimes which are not
34 class A felonies; and

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

37 (2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-
38 4643, prior to its repeal, or K.S.A. 2011 Supp. 21-6627, and amendments
39 thereto, for crimes committed on or after July 1, 2006, the inmate shall be
40 eligible for parole after serving the mandatory term of imprisonment.

41 (d) (1) Persons sentenced for crimes, other than off-grid crimes,
42 committed on or after July 1, 1993, or persons subject to subparagraph
43 (G), will not be eligible for parole, but will be released to a mandatory

1 period of postrelease supervision upon completion of the prison portion of
2 their sentence as follows:

3 (A) Except as provided in subparagraphs (D) and (E), persons
4 sentenced for nondrug severity level 1 through 4 crimes ~~and~~, drug severity
5 levels 1 and 2 crimes *committed on or after July 1, 1993, but prior to July*
6 *1, 2012, and drug severity levels 1, 2 and 3 crimes committed on or after*
7 *July 1, 2012*, must serve 36 months, plus the amount of good time and
8 program credit earned and retained pursuant to K.S.A. 21-4722, prior to its
9 repeal, or K.S.A. 2011 Supp. 21-6821, and amendments thereto, on
10 postrelease supervision.

11 (B) Except as provided in subparagraphs (D) and (E), persons
12 sentenced for nondrug severity levels 5 and 6 crimes ~~and~~, drug severity
13 level 3 crimes *committed on or after July 1, 1993, but prior to July 1,*
14 *2012, and drug severity levels 4 crimes committed on or after July 1,*
15 *2012*, must serve 24 months, plus the amount of good time and program
16 credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal,
17 or K.S.A. 2011 Supp. 21-6821, and amendments thereto, on postrelease
18 supervision.

19 (C) Except as provided in subparagraphs (D) and (E), persons
20 sentenced for nondrug severity level 7 through 10 crimes ~~and~~, drug
21 severity level 4 crimes *committed on or after July 1, 1993, but prior to*
22 *July 1, 2012, and drug severity levels 5 crimes committed on or after July*
23 *1, 2012*, must serve 12 months, plus the amount of good time and program
24 credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal,
25 or K.S.A. 2011 Supp. 21-6821, and amendments thereto, on postrelease
26 supervision.

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

33 (ii) If the sentencing judge departs from the presumptive postrelease
34 supervision period, the judge shall state on the record at the time of
35 sentencing the substantial and compelling reasons for the departure.
36 Departures in this section are subject to appeal pursuant to K.S.A. 21-
37 4721, prior to its repeal, or K.S.A. 2011 Supp. 21-6820, and amendments
38 thereto.

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

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

43 (b) any evidence received during the proceeding;

1 (c) the presentence report, the victim's impact statement and any
2 psychological evaluation as ordered by the court pursuant to subsection (e)
3 of K.S.A. 21-4714, prior to its repeal, or subsection (e) of K.S.A. 2011
4 Supp. 21-6813, and amendments thereto; and

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

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

10 (v) In carrying out the provisions of subparagraph (d)(1)(D), the court
11 shall refer to K.S.A. 21-4718, prior to its repeal, or K.S.A. 2011 Supp. 21-
12 6817, and amendments thereto.

13 (vi) Upon petition, the ~~parole~~ *parole prisoner review* board may provide for
14 early discharge from the postrelease supervision period upon completion
15 of court ordered programs and completion of the presumptive postrelease
16 supervision period, as determined by the crime of conviction, pursuant to
17 subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from
18 postrelease supervision is at the discretion of the ~~parole~~ board.

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

22 (viii) Persons convicted of K.S.A. 21-3510 or 21-3511, prior to their
23 repeal, or K.S.A. 2011 Supp. 21-5508, and amendments thereto, shall be
24 required to participate in a treatment program for sex offenders during the
25 postrelease supervision period.

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

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

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

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

43 (A) Rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 2011 Supp.

1 21-5503, and amendments thereto;

2 (B) indecent liberties with a child, K.S.A. 21-3503, prior to its repeal,
3 or subsection (a) of K.S.A. 2011 Supp. 21-5506, and amendments thereto;

4 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, prior
5 to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5506, and
6 amendments thereto;

7 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505,
8 prior to its repeal, or subsection (a)(3) and (a)(4) of K.S.A. 2011 Supp. 21-
9 5504, and amendments thereto;

10 (E) aggravated criminal sodomy, K.S.A. 21-3506, prior to its repeal,
11 or subsection (b) of K.S.A. 2011 Supp. 21-5504, and amendments thereto;

12 (F) indecent solicitation of a child, K.S.A. 21-3510, prior to its repeal,
13 or subsection (a) of K.S.A. 2011 Supp. 21-5508, and amendments thereto;

14 (G) aggravated indecent solicitation of a child, K.S.A. 21-3511, prior
15 to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5508, and
16 amendments thereto;

17 (H) sexual exploitation of a child, K.S.A. 21-3516, prior to its repeal,
18 or K.S.A. 2011 Supp. 21-5510, and amendments thereto;

19 (I) aggravated sexual battery, K.S.A. 21-3518, prior to its repeal, or
20 subsection (b) of K.S.A. 2011 Supp. 21-5505, and amendments thereto;

21 (J) aggravated incest, K.S.A. 21-3603, prior to its repeal, or
22 subsection (b) of K.S.A. 2011 Supp. 21-5604, and amendments thereto; or

23 (K) an attempt, conspiracy or criminal solicitation, as defined in
24 K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2011
25 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a
26 sexually violent crime as defined in this section.

27 "Sexually motivated" means that one of the purposes for which the
28 defendant committed the crime was for the purpose of the defendant's
29 sexual gratification.

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

37 (f) If a person is sentenced to prison for a crime committed on or after
38 July 1, 1993, while on probation, parole, conditional release or in a
39 community corrections program, for a crime committed prior to July 1,
40 1993, and the person is not eligible for retroactive application of the
41 sentencing guidelines and amendments thereto pursuant to K.S.A. 21-
42 4724, prior to its repeal, the new sentence shall not be aggregated with the
43 old sentence, but shall begin when the person is paroled or reaches the

1 conditional release date on the old sentence. If the offender was past the
2 offender's conditional release date at the time the new offense was
3 committed, the new sentence shall not be aggregated with the old sentence
4 but shall begin when the person is ordered released by the ~~Kansas parole~~
5 *prisoner review* board or reaches the maximum sentence expiration date on
6 the old sentence, whichever is earlier. The new sentence shall then be
7 served as otherwise provided by law. The period of postrelease supervision
8 shall be based on the new sentence, except that those offenders whose old
9 sentence is a term of imprisonment for life, imposed pursuant to K.S.A.
10 1993 Supp. 21-4628, prior to its repeal, or an indeterminate sentence with
11 a maximum term of life imprisonment, for which there is no conditional
12 release or maximum sentence expiration date, shall remain on postrelease
13 supervision for life or until discharged from supervision by the ~~Kansas~~
14 *parole prisoner review* board.

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

31 (h) The ~~Kansas parole~~ *prisoner review* board shall hold a parole
32 hearing at least the month prior to the month an inmate will be eligible for
33 parole under subsections (a), (b) and (c). At least the month preceding the
34 parole hearing, the county or district attorney of the county where the
35 inmate was convicted shall give written notice of the time and place of the
36 public comment sessions for the inmate to any victim of the inmate's crime
37 who is alive and whose address is known to the county or district attorney
38 or, if the victim is deceased, to the victim's family if the family's address is
39 known to the county or district attorney. Except as otherwise provided,
40 failure to notify pursuant to this section shall not be a reason to postpone a
41 parole hearing. In the case of any inmate convicted of an off-grid felony or
42 a class A felony the secretary of corrections shall give written notice of the
43 time and place of the public comment session for such inmate at least one

1 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 ~~Kansas parole~~ 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 ~~parole prisoner review~~ board will review the inmates 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 ~~Kansas parole prisoner review~~ board shall have the inmate appear either in person or via a video conferencing format and shall interview the inmate unless

1 impractical because of the inmate's physical or mental condition or
2 absence from the institution. Every inmate while on parole shall remain in
3 the legal custody of the secretary of corrections and is subject to the orders
4 of the secretary. Whenever the ~~Kansas parole~~ board formally considers
5 placing an inmate on parole and no agreement has been entered into with
6 the inmate under K.S.A. 75-5210a, and amendments thereto, the board
7 shall notify the inmate in writing of the reasons for not granting parole. If
8 an agreement has been entered under K.S.A. 75-5210a, and amendments
9 thereto, and the inmate has not satisfactorily completed the programs
10 specified in the agreement, or any revision of such agreement, the board
11 shall notify the inmate in writing of the specific programs the inmate must
12 satisfactorily complete before parole will be granted. If parole is not
13 granted only because of a failure to satisfactorily complete such programs,
14 the board shall grant parole upon the secretary's certification that the
15 inmate has successfully completed such programs. If an agreement has
16 been entered under K.S.A. 75-5210a, and amendments thereto, and the
17 secretary of corrections has reported to the board in writing that the inmate
18 has satisfactorily completed the programs required by such agreement, or
19 any revision thereof, the board shall not require further program
20 participation. However, if the board determines that other pertinent
21 information regarding the inmate warrants the inmate's not being released
22 on parole, the board shall state in writing the reasons for not granting the
23 parole. If parole is denied for an inmate sentenced for a crime other than a
24 class A or class B felony or an off-grid felony, the board shall hold another
25 parole hearing for the inmate not later than one year after the denial unless
26 the ~~parole~~ board finds that it is not reasonable to expect that parole would
27 be granted at a hearing if held in the next three years or during the interim
28 period of a deferral. In such case, the ~~parole~~ board may defer subsequent
29 parole hearings for up to three years but any such deferral by the board
30 shall require the board to state the basis for its findings. If parole is denied
31 for an inmate sentenced for a class A or class B felony or an off-grid
32 felony, the board shall hold another parole hearing for the inmate not later
33 than three years after the denial unless the ~~parole~~ board finds that it is not
34 reasonable to expect that parole would be granted at a hearing if held in
35 the next 10 years or during the interim period of a deferral. In such case,
36 the ~~parole~~ board may defer subsequent parole hearings for up to 10 years
37 but any such deferral shall require the board to state the basis for its
38 findings.

39 (2) Inmates sentenced for a class A or class B felony who have not
40 had a parole board hearing in the five years prior to July 1, 2010, shall
41 have such inmates' cases reviewed by the ~~parole~~ board on or before July 1,
42 2012. Such review shall begin with the inmates with the oldest deferral
43 date and progress to the most recent. Such review shall be done utilizing

1 existing resources unless the parole board determines that such resources
2 are insufficient. If the parole board determines that such resources are
3 insufficient, then the provisions of this paragraph are subject to
4 appropriations therefor.

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

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

17 (m) Whenever the ~~Kansas parole~~ *prisoner review* board orders the
18 parole of an inmate or establishes conditions for an inmate placed on
19 postrelease supervision, the board:

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

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

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

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

41 (5) unless it finds compelling circumstances which would render a
42 plan of payment unworkable, shall order that the parolee or person on
43 postrelease supervision reimburse the state for all or part of the

1 expenditures by the state board of indigents' defense services to provide
2 counsel and other defense services to the person. In determining the
3 amount and method of payment of such sum, the ~~parole~~ board shall take
4 account of the financial resources of the person and the nature of the
5 burden that the payment of such sum will impose. Such amount shall not
6 exceed the amount claimed by appointed counsel on the payment voucher
7 for indigents' defense services or the amount prescribed by the board of
8 indigents' defense services reimbursement tables as provided in K.S.A. 22-
9 4522, and amendments thereto, whichever is less, minus any previous
10 payments for such services.

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

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

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

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

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

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

39 (t) For offenders sentenced prior to May 25, 2000 who are eligible for
40 modification of their postrelease supervision obligation, the department of
41 corrections shall modify the period of postrelease supervision as provided
42 for by this section for offenders convicted of severity level 9 and 10 crimes
43 on the sentencing guidelines grid for nondrug crimes and severity level 4

1 crimes on the sentencing guidelines grid for drug crimes on or before
2 September 1, 2000; for offenders convicted of severity level 7 and 8
3 crimes on the sentencing guidelines grid for nondrug crimes on or before
4 November 1, 2000; and for offenders convicted of severity level 5 and 6
5 crimes on the sentencing guidelines grid for nondrug crimes and severity
6 level 3 crimes on the sentencing guidelines grid for drug crimes on or
7 before January 1, 2001.

8 (u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
9 4643, prior to its repeal, or K.S.A. 2011 Supp. 21-6627, and amendments
10 thereto, for crimes committed on or after July 1, 2006, shall be placed on
11 parole for life and shall not be discharged from supervision by the ~~Kansas~~
12 ~~parole prisoner review~~ board. When the board orders the parole of an
13 inmate pursuant to this subsection, the board shall order as a condition of
14 parole that the inmate be electronically monitored for the duration of the
15 inmate's natural life.

16 (v) Whenever the ~~Kansas parole prisoner review~~ board or the court
17 orders a person to be electronically monitored, the board or court shall
18 order the person to reimburse the state for all or part of the cost of such
19 monitoring. In determining the amount and method of payment of such
20 sum, the board or court shall take account of the financial resources of the
21 person and the nature of the burden that the payment of such sum will
22 impose.

23 Sec. 25. K.S.A. 2011 Supp. 38-2346 is hereby amended to read as
24 follows: 38-2346. (a) Except as provided in subsection (b), each county or
25 district attorney may adopt a policy and establish guidelines for an
26 immediate intervention program by which a juvenile may avoid
27 prosecution. In addition to the county or district attorney adopting policies
28 and guidelines for the immediate intervention programs, the court, the
29 county or district attorney and the director of the intake and assessment
30 center, pursuant to a written agreement, may develop local programs to:

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

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

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

41 (4) Allow intake and assessment workers to direct the release of a
42 juvenile prior to a detention hearing after the completion of the intake and
43 assessment process if the juvenile intake and assessment worker has

1 reason to believe that if released the juvenile will appear for further
2 proceedings and is not dangerous to self or others.

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

7 (1) A violation of K.S.A. 8-1567, and amendments thereto, and the
8 juvenile: (A) Has previously participated in an immediate intervention
9 program instead of prosecution of a complaint alleging a violation of that
10 statute or an ordinance of a city in this state which prohibits the acts
11 prohibited by that statute; (B) has previously been adjudicated of a
12 violation of that statute or a violation of a law of another state or of a
13 political subdivision of this or any other state, which law prohibits the acts
14 prohibited by that statute; or (C) during the time of the alleged violation
15 was involved in a motor vehicle accident or collision resulting in personal
16 injury or death; or

17 (2) a violation of an off-grid crime, a severity level 1, 2 or 3 felony
18 for nondrug crimes ~~or~~ , a drug severity level 1 or 2 felony for drug crimes
19 *committed prior to July 1, 2012, or a drug severity level 1, 2 or 3 felony*
20 *for drug crimes committed on or after July 1, 2012.*

21 (c) An immediate intervention program may include a stipulation,
22 agreed to by the juvenile, the juvenile's attorney and the attorney general
23 or county or district attorney, of the facts upon which the charge is based
24 and a provision that if the juvenile fails to fulfill the terms of the specific
25 immediate intervention agreement and the immediate intervention
26 proceedings are resumed, the proceedings, including any proceedings on
27 appeal, shall be conducted on the record of the stipulation of facts.

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

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

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

38 Sec. 26. K.S.A. 2011 Supp. 38-2347 is hereby amended to read as
39 follows: 38-2347. (a) (1) Except as otherwise provided in this section, at
40 any time after commencement of proceedings under this code against a
41 juvenile and prior to the beginning of an evidentiary hearing at which the
42 court may enter a sentence as provided in K.S.A. 2011 Supp. 38-2356, and
43 amendments thereto, the county or district attorney or the county or district

1 attorney's designee may file a motion requesting that the court authorize
2 prosecution of the juvenile as an adult under the applicable criminal
3 statute. The juvenile shall be presumed to be a juvenile unless good cause
4 is shown to prosecute the juvenile as an adult.

5 (2) The alleged juvenile offender shall be presumed to be an adult if
6 the alleged juvenile offender was: (A) 14, 15, 16 or 17 years of age at the
7 time of the offense or offenses alleged in the complaint, if any such
8 offense: (i) If committed by an adult, would constitute an off-grid crime, a
9 person felony; *or a nondrug severity level 1 through 6 felony ~~or any~~*; (ii)
10 *committed prior to July 1, 2012, if committed by an adult prior to July 1,*
11 *2012, would constitute a drug severity level 1, 2 or 3 felony;* (iii)
12 *committed on or after July 1, 2012, if committed by an adult on or after*
13 *July 1, 2012, would constitute a drug severity level 1, 2, 3 or 4 felony;* or
14 ~~(ii)~~ (iv) was committed while in possession of a firearm; or (B) charged
15 with a felony or with more than one offense, one or more of which
16 constitutes a felony, after having been adjudicated or convicted in a
17 separate juvenile proceeding as having committed an offense which would
18 constitute a felony if committed by an adult and the adjudications or
19 convictions occurred prior to the date of the commission of the new act
20 charged and prior to the beginning of an evidentiary hearing at which the
21 court may enter a sentence as provided in K.S.A. 2011 Supp. 38-2356, and
22 amendments thereto. If the juvenile is presumed to be an adult, the burden
23 is on the juvenile to rebut the presumption by a preponderance of the
24 evidence.

25 (3) At any time after commencement of proceedings under this code
26 against a juvenile offender and prior to the beginning of an evidentiary
27 hearing at which the court may enter a sentence as provided in K.S.A.
28 2011 Supp. 38-2356, and amendments thereto, the county or district
29 attorney or the county or district attorney's designee may file a motion
30 requesting that the court designate the proceedings as an extended
31 jurisdiction juvenile prosecution.

32 (4) If the county or district attorney or the county or district attorney's
33 designee files a motion to designate the proceedings as an extended
34 jurisdiction juvenile prosecution and the juvenile was 14, 15, 16 or 17
35 years of age at the time of the offense or offenses alleged in the complaint
36 and: (A) charged with an offense: (i) If committed by an adult, would
37 constitute an off-grid crime, a person felony; *or a nondrug severity level 1*
38 *through 6 felony ~~or any~~*; (ii) *committed prior to July 1, 2012, if*
39 *committed by an adult prior to July 1, 2012, would constitute a drug*
40 *severity level 1, 2 or 3 felony;* (iii) *committed on or after July 1, 2012, if*
41 *committed by an adult on or after July 1, 2012, would constitute a drug*
42 *severity level 1, 2, 3 or 4 felony;* or ~~(ii)~~ (iv) was committed while in
43 possession of a firearm; or (B) charged with a felony or with more than,

1 one offense, one or more of which constitutes a felony, after having been
2 adjudicated or convicted in a separate juvenile proceeding as having
3 committed an act which would constitute a felony if committed by an adult
4 and the adjudications or convictions occurred prior to the date of the
5 commission of the new offense charged, the burden is on the juvenile to
6 rebut the designation of an extended jurisdiction juvenile prosecution by a
7 preponderance of the evidence. In all other motions requesting that the
8 court designate the proceedings as an extended jurisdiction juvenile
9 prosecution, the juvenile is presumed to be a juvenile. The burden of proof
10 is on the prosecutor to prove the juvenile should be designated as an
11 extended jurisdiction juvenile.

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

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

25 (2) At the hearing, the court shall inform the juvenile of the
26 following:

27 (A) The nature of the charges in the complaint;

28 (B) the right of the juvenile to be presumed innocent of each charge;

29 (C) the right to trial without unnecessary delay and to confront and
30 cross-examine witnesses appearing in support of the allegations of the
31 complaint;

32 (D) the right to subpoena witnesses;

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

34 (F) the sentencing alternatives the court may select as the result of the
35 juvenile being prosecuted under an extended jurisdiction juvenile
36 prosecution.

37 (d) If the juvenile fails to appear for hearing on the motion after
38 having been served with notice of the hearing, the court may hear and
39 determine the motion in the absence of the juvenile. If the court is unable
40 to obtain service of process and give notice of the hearing, the court may
41 hear and determine the motion in the absence of the alleged juvenile
42 offender after having given notice of the hearing at least once a week for
43 two consecutive weeks in the official county newspaper of the county

1 where the hearing will be held.

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

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

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

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

13 (4) the number of alleged offenses unadjudicated and pending against
14 the juvenile;

15 (5) the previous history of the juvenile, including whether the
16 juvenile had been adjudicated a juvenile offender under this code or the
17 Kansas juvenile justice code and, if so, whether the offenses were against
18 persons or property, and any other previous history of antisocial behavior
19 or patterns of physical violence;

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

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

26 (8) whether the interests of the juvenile or of the community would
27 be better served by criminal prosecution or extended jurisdiction juvenile
28 prosecution.

29 The insufficiency of evidence pertaining to any one or more of the
30 factors listed in this subsection, in and of itself, shall not be determinative
31 of the issue. Subject to the provisions of K.S.A. 2011 Supp. 38-2354, and
32 amendments thereto, written reports and other materials relating to the
33 juvenile's mental, physical, educational and social history may be
34 considered by the court.

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

41 (2) The court may designate the proceeding as an extended
42 jurisdiction juvenile prosecution upon completion of the hearing if the
43 juvenile has failed to rebut the presumption or the court finds from a

1 preponderance of the evidence that the juvenile should be prosecuted
2 under an extended jurisdiction juvenile prosecution.

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

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

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

20 (h) If the juvenile is convicted, the authorization for prosecution as an
21 adult shall attach and apply to any future prosecutions of the juvenile
22 which are or would be cognizable under this code. If the juvenile is not
23 convicted, the authorization for prosecution as an adult shall not attach and
24 shall not apply to future prosecutions of the juvenile which are or would be
25 cognizable under this code.

26 (i) If the juvenile is prosecuted as an adult under subsection (a)(2)
27 and is not convicted in adult court of an offense listed in subsection (a)(2)
28 but is convicted or adjudicated of a lesser included offense, the juvenile
29 shall be a juvenile offender and receive a sentence pursuant to K.S.A. 2011
30 Supp. 38-2361, and amendments thereto.

31 Sec. 27. K.S.A. 2011 Supp. 38-2369 is hereby amended to read as
32 follows: 38-2369. (a) For the purpose of committing juvenile offenders to
33 a juvenile correctional facility, the following placements shall be applied
34 by the judge in felony or misdemeanor cases. If used, the court shall
35 establish a specific term of commitment as specified in this subsection,
36 unless the judge conducts a departure hearing and finds substantial and
37 compelling reasons to impose a departure sentence as provided in K.S.A.
38 2011 Supp. 38-2371, and amendments thereto.

39 (1) *Violent Offenders.* (A) The violent offender I is defined as an
40 offender adjudicated as a juvenile offender for an offense which, if
41 committed by an adult, would constitute an off-grid felony. Offenders in
42 this category may be committed to a juvenile correctional facility for a
43 minimum term of 60 months and up to a maximum term of the offender

1 reaching the age of 22 years, six months. The aftercare term for this
2 offender is set at a minimum term of six months and up to a maximum
3 term of the offender reaching the age of 23 years.

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

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

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

17 (ii) *committed prior to July 1, 2012, which, if committed by an adult*
18 *prior to July 1, 2012, would constitute a drug severity level 1 or 2 felony;*
19 *or*

20 (iii) *committed on or after July 1, 2012, which, if committed by an*
21 *adult on or after July 1, 2012, would constitute a drug severity level 1, 2*
22 *or 3 felony.*

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

27 (B) The serious offender II is defined as an offender adjudicated as a
28 juvenile offender for an offense which, if committed by an adult, would
29 constitute a nondrug severity level 7, 8, 9 or 10 person felony with one
30 prior felony adjudication. Offenders in this category may be committed to
31 a juvenile correctional facility for a minimum term of nine months and up
32 to a maximum term of 18 months. The aftercare term for this offender is
33 set at a minimum term of six months and up to a maximum term of 24
34 months.

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

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

40 (ii) *committed prior to July 1, 2012, which, if committed by an adult*
41 *prior to July 1, 2012, would constitute one present drug severity level 3*
42 ~~drug~~ *felony adjudication and two prior felony adjudications; or*

43 (iii) *committed on or after July 1, 2012, which, if committed by an*

1 *adult on or after July 1, 2012, would constitute one present drug severity*
2 *level 4 felony adjudication and two prior felony adjudications.*

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

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

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

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

16 (iii) *committed prior to July 1, 2012, which, if committed by an adult*
17 *prior to July 1, 2012, would constitute* one present *drug severity level 3*
18 *~~drug~~ felony adjudication and either two prior misdemeanor adjudications*
19 *or one prior person or nonperson felony adjudication; ~~or~~*

20 (iv) *committed prior to July 1, 2012, which, if committed by an adult*
21 *prior to July 1, 2012, would constitute* one present *severity level 3 drug*
22 *felony adjudication and two prior drug severity level 4 ~~drug~~ or 5*
23 *adjudications;*

24 (v) *committed on or after July 1, 2012, which, if committed by an*
25 *adult on or after July 1, 2012, would constitute one present drug severity*
26 *level 4 felony adjudication and either two prior misdemeanor*
27 *adjudications or one prior person or nonperson felony adjudication; or*

28 (vi) *committed on or after July 1, 2012, which, if committed by an*
29 *adult on or after July 1, 2012, would constitute one present drug severity*
30 *level 4 felony adjudication and two prior drug severity level 4 or 5*
31 *adjudications.*

32 Offenders in this category may be committed to a juvenile correctional
33 facility for a minimum term of six months and up to a maximum term of
34 18 months. The aftercare term for this offender is set at a minimum term of
35 six months and up to a maximum term of 12 months.

36 (C) The chronic offender III, escalating misdemeanant is defined as
37 an offender adjudicated as a juvenile offender for an offense ~~which, if~~
38 ~~committed by an adult, would constitute:~~

39 (i) *Which, if committed by an adult, would constitute* one present
40 *misdemeanor adjudication and either two prior misdemeanor adjudications*
41 *or one prior person or nonperson felony adjudication and two placement*
42 *failures;*

43 (ii) *which, if committed by an adult, would constitute* one present

1 misdemeanor adjudication and two prior *drug* severity level 4 ~~drug~~ or 5
2 felony adjudications and two placement failures;

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

7 (iv) *which, if committed by an adult, would constitute one present*
8 *drug* severity level 4 ~~drug~~ felony adjudication and two prior *drug* severity
9 level 4 ~~drug~~ or 5 felony adjudications and two placement failures;

10 (v) *committed on or after July 1, 2012, which, if committed by an*
11 *adult on or after July 1, 2012, would constitute one present drug severity*
12 *level 5 felony adjudication and either two prior misdemeanor*
13 *adjudications or one prior person or nonperson felony adjudication and*
14 *two placement failures; or*

15 (vi) *committed on or after July 1, 2012, which, if committed by an*
16 *adult on or after July 1, 2012, would constitute one present drug severity*
17 *level 5 felony adjudication and two prior drug severity level 4 or 5*
18 *adjudications and two placement failures.*

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

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

25 (A) Subject to the limitations in subsection (a) of K.S.A. 2011 Supp.
26 38-2366, and amendments thereto, commit the offender directly to a
27 juvenile correctional facility for a minimum term of three months and up
28 to a maximum term of six months. The aftercare term for this offender
29 shall be a minimum of two months and a maximum of six months, or the
30 length of the aftercare originally ordered, which ever is longer.

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

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

34 (ii) Order the offender to serve a period of sanctions pursuant to
35 subsection (f) of K.S.A. 2011 Supp. 38-2361, and amendments thereto.

36 (iii) Revoke or restrict the juvenile's driving privileges as described in
37 subsection (c) of K.S.A. 2011 Supp. 38-2361, and amendments thereto.

38 (C) Discharge the offender from the custody of the commissioner,
39 release the commissioner from further responsibilities in the case and enter
40 any other appropriate orders.

41 (b) As used in this section: (1) "Placement failure" means a juvenile
42 offender in the custody of the juvenile justice authority has significantly
43 failed the terms of conditional release or has been placed out-of-home in a

1 community placement accredited by the commissioner and has
2 significantly violated the terms of that placement or violated the terms of
3 probation.

4 (2) "Adjudication" includes out-of-state juvenile adjudications. An
5 out-of-state offense, which if committed by an adult would constitute the
6 commission of a felony or misdemeanor, shall be classified as either a
7 felony or a misdemeanor according to the adjudicating jurisdiction. If an
8 offense which if committed by an adult would constitute the commission
9 of a felony is a felony in another state, it will be deemed a felony in
10 Kansas. The state of Kansas shall classify the offense, which if committed
11 by an adult would constitute the commission of a felony or misdemeanor,
12 as person or nonperson. In designating such offense as person or
13 nonperson, reference to comparable offenses shall be made. If the state of
14 Kansas does not have a comparable offense, the out-of-state adjudication
15 shall be classified as a nonperson offense.

16 (c) All appropriate community placement options shall have been
17 exhausted before a chronic offender III, escalating misdemeanant shall be
18 placed in a juvenile correctional facility. A court finding shall be made
19 acknowledging that appropriate community placement options have been
20 pursued and no such option is appropriate.

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

25 Sec. 28. K.S.A. 2011 Supp. 38-2374 is hereby amended to read as
26 follows: 38-2374. (a) When a juvenile offender has satisfactorily
27 completed the term of incarceration at the juvenile correctional facility to
28 which the juvenile offender was committed or placed, the person in charge
29 of the juvenile correctional facility shall have authority to release the
30 juvenile offender under appropriate conditions and for a specified period
31 of time. Prior to release from a juvenile correctional facility, the
32 commissioner shall consider any recommendations made by the juvenile
33 offender's community case management officer.

34 (b) At least 21 days prior to releasing a juvenile offender as provided
35 in subsection (a), the person in charge of the juvenile correctional facility
36 shall notify the committing court of the date and conditions upon which it
37 is proposed the juvenile offender is to be released. The person in charge of
38 the juvenile correctional facility shall notify the school district in which
39 the juvenile offender will be residing if the juvenile is still required to
40 attend a school. Such notification to the school shall include the name of
41 the juvenile offender, address upon release, contact person with whom the
42 juvenile offender will be residing upon release, anticipated date of release,
43 anticipated date of enrollment in school, name and phone number of case

1 worker, crime or crimes of adjudication if not confidential based upon
2 other statutes, conditions of release and any other information the
3 commissioner deems appropriate. To ensure the educational success of the
4 student, the community case manager or a representative from the
5 residential facility where the juvenile offender will reside shall contact the
6 principal of the receiving school in a timely manner to review the juvenile
7 offender's case. If such juvenile offender's offense would have constituted
8 an off-grid crime, a nondrug felony crime ranked at severity level 1, 2, 3, 4
9 or 5, or a drug felony crime ranked at severity level 1, 2 or 3, on or after
10 July 1, 1993, or a drug felony crime ranked at severity level 4 on or after
11 July 1, 2012, if committed by an adult, the person in charge of the juvenile
12 correctional facility shall notify the county or district attorney of the
13 county where the offender was adjudicated a juvenile offender of the date
14 and conditions upon which it is proposed the juvenile offender is to be
15 released. The county or district attorney shall give written notice at least
16 seven days prior to the release of the juvenile offender to: (1) Any victim
17 of the juvenile offender's crime who is alive and whose address is known
18 to the court or, if the victim is deceased, to the victim's family if the
19 family's address is known to the court; and (2) the local law enforcement
20 agency. Failure to notify pursuant to this section shall not be a reason to
21 postpone a release. Nothing in this section shall create a cause of action
22 against the state or county or an employee of the state or county acting
23 within the scope of the employee's employment as a result of the failure to
24 notify pursuant to this section.

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

28 (d) If, during the conditional release, the juvenile offender is not
29 returning to the county from which committed, the person in charge of the
30 juvenile correctional facility shall also give notice to the court of the
31 county in which the juvenile offender is to be residing.

32 (e) To assure compliance with conditional release from a juvenile
33 correctional facility, the commissioner shall have the authority to prescribe
34 the manner in which compliance with the conditions shall be supervised.
35 When requested by the commissioner, the appropriate court may assist in
36 supervising compliance with the conditions of release during the term of
37 the conditional release. The commissioner may require the parent of the
38 juvenile offender to cooperate and participate with the conditional release.

39 (f) For acts committed before July 1, 1999, the juvenile justice
40 authority shall notify at least 45 days prior to the discharge of the juvenile
41 offender the county or district attorney of the county where the offender
42 was adjudicated a juvenile offender of the release of such juvenile
43 offender, if such juvenile offender's offense would have constituted a class

1 A, B or C felony before July 1, 1993, or an off-grid crime, a nondrug
2 crime ranked at severity level 1, 2, 3, 4 or 5 or a drug crime ranked at
3 severity level 1, 2 or 3, on or after July 1, 1993, *or a drug crime ranked at*
4 *severity level 4 on or after July 1, 2012*, if committed by an adult. The
5 county or district attorney shall give written notice at least 30 days prior to
6 the release of the juvenile offender to: (1) Any victim of the juvenile
7 offender's crime who is alive and whose address is known to the court or,
8 if the victim is deceased, to the victim's family if the family's address is
9 known to the court; and (2) the local law enforcement agency. Failure to
10 notify pursuant to this section shall not be a reason to postpone a release.
11 Nothing in this section shall create a cause of action against the state or
12 county or an employee of the state or county acting within the scope of the
13 employee's employment as a result of the failure to notify pursuant to this
14 section.

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

17 Sec. 29. K.S.A. 2011 Supp. 38-2376 is hereby amended to read as
18 follows: 38-2376. (a) When a juvenile offender has reached the age of 23
19 years, has been convicted as an adult while serving a term of incarceration
20 at a juvenile correctional facility, or has completed the prescribed terms of
21 incarceration at a juvenile correctional facility, together with any
22 conditional release following the program, the juvenile shall be discharged
23 by the commissioner from any further obligation under the commitment
24 unless the juvenile was sentenced pursuant to an extended jurisdiction
25 juvenile prosecution upon court order and the commissioner transfers the
26 juvenile to the custody of the secretary of corrections. The discharge shall
27 operate as a full and complete release from any obligations imposed on the
28 juvenile offender arising from the offense for which the juvenile offender
29 was committed.

30 (b) At least 45 days prior to the discharge of the juvenile offender, the
31 juvenile justice authority shall notify the court and the county or district
32 attorney of the county where the offender was adjudicated a juvenile
33 offender of the pending discharge of such juvenile offender, the offense
34 would have constituted a class A, B or C felony before July 1, 1993, or an
35 off-grid crime, a nondrug crime ranked at severity level 1, 2, 3, 4 or 5 or a
36 drug crime ranked at severity level 1, 2 or 3, on or after July 1, 1993, *or a*
37 *drug crime ranked at severity level 4 on or after July 1, 2012*, if committed
38 by an adult. The county or district attorney shall give written notice at least
39 30 days prior to the discharge of the juvenile offender pursuant to K.S.A.
40 2011 Supp. 38-2379, and amendments thereto.

41 Sec. 30. K.S.A. 2011 Supp. 75-5291 is hereby amended to read as
42 follows: 75-5291. (a) (1) The secretary of corrections may make grants to
43 counties for the development, implementation, operation and improvement

1 of community correctional services that address the criminogenic needs of
2 felony offenders including, but not limited to, adult intensive supervision,
3 substance abuse and mental health services, employment and residential
4 services, and facilities for the detention or confinement, care or treatment
5 of offenders as provided in this section except that no community
6 corrections funds shall be expended by the secretary for the purpose of
7 establishing or operating a conservation camp as provided by K.S.A. 75-
8 52,127, and amendments thereto.

9 (2) Except as otherwise provided, placement of offenders in a
10 community correctional services ~~programs~~ *program* by the court shall be
11 limited to placement of adult offenders, convicted of a felony offense:

12 (A) Whose offense is classified in grid blocks 5-H, 5-I or 6-G of the
13 sentencing guidelines grid for nondrug crimes ~~or~~, in grid blocks 3-C, 3-D,
14 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes
15 *for crimes committed prior to July 1, 2012, or in grid blocks 4-C, 4-D, 4-*
16 *E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes*
17 *for crimes committed on or after July 1, 2012.* In addition, the court may
18 place in a community correctional services program adult offenders,
19 convicted of a felony offense, whose offense is classified in grid blocks 6-
20 H, 6-I, 7-C, 7-D, 7-E, 7-F, 7-G, 7-H or 7-I of the sentencing guidelines
21 grid for nondrug crimes;

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

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

30 (D) any offender for whom a violation of conditions of release or
31 assignment or a nonprison sanction has been established as provided in
32 K.S.A. 22-3716, and amendments thereto, prior to revocation resulting in
33 the offender being required to serve any time for the sentence imposed or
34 which might originally have been imposed in a state facility in the custody
35 of the secretary of corrections;

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

41 (F) placed in a community correctional services ~~programs~~ *program* as
42 a condition of supervision following the successful completion of a
43 conservation camp program; ~~or~~

1 (G) who ~~has~~ have been sentenced to community corrections
2 supervision pursuant to K.S.A. 21-4729, prior to its repeal, or K.S.A. 2011
3 Supp. 21-6824, and amendments thereto; or

4 (H) who have been placed in a community correctional services
5 program for supervision by the court pursuant to K.S.A. 8-1567, and
6 amendments thereto.

7 (3) Notwithstanding any law to the contrary and subject to the
8 availability of funding therefor, adult offenders sentenced to community
9 supervision in Johnson county for felony crimes that occurred on or after
10 July 1, 2002, but before July 1, 2013, shall be placed under court services
11 or community corrections supervision based upon court rules issued by the
12 chief judge of the 10th judicial district. The provisions contained in this
13 subsection shall not apply to offenders transferred by the assigned agency
14 to an agency located outside of Johnson county. The provisions of this
15 paragraph shall expire on July 1, 2013.

16 (4) Nothing in this act shall prohibit a community correctional
17 services program from providing services to juvenile offenders upon
18 approval by the local community corrections advisory board. Grants from
19 community corrections funds administered by the secretary of corrections
20 shall not be expended for such services.

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

31 (b) (1) In order to establish a mechanism for community correctional
32 services to participate in the department of corrections annual budget
33 planning process, the secretary of corrections shall establish a community
34 corrections advisory committee to identify new or enhanced correctional
35 or treatment interventions designed to divert offenders from prison.

36 (2) The secretary shall appoint one member from the southeast
37 community corrections region, one member from the northeast community
38 corrections region, one member from the central community corrections
39 region and one member from the western community corrections region.
40 The deputy secretary of community and field services shall designate two
41 members from the state at large. The secretary shall have final
42 appointment approval of the members designated by the deputy secretary.
43 The committee shall reflect the diversity of community correctional

1 services with respect to geographical location and average daily population
2 of offenders under supervision.

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

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

- 9 (A) Efficiencies in the delivery of field supervision services;
10 (B) effectiveness and enhancement of existing interventions;
11 (C) identification of new interventions; and
12 (D) statewide performance indicators.

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

- 15 (A) Goals and measurable objectives;
16 (B) projected costs;
17 (C) the impact on public safety; and
18 (D) the evaluation process.

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

24 Sec. 31. K.S.A. 2011 Supp. 75-52,144 is hereby amended to read as
25 follows: 75-52,144. (a) Drug abuse treatment programs certified in
26 accordance with subsection (b) shall provide:

27 (1) Presentence drug abuse assessments of any person who is
28 convicted of a felony violation of K.S.A. 65-4160 or 65-4162, prior to
29 such ~~sections~~ *section's* repeal ~~or~~, K.S.A. 2010 Supp. 21-36a06, *prior to its*
30 *transfer; or K.S.A. 2011 Supp. 21-5706*, and amendments thereto, and
31 meets the requirements of K.S.A. 21-4729, prior to its repeal, or
32 *subsection (a) of K.S.A. 2011 Supp. 21-6824*, and amendments thereto;

33 (2) treatment of all persons who are convicted of a felony violation of
34 K.S.A. 65-4160 or 65-4162, prior to such ~~sections~~ *section's* repeal ~~or~~,
35 K.S.A. 2010 Supp. 21-36a06, *prior to its transfer; or K.S.A. 2011 Supp.*
36 *21-5706*, and amendments thereto, meet the requirements of K.S.A. 21-
37 4729, prior to its repeal, or K.S.A. 2011 Supp. 21-6824, and amendments
38 thereto, and whose sentence requires completion of a certified drug abuse
39 treatment program, as provided in this section;

40 (3) one or more treatment options in the continuum of services
41 needed to reach recovery: Detoxification, rehabilitation, continuing care
42 and aftercare, and relapse prevention;

43 (4) treatment options to incorporate family and auxiliary support

1 services; and

2 (5) treatment options for alcohol abuse when indicated by the
3 assessment of the offender or required by the court.

4 (b) The presentence criminal risk-need assessment shall be conducted
5 by a court services officer or a community corrections officer. The
6 presentence drug abuse treatment program placement assessment shall be
7 conducted by a drug abuse treatment program certified in accordance with
8 the provisions of this subsection to provide assessment and treatment
9 services. A drug abuse treatment program shall be certified by the
10 secretary of corrections. The secretary may establish qualifications for the
11 certification of programs, which may include requirements for supervision
12 and monitoring of clients; fee reimbursement procedures; handling of
13 conflicts of interest; delivery of services to clients unable to pay; and other
14 matters relating to quality and delivery of services by the program. Drug
15 abuse treatment may include community based and faith based programs.
16 The certification shall be for a four-year period. Recertification of a
17 program shall be by the secretary. To be eligible for certification under this
18 subsection, the secretary shall determine that a drug abuse treatment
19 program: (1) Meets the qualifications established by the secretary; (2) is
20 capable of providing the assessments, supervision and monitoring required
21 under subsection (a); (3) has employed or contracted with certified
22 treatment providers; and (4) meets any other functions and duties specified
23 by law.

24 (c) Any treatment provider who is employed or has contracted with a
25 certified drug abuse treatment program who provides services to offenders
26 shall be certified by the secretary of corrections. The secretary shall
27 require education and training which shall include, but not be limited to,
28 case management and cognitive behavior training. The duties of providers
29 who prepare the presentence drug abuse assessment may also include
30 appearing at sentencing and probation hearings in accordance with the
31 orders of the court, monitoring offenders in the treatment programs,
32 notifying the probation department and the court of any offender failing to
33 meet the conditions of probation or referrals to treatment, appearing at
34 revocation hearings as may be required and providing assistance and data
35 reporting and program evaluation.

36 (d) The cost for all drug abuse assessments ~~and performed pursuant~~
37 *to subsection (a)(1), and the cost for all certified drug abuse treatment*
38 *programs for any person who meets the requirements of K.S.A. 2011 Supp.*
39 *21-6824, and amendments thereto,* shall be paid by the Kansas sentencing
40 commission from funds appropriated for such purpose. The Kansas
41 sentencing commission shall contract for payment for such services with
42 the supervising agency. The sentencing court shall determine the extent, if
43 any, that such person is able to pay for such assessment and treatment.

1 Such payments shall be used by the supervising agency to offset costs to
2 the state. If such financial obligations are not met or cannot be met, the
3 sentencing court shall be notified for the purpose of collection or review
4 and further action on the offender's sentence.

5 (e) The community corrections staff shall work with the substance
6 abuse treatment staff to ensure effective supervision and monitoring of the
7 offender.

8 (f) The secretary of corrections is hereby authorized to adopt rules
9 and regulations to carry out the provisions of this section.

10 Sec. 32. K.S.A. 2011 Supp. 21-5701, 21-5703, 21-5705, 21-5706, 21-
11 5708, 21-5709, 21-5710, 21-5713, 21-5714, 21-5716, 21-6604, 21-6608,
12 21-6611, 21-6614, 21-6614a, 21-6614b, 21-6614c, 21-6805, 21-6808, 21-
13 6810, 21-6821, 21-6824, 22-2802, 22-2908, 22-3412, 22-3604, 22-3717,
14 38-2346, 38-2347, 38-2369, 38-2374, 38-2376, 75-5291, 75-5291b and
15 75-52,144 are hereby repealed.

16 Sec. 33. This act shall take effect and be in force from and after its
17 publication in the statute book.