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

New Section 1. (a) Endangerment is recklessly exposing another person to a danger of great bodily harm or death.
(b) Endangerment is a class A person misdemeanor.
(c) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 2. K.S.A. 2011 Supp. 21-5109 is hereby amended to read as follows: 21-5109. (a) When the same conduct of a defendant may establish the commission of more than one crime under the laws of this state, the defendant may be prosecuted for each of such crimes. Each of such crimes may be alleged as a separate count in a single complaint, information or indictment.
(b) Upon prosecution for a crime, the defendant may be convicted of either the crime charged or a lesser included crime, but not both. A lesser included crime is:
(1) A lesser degree of the same crime;
(2) a crime where all elements of the lesser crime are identical to some of the elements of the crime charged;
(3) an attempt to commit the crime charged; or
(4) an attempt to commit a crime defined under paragraph (1) or (2).

(c) Whenever charges are filed against a person, accusing the person of a crime which includes another crime of which the person has been convicted, the conviction of the lesser included crime shall not bar prosecution or conviction of the crime charged if the crime charged was not consummated at the time of conviction of the lesser included crime, but the conviction of the lesser included crime shall be annulled upon the filing of such charges. Evidence of the person's plea or any admission or statement made by the person in connection therewith in any of the proceedings which resulted in the person's conviction of the lesser included crime shall not be admissible at the trial of the crime charged. If the person is convicted of the crime charged, or of a lesser included crime, the person so convicted shall receive credit against any prison sentence imposed or fine to be paid for the period of confinement actually served or the amount of any fine actually paid under the sentence imposed for the annulled conviction.

(d) Unless otherwise provided by law, when crimes differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct, the defendant:

(1) May not be convicted of the two crimes based upon the same conduct; and

(2) shall be sentenced according to the terms of the more specific crime.

(e) A defendant may not be convicted of identical offenses based upon the same conduct. The prosecution may choose which such offense to charge and, upon conviction, the defendant shall be sentenced according to the terms of that offense.

Sec. 3. K.S.A. 2011 Supp. 21-5302 is hereby amended to read as follows: 21-5302. (a) A conspiracy is an agreement with another person to commit a crime or to assist in committing a crime. No person may be convicted of a conspiracy unless an overt act in furtherance of such conspiracy is alleged and proved to have been committed by such person or by a co-conspirator.

(b) It is immaterial to the criminal liability of a person charged with conspiracy that any other person with whom the defendant conspired lacked the actual intent to commit the underlying crime provided that the defendant believed the other person did have the actual intent to commit the underlying crime.

(c) It shall be a defense to a charge of conspiracy that the accused voluntarily and in good faith withdrew from the conspiracy, and communicated the fact of such withdrawal to one or more of the accused
person's co-conspirators, before any overt act in furtherance of the
conspiracy was committed by the accused or by a co-conspirator.

(c)(1) Conspiracy to commit an off-grid felony shall be ranked
at nondrug severity level 2. Conspiracy to commit any other nondrug
felony shall be ranked on the nondrug scale at two severity levels below
the appropriate level for the underlying or completed crime. The lowest
severity level for conspiracy to commit a nondrug felony shall be a
severity level 10.

(2) The provisions of this subsection shall not apply to a violation of
conspiracy to commit the crime of:

(A) Aggravated human trafficking, as defined in subsection (b) of
K.S.A. 2011 Supp. 21-5426, and amendments thereto, if the offender is
18 years of age or older and the victim is less than 14 years of age;

(B) terrorism as defined in K.S.A. 2011 Supp. 21-5421, and
amendments thereto;

(C) illegal use of weapons of mass destruction as defined in K.S.A.
2011 Supp. 21-5422, and amendments thereto;

(D) rape, as defined in subsection (a)(3) of K.S.A. 2011 Supp. 21-
5503, and amendments thereto, if the offender is 18 years of age or
older;

(E) aggravated indecent liberties with a child, as defined in
subsection (b)(3) of K.S.A. 2011 Supp. 21-5506, and amendments
thereto, if the offender is 18 years of age or older;

(F) aggravated criminal sodomy, as defined in subsection (b)(1) or
(b)(2) of K.S.A. 2011 Supp. 21-5504, and amendments thereto, if the
offender is 18 years of age or older;

(G) promoting prostitution, as defined in K.S.A. 2011 Supp. 21-
6420, and amendments thereto, if the offender is 18 years of age or older
and the prostitute is less than 14 years of age; or

(H) sexual exploitation of a child, as defined in subsection (a)(1) or
(a)(4) of K.S.A. 2011 Supp. 21-5510, and amendments thereto, if the
offender is 18 years of age or older and the child is less than 14 years of
age.

(c)(e) Conspiracy to commit a felony which prescribes a sentence
on the drug grid shall reduce the prison term prescribed in the drug grid
block for an underlying or completed crime by six months.

(c)(f) A conspiracy to commit a misdemeanor is a class C
misdemeanor.

Sec. 4. K.S.A. 2011 Supp. 21-5402 is hereby amended to read as
follows: 21-5402. (a) Murder in the first degree is the killing of a human
being committed:

(1) Intentionally, and with premeditation; or

(2) in the commission of, attempt to commit, or flight from any
Inherently dangerous felony.

(b) Murder in the first degree is an off-grid person felony.

(c) As used in this section, an "inherently dangerous felony" means:

(1) Any of the following felonies, whether such felony is so distinct from the homicide alleged to be a violation of subsection (a)(2) as not to be an ingredient of the homicide alleged to be a violation of subsection (a)(2):

(A) Kidnapping, as defined in subsection (a) of K.S.A. 2011 Supp. 21-5408, and amendments thereto;
(B) Aggravated kidnapping, as defined in subsection (b) of K.S.A. 2011 Supp. 21-5408, and amendments thereto;
(C) Robbery, as defined in subsection (a) of K.S.A. 2011 Supp. 21-5420, and amendments thereto;
(D) Aggravated robbery, as defined in subsection (b) of K.S.A. 2011 Supp. 21-5420, and amendments thereto;
(E) Rape, as defined in K.S.A. 2011 Supp. 21-5503, and amendments thereto;
(F) Aggravated criminal sodomy, as defined in subsection (b) of K.S.A. 2011 Supp. 21-5504, and amendments thereto;
(G) Abuse of a child, as defined in K.S.A. 2011 Supp. 21-5602, and amendments thereto;
(H) Felony theft of property as defined in subsection (a)(1) or (a)(3) of K.S.A. 2011 Supp. 21-5801, and amendments thereto;
(I) Burglary, as defined in subsection (a) of K.S.A. 2011 Supp. 21-5807, and amendments thereto;
(J) Aggravated burglary, as defined in subsection (b) of K.S.A. 2011 Supp. 21-5807, and amendments thereto;
(K) Arson, as defined in subsection (a) of K.S.A. 2011 Supp. 21-5812, and amendments thereto;
(L) Aggravated arson, as defined in subsection (b) of K.S.A. 2011 Supp. 21-5812, and amendments thereto;
(M) Treason, as defined in K.S.A. 2011 Supp. 21-5901, and amendments thereto;
(N) Any felony offense as provided in K.S.A. 2011 Supp. 21-5703, 21-5705 or 21-5706, and amendments thereto;
(O) Any felony offense as provided in subsection (a) or (b) of K.S.A. 2011 Supp. 21-6308, and amendments thereto;
(P) Endangering the food supply, as defined in subsection (a) of K.S.A. 2011 Supp. 21-6317, and amendments thereto;
(Q) Aggravated endangering the food supply, as defined in subsection (b) of K.S.A. 2011 Supp. 21-6317, and amendments thereto;
(R) Fleeing or attempting to elude a police officer, as defined in...
subsection (b) of K.S.A. 8-1568, and amendments thereto; or
(S) aggravated endangering a child, as defined in subsection (b)(1)
of K.S.A. 2011 Supp. 21-5601, and amendments thereto;
(T) abandonment of a child, as defined in subsection (a) of K.S.A.
2011 Supp. 21-5605, and amendments thereto; or
(U) aggravated abandonment of a child, as defined in subsection (b)
of K.S.A. 2011 Supp. 21-5605, and amendments thereto; and
(2) any of the following felonies, only when such felony is so
distinct from the homicide alleged to be a violation of subsection (a)(2)
as to not be an ingredient of the homicide alleged to be a violation of
subsection (a)(2):
(A) Murder in the first degree, as defined in subsection (a)(1);
(B) murder in the second degree, as defined in subsection (a)(1) of
K.S.A. 2011 Supp. 21-5403, and amendments thereto;
(C) voluntary manslaughter, as defined in subsection (a)(1) of
K.S.A. 2011 Supp. 21-5404, and amendments thereto;
(D) aggravated assault, as defined in subsection (b) of K.S.A. 2011
Supp. 21-5412, and amendments thereto;
(E) aggravated assault of a law enforcement officer, as defined in
subsection (d) of K.S.A. 2011 Supp. 21-5412, and amendments thereto;
(F) aggravated battery, as defined in subsection (b)(1) of K.S.A.
2011 Supp. 21-5413, and amendments thereto; or
(G) aggravated battery against a law enforcement officer, as
defined in subsection (d) of K.S.A. 2011 Supp. 21-5413, and
amendments thereto.
Sec. 5. K.S.A. 2011 Supp. 21-5426 is hereby amended to read as
follows: 21-5426. (a) Human trafficking is:
(1) The intentional recruitment, harboring, transportation,
provision or obtaining of a person for labor or services, through the use
of force, fraud or coercion for the purpose of subjecting the person to
involuntary servitude or forced labor;
(2) intentionally benefitting financially or by receiving anything of
value from participation in a venture that the person has reason to know
has engaged in acts set forth in subsection (a)(1);
(3) knowingly coercing employment by obtaining or maintaining
labor or services that are performed or provided by another person
through any of the following:
(A) Causing or threatening to cause physical injury to any person;
(B) physically restraining or threatening to physically restrain
another person;
(C) abusing or threatening to abuse the law or legal process;
(D) threatening to withhold food, lodging or clothing; or
(E) knowingly destroying, concealing, removing, confiscating or
possessing any actual or purported government identification document of another person; or

(4) knowingly holding another person in a condition of peonage in satisfaction of a debt owed the person who is holding such other person.

(b) Aggravated human trafficking is:

(1) human trafficking, as defined in subsection (a):

(A) involving the commission or attempted commission of

(B) kidnapping, as defined in subsection (a) of K.S.A. 2011 Supp. 21-5408, and amendments thereto;

(2) committed in whole or in part for the purpose of the sexual gratification of the defendant or another;

(3) resulting in a death; or

(4) involving recruiting, harboring, transporting, providing or obtaining, by any means, a person under 18 years of age knowing that the person, with or without force, fraud, threat or coercion, will be used to engage in forced labor, involuntary servitude or sexual gratification of the defendant or another.

(c) (1) Human trafficking is a severity level 2, person felony.

(2) Aggravated human trafficking is a severity level 1, person felony, except as provided in subsection (c)(3).

(3) Aggravated human trafficking or attempt, conspiracy or criminal solicitation to commit aggravated human trafficking is an off-grid person felony, when the offender is 18 years of age or older and the victim is less than 14 years of age.

(d) If the offender is 18 years of age or older and the victim is less than 14 years of age, the provisions of:

(1) subsection (c) of K.S.A. 2011 Supp. 21-5301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of aggravated human trafficking pursuant to this section;

(2) subsection (c) of K.S.A. 2011 Supp. 21-5302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated human trafficking pursuant to this section; and

(3) subsection (d) of K.S.A. 2011 Supp. 21-5303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of aggravated human trafficking pursuant to this section.

(e) The provisions of this section shall not apply to the use of the labor of any person incarcerated in a state or county correctional facility or city jail.

(f) As used in this section, "peonage" means a condition of involuntary servitude in which the victim is forced to work for another person by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process.

Sec. 6. K.S.A. 2011 Supp. 21-5604 is hereby amended to read as
follows: 21-5604. (a) Incest is marriage to or engaging in otherwise lawful sexual intercourse or sodomy, as defined in K.S.A. 2011 Supp. 21-5501, and amendments thereto, with a person who is 18 or more years of age and who is known to the offender to be related to the offender as any of the following biological relatives: Parent, child, grandparent of any degree, grandchild of any degree, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

(b) Aggravated incest is:

(1) Marriage to a person who is under 18 years of age and who is known to the offender to be related to the offender as any of the following biological, step or adoptive relatives: Child, grandchild of any degree, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece; or

(2) engaging in the following acts with a person who is 16 or more years of age but under 18 years of age and who is known to the offender to be related to the offender as any of the following biological, step or adoptive relatives: Child, grandchild of any degree, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece:

(A) Otherwise lawful sexual intercourse or sodomy as defined by K.S.A. 2011 Supp. 21-5501, and amendments thereto; or

(B) any lewd fondling, as described in subsection (a)(1) of K.S.A. 2011 Supp. 21-5506, and amendments thereto.

(c) (1) Incest is a severity level l0, person felony.

(2) Aggravated incest as defined in:

(A) Subsection (b)(2)(A) is a:

(i) Severity level 5, person felony, except as provided in subsection (c)(2)(A)(ii); and

(ii) severity level 3, person felony if the victim is the offender's biological, step or adoptive child; and

(B) subsection (b)(1) or (b)(2)(B) is a severity level 7, person felony.

Section 1. {Sec. 7.} K.S.A. 2011 Supp. 21-5701 is hereby amended to read as follows: 21-5701. As used in K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto:

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

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

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

(B) which has a stimulant, depressant or hallucinogenic effect on the
central nervous system substantially similar to the stimulant, depressant or
hallucinogenic effect on the central nervous system of a controlled
substance included in the schedules designated in K.S.A. 65-4105 or 65-
4107, and amendments thereto; or
(C) with respect to a particular individual, which the individual
represents or intends to have a stimulant, depressant or hallucinogenic
effect on the central nervous system substantially similar to the stimulant,
depressant or hallucinogenic effect on the central nervous system of a
controlled substance included in the schedules designated in K.S.A. 65-
4105 or 65-4107, and amendments thereto.
(2) "Controlled substance analog" does not include:
(A) A controlled substance;
(B) a substance for which there is an approved new drug application;
or
(C) a substance with respect to which an exemption is in effect for
investigational use by a particular person under section 505 of the federal
food, drug, and cosmetic act (21 U.S.C. 355) to the extent conduct with
respect to the substance is permitted by the exemption.
(c) "Cultivate" means the planting or promotion of growth of five or
more plants which contain or can produce controlled substances.
(d) "Distribute" means the actual, constructive or attempted transfer
from one person to another of some item whether or not there is an agency
relationship. "Distribute" includes, but is not limited to, sale, offer for sale
or any act that causes some item to be transferred from one person to
another. "Distribute" does not include acts of administering, dispensing or
prescribing a controlled substance as authorized by the pharmacy act of the
state of Kansas, the uniform controlled substances act, or otherwise
authorized by law.
(e) "Drug" means:
(1) Substances recognized as drugs in the official United States
pharmacopoeia, official homeopathic pharmacopoeia of the United States
or official national formulary or any supplement to any of them;
(2) substances intended for use in the diagnosis, cure, mitigation,
treatment or prevention of disease in man or animals;
(3) substances, other than food, intended to affect the structure or any
function of the body of man or animals; and
(4) substances intended for use as a component of any article
specified in paragraph (1), (2) or (3). It does not include devices or their
components, parts or accessories.
(f) "Drug paraphernalia" means all equipment and materials of any
kind which are used, or primarily intended or designed for use in planting,
propagating, cultivating, growing, harvesting, manufacturing,
compounding, converting, producing, processing, preparing, testing,
analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance and in violation of this act. "Drug paraphernalia" shall include, but is not limited to:

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

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

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

(4) Testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(5) Scales and balances used or intended for use in weighing or measuring controlled substances;

(6) Diluents and adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances;

(7) Separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana;

(8) Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances;

(9) Capsules, balloons, envelopes, bags and other containers used or intended for use in packaging small quantities of controlled substances;

(10) Containers and other objects used or intended for use in storing or concealing controlled substances;

(11) Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body;

(12) Objects used or primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into the human body, such as:

(A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

(B) Water pipes, bongs or smoking pipes designed to draw smoke through water or another cooling device;

(C) Carburetion pipes, glass or other heat resistant tubes or any other device used or intended to be used, designed to be used to cause vaporization of a controlled substance for inhalation;

(D) Smoking and carburetion masks;

(E) Roach clips, objects used to hold burning material, such as a
marijuana cigarette, that has become too small or too short to be held in
the hand;
(F) miniature cocaine spoons and cocaine vials;
(G) chamber smoking pipes;
(H) carburetor smoking pipes;
(I) electric smoking pipes;
(J) air-driven smoking pipes;
(K) chillums;
(L) bongs;
(M) ice pipes or chillers;
(N) any smoking pipe manufactured to disguise its intended purpose;
(O) wired cigarette papers; or
(P) cocaine freebase kits.
(g) "Immediate precursor" means a substance which the board of
pharmacy has found to be and by rules and regulations designates as being
the principal compound commonly used or produced primarily for use and
which is an immediate chemical intermediary used or likely to be used in
the manufacture of a controlled substance, the control of which is
necessary to prevent, curtail or limit manufacture.
(h) "Isomer" means all enantiomers and diastereomers.
(i) "Manufacture" means the production, preparation, propagation,
compounding, conversion or processing of a controlled substance either
directly or indirectly or by extraction from substances of natural origin or
independently by means of chemical synthesis or by a combination of
extraction and chemical synthesis and includes any packaging or
repackaging of the substance or labeling or relabeling of its container.
"Manufacture" does not include:
(1) The preparation or compounding of a controlled substance by an
individual for the individual's own lawful use or the preparation,
compounding, packaging or labeling of a controlled substance:
(†) (A) By a practitioner or the practitioner's agent pursuant to a
lawful order of a practitioner as an incident to the practitioner's
administering or dispensing of a controlled substance in the course of the
practitioner's professional practice; or
(2) (B) by a practitioner or by the practitioner's authorized agent
under such practitioner's supervision for the purpose of or as an incident to
research, teaching or chemical analysis or by a pharmacist or medical care
facility as an incident to dispensing of a controlled substance; or
(2) the addition of diluents or adulterants, including, but not limited
to, quinine hydrochloride, mannitol, mannite, dextrose or lactose, which
are intended for use in cutting a controlled substance.
(j) "Marijuana" means all parts of all varieties of the plant Cannabis
whether growing or not, the seeds thereof, the resin extracted from any
part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. "Marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

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

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

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

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

(3) opium poppy and poppy straw;

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

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

(n) "Opium poppy" means the plant of the species Papaver somniferum l. except its seeds.

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

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

(q) "Possession" means having joint or exclusive control over an item with knowledge of and intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.
(r) "School property" means property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12. This definition shall not be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the above definition, the actual use of that structure or property at the time alleged shall not be a defense to the crime charged or the sentence imposed.

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

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

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

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

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

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

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

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

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

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

Sec. 2. (Am. by SCW) K.S.A. 2011 Supp. 21-5705 is hereby amended to read as follows: 21-5705. (a) It shall be unlawful for any person to cultivate, distribute or possess with the intent to distribute any of the following controlled substances or controlled substance analogs thereof:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Class A person misdemeanor, except as provided in subsection (d) (6)(B); and

(B) nondrug severity level 7, person felony if the substance was distributed to or possessed with the intent to distribute to a minor.

(7) Violation of subsection (c) is a:

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

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

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

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

(1) 450 grams or more of marijuana;

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

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

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

(f) It shall not be a defense to charges arising under this section that

the defendant:

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

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

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

(g) As used in this section:
(1) "Material" means the total amount of any substance, including a
compound or a mixture, which contains any quantity of a controlled
substance or controlled substance analog.
(2) "Dosage unit" means a controlled substance or controlled
substance analog distributed or possessed with the intent to distribute as a
discrete unit, including but not limited to, one pill, one capsule or one
microdot, and not distributed by weight.

(A) For steroids, or controlled substances in liquid solution legally
manufactured for prescription use, or an analog thereof, "dosage unit"
means the smallest medically approved dosage unit, as determined by the
label, materials provided by the manufacturer, a prescribing authority,
licensed health care professional or other qualified health authority.

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

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

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

(b) It shall be unlawful for any person to possess any of the following
controlled substances or controlled substance analogs thereof:
(1) Any depressant designated in subsection (e) of K.S.A. 65-4105,
subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109
or subsection (b) of K.S.A. 65-4111, and amendments thereto;
(2) any stimulant designated in subsection (f) of K.S.A. 65-4105,
subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of
K.S.A. 65-4109, and amendments thereto;
(3) any hallucinogenic drug designated in subsection (d) of K.S.A.
65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-
4109, and amendments thereto;
(4) any substance designated in subsection (g) of K.S.A. 65-4105 and
subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments
thereto;
(5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
4109, and amendments thereto;
(6) any substance designated in K.S.A. 65-4113, and amendments thereto; or
(7) any substance designated in subsection (h) of K.S.A. 65-4105, and amendments thereto.

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

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

(B) violation of subsection (b)(1) through (b)(5) or (b)(7) is a drug severity level 4 5 felony if that person has a prior conviction under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense if the substance involved was 3, 4-methylenedioxymethamphetamine (MDMA), marijuana as designated in subsection (d) of K.S.A. 65-4105, and amendments thereto, or any substance designated in subsection (h) of K.S.A. 65-4105, and amendments thereto, or an analog thereof.

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

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

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

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

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

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

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

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

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

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

(3) possessing with intent to sell the prescription-only drug so obtained.
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(c) (1) Unlawfully obtaining a prescription-only drug is a:
    (A) Class A nonperson misdemeanor, except as provided in subsection (c)(1)(B); and
    (2) (B) Unlawfully obtaining a prescription-only drug is a nondrug severity level 9, nonperson felony if that person has a prior conviction of paragraph (1) under this section, K.S.A. 2010 Supp. 21-36a08, prior to its transfer; or K.S.A. 21-4214, prior to its repeal.

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

(d) As used in this section:
    (1) "Pharmacist," "practitioner," "mid-level practitioner" and "prescription-only drug" shall have the meanings ascribed thereto by K.S.A. 65-1626, and amendments thereto.
    (2) "Prescription order" means an order transmitted in writing, orally, telephonically or by other means of communication for a prescription-only drug to be filled by a pharmacist. "Prescription order" does not mean a drug dispensed pursuant to such an order.
    (e) The provisions of this section shall not be applicable to prosecutions involving prescription-only drugs which could be brought under K.S.A. 2011 Supp. 21-5705 or 21-5706, and amendments thereto.

Sec. 6.

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

(b) It shall be unlawful for any person to use or possess with intent to use any drug paraphernalia to:
    (1) Manufacture, cultivate, plant, propagate, harvest, test, analyze or distribute a controlled substance; or
    (2) store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body.

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

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

(e) (1) Violation of subsection (a) is a drug severity level ≥ 3 felony;
    (2) violation of subsection (b)(1) is a:
(A) Drug severity level 4 felony, except that violation of subsection (b)(1) is a class A nonperson misdemeanor if the drug paraphernalia was used to cultivate fewer than five marijuana plants; and

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

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

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

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

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

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

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

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

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

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

(d) It shall be unlawful for any person to distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing, or under circumstances where one reasonably
should know, that it will be used as such in violation of subsection (b) of

(e) (1) Violation of subsection (a) is a drug severity level 2 or 3 felony;
(2) violation of subsection (b) is a:
(A) drug severity level 4 or 5 felony, except that violation of subsection
(b) is as provided in subsection (e)(2)(B); and
(B) drug severity level 3 or 4 felony if the trier of fact makes a finding
that the offender is 18 or more years of age and the offender distributed or
caused drug paraphernalia to be distributed to a minor or on or within
1,000 feet of any school property;
(3) violation of subsection (c) is a:
(A) Nondrug severity level 9, nonperson felony, except that violation
of subsection (c) is as provided in subsection (e)(3)(B); and
(B) drug severity level 4 or 5 felony if the trier of fact makes a finding
that the offender is 18 or more years of age and the offender distributed or
caused drug paraphernalia to be distributed to a minor or on or within
1,000 feet of any school property; and
(4) violation of subsection (d) is a:
(A) Class A nonperson misdemeanor, except that violation of
subsection (d) is as provided in subsection (e)(4)(B); and
(B) nondrug severity level 9, nonperson felony if the trier of fact
makes a finding that the offender is 18 or more years of age and the
offender distributed or caused drug paraphernalia to be distributed to a
minor or on or within 1,000 feet of any school property.

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

(g) As used in this section, "or under circumstances where one
reasonably should know" that an item will be used in violation of this
section, shall include, but not be limited to, the following:
(1) Actual knowledge from prior experience or statements by
customers;
(2) inappropriate or impractical design for alleged legitimate use;
(3) receipt of packaging material, advertising information or other
manufacturer supplied information regarding the item's use as drug
paraphernalia; or
(4) receipt of a written warning from a law enforcement or
prosecutorial agency having jurisdiction that the item has been previously
determined to have been designed specifically for use as drug
paraphernalia.

Sec. 8: {14.} K.S.A. 2011 Supp. 21-5713 is hereby amended to read
as follows: 21-5713. (a) It shall be unlawful for any person to distribute, possess with the intent to distribute, or manufacture with the intent to distribute any simulated controlled substance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Violation of this section is a:

1. Violation of this section is a drug severity level 4 felony if the value of the proceeds is less than $5,000;
2. violation of this section is a drug severity level 3 felony if the value of the proceeds is at least $5,000 but less than $100,000;
3. violation of this section shall be a drug severity level 2 felony if the value of the proceeds is at least $100,000 but less than $500,000;
4. violation of this section shall be a drug severity level 1 felony if the value of the proceeds is at least $500,000;
(4) drug severity level 2 felony if the value of the proceeds is at least $250,000 but less than $500,000; and

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

Sec. 17. K.S.A. 2011 Supp. 21-5806 is hereby amended to read as follows: 21-5806. (a) Unlawful use of recordings is:

1. Knowingly, and without the consent of the owner, duplicating or causing to be duplicated any sounds recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, or recording or causing to be recorded any live performance, with the intent to sell, rent or cause to be sold or rented, any such duplicated sounds or any such recorded performance, or to give away such duplicated sounds or recorded performance as part of a promotion for any product or service;

2. distributing or possessing with the intent to distribute, any article produced in violation of subsection (a)(1) knowing or having reasonable grounds to know that such article was produced in violation of law; or

3. possessing any article produced in violation of subsection (a)(1) knowing or having reasonable grounds to know that such article was produced in violation of law; or

4. knowingly selling, renting, offering for sale or rental, or possessing, transporting or manufacturing with intent to sell or rent, any phonograph record, audio or video disc, wire, audio or video tape, film or other article now known or later developed on which sounds, images, or both sounds and images are recorded or otherwise stored, unless the outside cover, box or jacket clearly and conspicuously discloses the name and address of the manufacturer of such recorded article.

(b) Unlawful use of recordings:

1. Is a severity level 9, nonperson felony, except as provided in subsections (b)(2) and (b)(3); and

2. as defined in subsection (a)(2) or (a)(3), (a)(4), is a class A nonperson misdemeanor if the offense involves fewer than seven audio visual recordings, or fewer than 100 sound recordings during a 180-day period; and

3. as defined in subsection (a)(3), is a class B nonperson misdemeanor.

(c) The provisions of subsection (a)(1) shall not apply to:

1. Any broadcaster who, in connection with or as part of a radio or television broadcast or cable transmission, or for the purpose of archival preservation, duplicates any such sounds recorded on a sound recording;

2. any person who duplicates such sounds or such performance...
for personal use, and without compensation for such duplication; or
(3) any sounds initially fixed in a tangible medium of expression
after February 15, 1972.
(d) The provisions of subsections (a)(1) and (a)(3) shall not apply to
any computer program or any audio or visual recording that is part of
any computer program or to any article or device on which is exclusively
recorded any such computer program.
(e) As used in this section:
(1) "Owner" means the person who owns the original fixation of
sounds embodied in the master phonograph record, master disc, master
wire, master tape, master film or other device used for reproducing
sounds on phonograph records, discs, wires, tapes, films or other articles
now known or later developed upon which sound is recorded or
otherwise stored, and from which the duplicated recorded sounds are
directly or indirectly derived, or the person who owns the right to record
such live performance; and
(2) "computer program" means a set of statements or instructions
to be used directly or indirectly in a computer in order to bring about a
certain result.
(f) It shall be the duty of all law enforcement officers, upon
discovery, to confiscate all recorded devices that do not conform to the
provisions of this section and that are possessed for the purpose of
selling or renting such recorded devices, and all equipment and
components used or intended to be used to knowingly manufacture
recorded devices that do not conform to the provisions of such section
for the purpose of selling or renting such recorded devices. The
nonconforming recorded devices that are possessed for the purpose of
selling or renting such recorded devices are contraband and shall be
delivered to the district attorney for the county in which the confiscation
was made, by court order, and shall be destroyed or otherwise disposed
of, if the court finds that the person claiming title to such recorded
devices possessed such recorded devices for the purpose of selling or
renting such recorded devices. The equipment and components
confiscated shall be delivered to the district attorney for the county in
which the confiscation was made, by court order upon conviction, and
may be given to a charitable or educational organization.
Sec. 18. K.S.A. 2011 Supp. 21-5807 is hereby amended to read as
follows: 21-5807. (a) Burglary is, without authority, entering into or
remaining within any:
(1) Dwelling, with intent to commit a felony, theft or sexual battery;
sexually motivated crime therein;
(2) building, manufactured home, mobile home, tent or other
structure which is not a dwelling, with intent to commit a felony, theft or
sexual battery sexually motivated crime therein; or

(3) vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property, with intent to commit a felony, theft or sexual battery sexually motivated crime therein.

(b) Aggravated burglary is, without authority, entering into or remaining within any building, manufactured home, mobile home, tent or other structure, or any vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property in which there is a human being with intent to commit a felony, theft or sexual battery sexually motivated crime therein.

(c) (1) Burglary as defined in:

(A) Subsection (a)(1) is a severity level 7, person felony;

(B) subsection (a)(2) is a severity level 7, nonperson felony; and

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

(2) Aggravated burglary is a severity level 5, person felony.

(d) As used in this section, “sexually motivated” means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

Sec. 19. K.S.A. 2011 Supp. 21-5904 is hereby amended to read as follows: 21-5904. (a) Interference with law enforcement is:

(1) Falsely reporting to a law enforcement officer or state investigative agency that a crime has been committed, knowing that such information is false and intending that the officer or agency shall act in reliance upon such information; or:

(A) That a particular person has committed a crime, knowing that such information is false and intending that the officer or agency shall act in reliance upon such information; or

(B) any information, knowing that such information is false and intending to influence, impede or obstruct such officer's or agency's duty;

(2) concealing, destroying or materially altering evidence with the intent to prevent or hinder the apprehension or prosecution of any person; or

(2) knowingly obstructing, resisting or opposing any person authorized by law to serve process in the service or execution or in the attempt to serve or execute any writ, warrant, process or order of a court, or in the discharge of any official duty.

(b) (1) Interference with law enforcement as defined in subsection (a)(1) or (a)(2) is a class A nonperson misdemeanor, except as provided in subsection (b)(2).

(2) Interference with law enforcement as defined in:

(A) Subsection (a)(1)(A) or (a)(2) is a severity level 8, nonperson felony in the case of a felony; and

(B) subsection (a)(1)(B) is a severity level 9, nonperson felony in the
case of a felony.

(a)(3) Interference with law enforcement as defined in subsection (a)(4) is a:

(A) Severity level 9, nonperson felony in the case of a felony, or resulting from parole or any authorized disposition for a felony; and

(B) class A nonperson misdemeanor in the case of a misdemeanor, or resulting from any authorized disposition for a misdemeanor, or a civil case.

Sec. 20. K.S.A. 2011 Supp. 21-5905 is hereby amended to read as follows: 21-5905. (a) Interference with the judicial process is:

(1) Communicating with any judicial officer in relation to any matter which is or may be brought before such judge, magistrate, master or juror with intent improperly to influence such officer;

(2) committing any of the following acts, with intent to influence, impede or obstruct the finding, decision, ruling, order, judgment or decree of such judicial officer or prosecutor on any matter then pending before the officer or prosecutor:

(A) Communicating in any manner a threat of violence to any judicial officer or any prosecutor;

(B) harassing a judicial officer or a prosecutor by repeated vituperative communication; or

(C) picketing, parading or demonstrating near such officer's or prosecutor's residence or place of abode;

(3) picketing, parading or demonstrating in or near a building housing a judicial officer or a prosecutor with intent to impede or obstruct the finding, decision, ruling, order, judgment or decree of such judicial officer or prosecutor on any matter then pending before the officer or prosecutor;

(4) knowingly accepting or agreeing to accept anything of value as consideration for a promise:

(A) Not to initiate or aid in the prosecution of a person who has committed a crime; or

(B) to conceal, destroy or materially alter evidence of a crime; or

(5) concealing, destroying or materially altering evidence with the intent to influence, impede or obstruct any proceeding, civil or criminal; or

(a)(6) when performed by a person summoned or sworn as a juror in any case:

(A) Intentionally soliciting, accepting or agreeing to accept from another any benefit as consideration to wrongfully give a verdict for or against any party in any proceeding, civil or criminal;

(B) intentionally promising or agreeing to wrongfully give a verdict for or against any party in any proceeding, civil or criminal; or
(C) knowingly receiving any evidence or information from anyone in relation to any matter or cause for the trial of which such juror has been or will be sworn, without the authority of the court or officer before whom such juror has been summoned, and without immediately disclosing the same to such court or officer.

(b) Interference with the judicial process as defined in:

(1) Subsection (a)(1) is a severity level 9, nonperson felony;

(2) subsection (a)(2) and (a)(3) is a class A nonperson misdemeanor;

(3) subsection (a)(4) is a:

(A) Severity level 8, nonperson felony if the crime is a felony; or

and

(B) class A nonperson misdemeanor if the crime is a misdemeanor;

(4) subsection (a)(5) is a:

(A) Severity level 8, nonperson felony if the proceeding is a felony prosecution; and

(B) class A nonperson misdemeanor if the proceeding is any proceeding other than a felony prosecution;

(5) subsection (a)(5)(A) of (a)(5)(B) or (a)(5)(C) of (a)(5)(B) or (a)(6)(C) is a severity level 9, nonperson felony.

(c) Nothing in this section shall limit or prevent the exercise by any court of this state of its power to punish for contempt.

Sec. 21. K.S.A. 2011 Supp. 21-5907 is hereby amended to read as follows: 21-5907. (a) Simulating legal process is:

(1) Distributing to another any document which simulates or purports to be, or is designed to cause others to believe it to be, a summons, petition, complaint or other judicial process, with intent thereby to induce payment of a claim. legal process, with the intent to mislead the recipient and cause the recipient to take action in reliance thereon; or

(2) printing or distributing any such document, knowing that it shall be so used.

(b) Simulating legal process is a class A nonperson misdemeanor.

(c) This section shall not apply to the printing or distribution of blank forms of legal documents intended for actual use in judicial proceedings.

Sec. 22. K.S.A. 2011 Supp. 21-5911 is hereby amended to read as follows: 21-5911. (a) Escape from custody is escaping while held in custody on a: (1) Charge or conviction of or arrest for a misdemeanor;

(2) charge or adjudication or arrest as a juvenile offender where the act, if committed by an adult, would constitute a misdemeanor; or
(3) commitment to the state security hospital as provided in K.S.A. 22-3428, and amendments thereto, based on a finding that the person committed an act constituting a misdemeanor or by a person 18 years of age or over who is being held in custody on a conviction of a misdemeanor.

(b) Aggravated escape from custody is:
   (1) Escaping while held in custody:
      (A) Upon a charge or conviction of arrest for a felony;
      (B) upon a charge or adjudication or arrest as a juvenile offender where the act, if committed by an adult, would constitute a felony;
      (C) prior to or upon a finding of probable cause for evaluation as a sexually violent predator as provided in K.S.A. 59-29a05, and amendments thereto;
      (D) upon commitment to a treatment facility as a sexually violent predator as provided in K.S.A. 59-29a01 et seq., and amendments thereto;
      (E) upon a commitment to the state security hospital as provided in K.S.A. 22-3428, and amendments thereto, based on a finding that the person committed an act constituting a felony;
      (F) by a person 18 years of age or over who is being held on an adjudication of a felony; or
      (G) upon incarceration at a state correctional institution while in the custody of the secretary of corrections.

   (2) Escaping effected or facilitated by the use of violence or the threat of violence against any person while held in custody:
      (A) On a charge or conviction of any crime;
      (B) on a charge or adjudication as a juvenile offender where the act, if committed by an adult, would constitute a felony;
      (C) prior to or upon a finding of probable cause for evaluation as a sexually violent predator as provided in K.S.A. 59-29a05, and amendments thereto;
      (D) upon commitment to a treatment facility as a sexually violent predator as provided in K.S.A. 59-29a01 et seq., and amendments thereto;
      (E) upon a commitment to the state security hospital as provided in K.S.A. 22-3428, and amendments thereto, based on a finding that the person committed an act constituting any crime;
      (F) by a person 18 years of age or over who is being held on a charge or adjudication of a misdemeanor or felony; or
      (G) upon incarceration at a state correctional institution while in the custody of the secretary of corrections.

(c) (1) Escape from custody is a class A nonperson misdemeanor.

(2) Aggravated escape from custody as defined in:
(A) Subsection (b)(1)(A), (b)(1)(C), (b)(1)(D), (b)(1)(E) or (b)(1)(F) is a severity level 8, nonperson felony;
(B) subsection (b)(1)(B) or (b)(1)(G) is a severity level 5, nonperson felony;
(C) subsection (b)(2)(A), (b)(2)(C), (b)(2)(D), (b)(2)(E) or (b)(2)(F) is a severity level 6, person felony; and
(D) subsection (b)(2)(B) or (b)(2)(G) is a severity level 5, person felony.

(d) As used in this section and K.S.A. 2011 Supp. 21-5912, and amendments thereto:
(1) "Custody" means arrest; detention in a facility for holding persons charged with or convicted of crimes or charged or adjudicated as a juvenile offender; detention for extradition or deportation; detention in a hospital or other facility pursuant to court order, imposed as a specific condition of probation or parole or imposed as a specific condition of assignment to a community correctional services program; commitment to the state security hospital as provided in K.S.A. 22-3428, and amendments thereto; or any other detention for law enforcement purposes. "Custody" does not include general supervision of a person on probation or parole or constraint incidental to release on bail;
(2) "escape" means departure from custody without lawful authority or failure to return to custody following temporary leave lawfully granted pursuant to express authorization of law or order of a court;
(3) "juvenile offender" means the same as in K.S.A. 2011 Supp. 38-2302, and amendments thereto; and
(4) "state correctional institution" means the same as in K.S.A. 75-5202, and amendments thereto.

(e) As used in this section, the term "charge" shall not require that the offender was held on a written charge contained in a complaint, information or indictment, if such offender was arrested prior to such offender's escape from custody.

Sec. 23. K.S.A. 2011 Supp. 21-6001 is hereby amended to read as follows: 21-6001. (a) Bribery is:
(1) Offering, giving or promising to give, directly or indirectly, to any person who is a public officer, candidate for public office or public employee any benefit, reward or consideration to which the person is not legally entitled with intent thereby to influence the person with respect to the performance of the person's powers or duties as a public officer or employee; or
(2) the act of a person who is a public officer, candidate for public office or public employee, in requesting, receiving or agreeing to receive, directly or indirectly, any benefit, reward or consideration given with
intent that the person will be so influenced.

(1) With the intent to improperly influence a public official, offering, giving or promising to give, directly or indirectly, to any public official any benefit, reward or consideration which the public official is not permitted by law to accept, in exchange for the performance or omission of performance of the public official's powers or duties or a promise to perform or omit performance of such powers or duties; or

(2) the act of a public official intentionally requesting, receiving or agreeing to receive, directly or indirectly, any benefit, reward or consideration, which the public official is not permitted by law to accept, with the intent to improperly influence such public official and in exchange for the performance or omission of performance of the public official's powers or duties or a promise to perform or omit performance of such powers or duties.

(b) Bribery is a severity level 7, nonperson felony. Upon conviction of bribery, a public official or public employee shall forfeit the person's office or employment. Notwithstanding an expungement of the conviction pursuant to K.S.A. 2011 Supp. 21-6614, and amendments thereto, any person convicted of bribery under the provisions of this section shall be forever disqualified from holding public office or public employment in this state.

(c) As used in this section, "public official" means any person who is a public officer, candidate for public office or public employee.

Sec. 24. K.S.A. 2011 Supp. 21-6110 is hereby amended to read as follows: 21-6110. (a) No person shall it shall be unlawful, with no requirement of a culpable mental state, to smoke in an enclosed area or at a public meeting including, but not limited to:

(1) Public places;
(2) taxicabs and limousines;
(3) restrooms, lobbies, hallways and other common areas in public and private buildings, condominiums and other multiple-residential facilities;
(4) restrooms, lobbies and other common areas in hotels and motels and in at least 80% of the sleeping quarters within a hotel or motel that may be rented to guests;
(5) access points of all buildings and facilities not exempted pursuant to subsection (d); and
(6) any place of employment.

(b) Each employer having a place of employment that is an enclosed area shall provide a smoke-free workplace for all employees. Such employer shall also adopt and maintain a written smoking policy which shall prohibit smoking without exception in all areas of the place of employment. Such policy shall be communicated to all current
employees within one week of its adoption and shall be communicated to
all new employees upon hiring. Each employer shall provide a written
copy of the smoking policy upon request to any current or prospective
employee.

(c) Notwithstanding any other provision of this section, K.S.A. 2011
Supp. 21-6111 or 21-6112, and amendments thereto, the proprietor or
other person in charge of an adult care home, as defined in K.S.A. 39-
923, and amendments thereto, or a medical care facility, may designate a
portion of such adult care home, or the licensed long-term care unit of
such medical care facility, as a smoking area, and smoking may be
permitted within such designated smoking area.

(d) The provisions of this section shall not apply to:

1. The outdoor areas of any building or facility beyond the access
   points of such building or facility;
2. private homes or residences, except when such home or
   residence is used as a day care home, as defined in K.S.A. 65-530, and
   amendments thereto;
3. a hotel or motel room rented to one or more guests if the total
   percentage of such hotel or motel rooms in such hotel or motel does not
   exceed 20%;
4. the gaming floor of a lottery gaming facility or racetrack
   gaming facility, as those terms are defined in K.S.A. 74-8702, and
   amendments thereto;
5. that portion of an adult care home, as defined in K.S.A. 39-923,
   and amendments thereto, that is expressly designated as a smoking area
   by the proprietor or other person in charge of such adult care home
   pursuant to subsection (c) and that is fully enclosed and ventilated;
6. that portion of a licensed long-term care unit of a medical care
   facility that is expressly designated as a smoking area by the proprietor
   or other person in charge of such medical care facility pursuant to
   subsection (c) and that is fully enclosed and ventilated and to which
   access is restricted to the residents and their guests;
7. tobacco shops;
8. a class A or class B club defined in K.S.A. 41-2601, and
   amendments thereto, which (A) held a license pursuant to K.S.A. 41-
   2606 et seq., and amendments thereto, as of January 1, 2009; and (B)
   notifies the secretary of health and environment in writing, not later
   than 90 days after the effective date of this act, that it wishes to continue
   to allow smoking on its premises;
9. a private club in designated areas where minors are prohibited;
and
10. any benefit cigar dinner or other cigar dinner of a
    substantially similar nature that:
(A) Is conducted specifically and exclusively for charitable purposes by a nonprofit organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986;

(B) is conducted no more than once per calendar year by such organization; and

(C) has been held during each of the previous three years prior to January 1, 2011.

Sec. 25. K.S.A. 2011 Supp. 21-6112 is hereby amended to read as follows: 21-6112. (a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to fail to comply with all or any of the provisions of K.S.A. 2011 Supp. 21-6109 through 21-6116, and amendments thereto.

(b) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to allow smoking to occur where prohibited by law. Any such person shall be deemed to allow smoking to occur under this subsection if such person: (1) Has knowledge that smoking is occurring; and (2) recklessly permits smoking under the totality of the circumstances.

(c) It shall be unlawful for any person, with no requirement of a culpable mental state, to smoke in any area where smoking is prohibited by the provisions of K.S.A. 2011 Supp. 21-6110, and amendments thereto.

(d) Any person who violates any provision of K.S.A. 2011 Supp. 21-6109 through 21-6116, and amendments thereto, shall be guilty of a cigarette or tobacco infractions punishable by a fine:

(1) Not exceeding $100 for the first violation;

(2) not exceeding $200 for a second violation within a one year period after the first violation; or

(3) not exceeding $500 for a third or subsequent violation within a one year period after the first violation.

For purposes of this subsection, the number of violations within a year shall be measured by the date the smoking violations occur.

(e) Each individual allowed to smoke by a person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, in violation of subsection (b) shall be considered a separate violation for purposes of determining the number of violations under subsection (d).

(f) No employer shall discharge, refuse to hire or in any manner retaliate against an employee, applicant for employment or customer because with the intent to retaliate against that
employee, applicant or customer reports or attempts for reporting or attempting to prosecute a violation of any of the provisions of K.S.A. 2011 Supp. 21-6109 through 21-6116, and amendments thereto.

Sec. 26. K.S.A. 2011 Supp. 21-6312 is hereby amended to read as follows: 21-6312. (a) Criminal possession of explosives is the possession of any explosive or detonating substance by a person who, within five years preceding such possession, has been convicted of a felony under the laws of this or any other jurisdiction or has been released from imprisonment for a felony.

(b) Criminal disposal of explosives is knowingly and without lawful authority distributing any explosive or detonating substance to a person:

(1) Under 21 years of age, regardless of whether the seller, donor or transferor knows the age of such person;

(2) who is both addicted to and an unlawful user of a controlled substance; or

(3) who, within the preceding five years, has been convicted of a felony under the laws of this or any other jurisdiction or has been released from imprisonment for a felony.

(c) Carrying concealed explosives is carrying any explosive or detonating substance on the person in a wholly or partly concealed manner.

(d) (1) Criminal possession of explosives is a severity level 7, person felony.

(2) Criminal disposal of explosives is a severity level 10, person felony.

(3) Carrying concealed explosives is a class C person misdemeanor.

(e) As used in subsections (a) and (b), "explosives" means any chemical compound, mixture or device, of which the primary purpose is to function by explosion, and includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters.

Sec. 27. K.S.A. 2011 Supp. 21-6412 is hereby amended to read as follows: 21-6412. (a) Cruelty to animals is:

(1) Knowingly and maliciously killing, injuring, maiming, torturing, burning or mutilating any animal;

(2) knowingly abandoning any animal in any place without making provisions for its proper care;

(3) having physical custody of any animal and knowingly failing to provide such food, potable water, protection from the elements, opportunity for exercise and other care as is needed for the health or well-being of such kind of animal;
(4) intentionally using a wire, pole, stick, rope or any other object to
cause an equine to lose its balance or fall, for the purpose of sport or
entertainment;
(5) knowingly but not maliciously killing or injuring any animal; or
(6) knowingly and maliciously administering any poison to any
domestic animal.

(b) Cruelty to animals as defined in:
(1) Subsection (a)(1) or (a)(6) is a nonperson felony. Upon
conviction of subsection (a)(1) or (a)(6), a person shall be sentenced to
not less than 30 days or more than one year's imprisonment and be fined
not less than $500 nor more than $5,000. The person convicted shall not
be eligible for release on probation, suspension or reduction of sentence
or parole until the person has served the minimum mandatory sentence
as provided herein. During the mandatory 30 days imprisonment, such
offender shall have a psychological evaluation prepared for the court to
assist the court in determining conditions of probation. Such conditions
shall include, but not be limited to, the completion of an anger
management program; and
(2) subsection (a)(2), (a)(3), (a)(4) or (a)(5) is a:
(A) Class A nonperson misdemeanor, except as provided in
subsection (b)(2)(B); and
(B) nonperson felony upon the second or subsequent conviction of
cruelty to animals as defined in subsection (a)(2), (a)(3), (a)(4) or (a)(5).
Upon such conviction, a person shall be sentenced to not less than five
days or more than one year's imprisonment and be fined not less than
$500 nor more than $2,500. The person convicted shall not be eligible
for release on probation, suspension or reduction of sentence or parole
until the person has served the minimum mandatory sentence as
provided herein.

(c) The provisions of this section shall not apply to:
(1) Normal or accepted veterinary practices;
(2) bona fide experiments carried on by commonly recognized
research facilities;
(3) killing, attempting to kill, trapping, catching or taking of any
animal in accordance with the provisions of chapter 32 or chapter 47 of
the Kansas Statutes Annotated, and amendments thereto;
(4) rodeo practices accepted by the rodeo cowboys' association;
(5) the humane killing of an animal which is diseased or disabled
beyond recovery for any useful purpose, or the humane killing of
animals for population control, by the owner thereof or the agent of
such owner residing outside of a city or the owner thereof within a city if
no animal shelter, pound or licensed veterinarian is within the city, or by
a licensed veterinarian at the request of the owner thereof, or by any
officer or agent of an incorporated humane society, the operator of an animal shelter or pound, a local or state health officer or a licensed veterinarian three business days following the receipt of any such animal at such society, shelter or pound;

(6) with respect to farm animals, normal or accepted practices of animal husbandry, including the normal and accepted practices for the slaughter of such animals for food or by-products and the careful or thrifty management of one's herd or animals, including animal care practices common in the industry or region;

(7) the killing of any animal by any person at any time which may be found outside of the owned or rented property of the owner or custodian of such animal and which is found injuring or posing a threat to any person, farm animal or property;

(8) an animal control officer trained by a licensed veterinarian in the use of a tranquilizer gun, using such gun with the appropriate dosage for the size of the animal, when such animal is vicious or could not be captured after reasonable attempts using other methods;

(9) laying an equine down for medical or identification purposes;

(10) normal or accepted practices of pest control, as defined in subsection (x) of K.S.A. 2-2438a, and amendments thereto; or

(11) accepted practices of animal husbandry pursuant to regulations promulgated by the United States department of agriculture for domestic pet animals under the animal welfare act, public law 89-544, as amended and in effect on July 1, 2006.

(d) The provisions of subsection (a)(6) shall not apply to any person exposing poison upon their premises for the purpose of destroying wolves, coyotes or other predatory animals.

(e) Any public health officer, law enforcement officer, licensed veterinarian or officer or agent of any incorporated humane society, animal shelter or other appropriate facility may take into custody any animal, upon either private or public property, which clearly shows evidence of cruelty to animals. Such officer, agent or veterinarian may inspect, care for or treat such animal or place such animal in the care of a duly incorporated humane society or licensed veterinarian for treatment, boarding or other care or, if an officer of such humane society or such veterinarian determines that the animal appears to be diseased or disabled beyond recovery for any useful purpose, for humane killing. If the animal is placed in the care of an animal shelter, the animal shelter shall notify the owner or custodian, if known or reasonably ascertainable. If the owner or custodian is charged with a violation of this section, the board of county commissioners in the county where the animal was taken into custody shall establish and approve procedures whereby the animal shelter may petition the district
court to be allowed to place the animal for adoption or euthanize the
animal at any time after 21 days after the owner or custodian is notified
or, if the owner or custodian is not known or reasonably ascertainable
after 21 days after the animal is taken into custody, unless the owner or
custodian of the animal files a renewable cash or performance bond
with the county clerk of the county where the animal is being held, in an
amount equal to not less than the cost of care and treatment of the
animal for 30 days. Upon receiving such petition, the court shall
determine whether the animal may be placed for adoption or euthanized.
The board of county commissioners in the county where the animal was
taken into custody shall review the cost of care and treatment being
charged by the animal shelter maintaining the animal.
  (f) The owner or custodian of an animal placed for adoption or
killed pursuant to subsection (e) shall not be entitled to recover damages
for the placement or killing of such animal unless the owner proves that
such placement or killing was unwarranted.
  (g) Expenses incurred for the care, treatment or boarding of any
animal, taken into custody pursuant to subsection (e), pending
prosecution of the owner or custodian of such animal for the crime of
cruelty to animals, shall be assessed to the owner or custodian as a cost
of the case if the owner or custodian is adjudicated guilty of such crime.
  (h) Upon the filing of a sworn complaint by any public health officer,
law enforcement officer, licensed veterinarian or officer or agent of any
incorporated humane society, animal shelter or other appropriate facility
alleging the commission of cruelty to animals, the county or district
attorney shall determine the validity of the complaint and shall forthwith
file charges for the crime if the complaint appears to be valid.
  (i) If a person is adjudicated guilty of the crime of cruelty to
animals, and the court having jurisdiction is satisfied that an animal
owned or possessed by such person would be in the future subjected to
such crime, such animal shall not be returned to or remain with such
person. Such animal may be turned over to a duly incorporated humane
society or licensed veterinarian for sale or other disposition.
  (j) As used in this section:
(1) "Equine" means a horse, pony, mule, jenny, donkey or hinny;
and
(2) "maliciously" means a state of mind characterized by actual
evil-mindedness or specific intent to do a harmful act without a
reasonable justification or excuse.
Sec. 28. K.S.A. 2011 Supp. 21-6413 is hereby amended to read as
follows: 21-6413 (a) Unlawful disposition of animals is knowingly
raffling, or giving as a prize or premium or using as an advertising device
or promotional display living rabbits or chickens, ducklings or goslings.
(b) Unlawful disposition of animals is a class C misdemeanor.

(c) The provisions of this section shall not apply to a person giving such animals to minors for use in agricultural projects under the supervision of commonly recognized youth farm organizations.

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

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

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

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

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

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

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

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

(8) order the defendant to repay the amount of any reward paid by any crime stoppers chapter, individual, corporation or public entity which materially aided in the apprehension or conviction of the defendant; repay the amount of any costs and expenses incurred by any law enforcement agency in the apprehension of the defendant, if one of the current crimes
of conviction of the defendant includes escape from custody or aggravated escape from custody, as defined in K.S.A. 2011 Supp. 21-5911, and amendments thereto; repay expenses incurred by a fire district, fire department or fire company responding to a fire which has been determined to be arson or aggravated arson as defined in K.S.A. 2011 Supp. 21-5812, and amendments thereto, if the defendant is convicted of such crime; repay the amount of any public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation which leads to the defendant's conviction; or repay the amount of any medical costs and expenses incurred by any law enforcement agency or county. Such repayment of the amount of any such costs and expenses incurred by a county, law enforcement agency, fire district, fire department or fire company or any public funds utilized by a law enforcement agency shall be deposited and credited to the same fund from which the public funds were credited to prior to use by the county, law enforcement agency, fire district, fire department or fire company;

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

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

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

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

(13) impose any appropriate combination of (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12); or
(14) suspend imposition of sentence in misdemeanor cases.
(b) (1) In addition to or in lieu of any of the above, the court shall order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime, unless the court finds compelling circumstances which would render a plan of restitution unworkable. In regard to a violation of K.S.A. 2011 Supp. 21-6107, and amendments thereto, such damage or loss shall include, but not be limited to, attorney fees and costs incurred to repair the credit history or rating of the person whose personal identification documents were obtained and used in violation of such section, and to satisfy a debt, lien or other obligation incurred by the person whose personal identification documents were obtained and used in violation of such section. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefor.
(2) If the court orders restitution, the restitution shall be a judgment against the defendant which may be collected by the court by garnishment or other execution as on judgments in civil cases. If, after 60 days from the date restitution is ordered by the court, a defendant is found to be in noncompliance with the plan established by the court for payment of restitution, and the victim to whom restitution is ordered paid has not initiated proceedings in accordance with K.S.A. 60-4301 et seq., and amendments thereto, the court shall assign an agent procured by the attorney general pursuant to K.S.A. 75-719, and amendments thereto, to collect the restitution on behalf of the victim. The chief judge of each judicial district may assign such cases to an appropriate division of the court for the conduct of civil collection proceedings.
(c) In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (d) of K.S.A. 2011 Supp. 21-6602, and amendments thereto.
(d) In addition to any of the above, the court shall order the defendant to reimburse the county general fund for all or a part of the expenditures by the county to provide counsel and other defense services to the defendant. Any such reimbursement to the county shall be paid only after any order for restitution has been paid in full. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family,
the court may waive payment of all or part of the amount due or modify the method of payment.

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

(f) (1) When a new felony is committed while the offender is incarcerated and serving a sentence for a felony, or while the offender is on probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision for a felony, a new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 2011 Supp. 21-6606, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

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

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

(g) Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration
whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 4-C, 4-D, 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, and whose offense does not meet the requirements of K.S.A. 2011 Supp. 21-6824, and amendments thereto, prior to revocation of a nonprison sanction of a defendant whose offense is classified in grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, and whose offense does not meet the requirements of K.S.A. 2011 Supp. 21-6824, and amendments thereto, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 4-C, 4-D, 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, the court shall consider placement of the defendant in the Labette correctional conservation camp, conservation camps established by the secretary of corrections pursuant to K.S.A. 75-52,127, and amendment thereto, or a community intermediate sanction center. Pursuant to this paragraph the defendant shall not be sentenced to imprisonment if space is available in a conservation camp or a community intermediate sanction center and the defendant meets all of the conservation camp's or a community intermediate sanction center's placement criteria unless the court states on the record the reasons for not placing the defendant in a conservation camp or a community intermediate sanction center.

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Upon expiration of the period of time for which conditions are
imposed pursuant to this subsection, the licensee may apply to the division
for the return of the license previously surrendered by such licensee. In the
event such license has expired, such person may apply to the division for a
new license, which shall be issued immediately by the division upon
payment of the proper fee and satisfaction of the other conditions
established by law, unless such person's privilege to operate a motor
vehicle on the highways of this state has been suspended or revoked prior
thereto. If any person shall violate any of the conditions imposed under
this paragraph, such person's driver's license or privilege to operate a
motor vehicle on the highways of this state shall be revoked for a period of
not less than 60 days nor more than one year by the judge of the court in
which such person is convicted of violating such conditions.
(4) As used in this subsection, "highway" and "street" means the
same as in K.S.A. 8-1424 and 8-1473, and amendments thereto.

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

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

Sec. 12. K.S.A. 2011 Supp. 21-6608 is hereby amended to read
as follows: 21-6608. (a) The period of suspension of sentence, probation or
assignment to community corrections fixed by the court shall not exceed
two years in misdemeanor cases, subject to renewal and extension for
additional fixed periods of two years. Probation, suspension of sentence or
assignment to community corrections may be terminated by the court at
any time and upon such termination or upon termination by expiration of
the term of probation, suspension of sentence or assignment to community
corrections, an order to this effect shall be entered by the court.
(b) The district court having jurisdiction of the offender may parole
any misdemeanant sentenced to confinement in the county jail. The period
of such parole shall be fixed by the court and shall not exceed two years
and shall be terminated in the manner provided for termination of
suspended sentence and probation.
(c) For all crimes committed on or after July 1, 1993, the duration of
probation in felony cases sentenced for the following severity levels on the
sentencing guidelines grid for nondrug crimes and the sentencing
guidelines grid for drug crimes is as follows:
(1) For nondrug crimes the recommended duration of probation is:
(A) 36 months for crimes in crime severity levels 1 through 5; and
(B) 24 months for crimes in crime severity levels 6 and 7;
(2) for drug crimes the recommended duration of probation is 36
months for crimes in crime severity levels 1 and 2 committed prior to July
1, 2012, and crimes in crime severity levels 1, 2 and 3 committed on or
after July 1, 2012;
(3) except as provided further, in felony cases sentenced at severity
levels 9 and 10 on the sentencing guidelines grid for nondrug crimes and,
severity level 4 on the sentencing guidelines grid for drug crimes
committed prior to July 1, 2012, and severity level 5 of the sentencing
guidelines grid for drug crimes committed on or after July 1, 2012, if a
nonprison sanction is imposed, the court shall order the defendant to serve
a period of probation of up to 12 months in length;
(4) in felony cases sentenced at severity level 8 on the sentencing
guidelines grid for nondrug crimes, severity level 3 on the sentencing
guidelines grid for drug crimes committed prior to July 1, 2012, and severity level 4 of the sentencing guidelines grid for drug crimes
committed on or after July 1, 2012, and felony cases sentenced pursuant to
K.S.A. 2011 Supp. 21-6824, and amendments thereto, if a nonprison
sanction is imposed, the court shall order the defendant to serve a period of
probation, or assignment to a community correctional services program, as
provided under K.S.A. 75-5291 et seq., and amendments thereto, of up to
18 months in length;
(5) if the court finds and sets forth with particularity the reasons for
finding that the safety of the members of the public will be jeopardized or
that the welfare of the inmate will not be served by the length of the
probation terms provided in subsections (c)(3) and (c)(4), the court may
impose a longer period of probation. Such an increase shall not be
considered a departure and shall not be subject to appeal;
(6) except as provided in subsections (c)(7) and (c)(8), the total
period in all cases shall not exceed 60 months, or the maximum period of
the prison sentence that could be imposed whichever is longer. Nonprison
sentences may be terminated by the court at any time;
(7) if the defendant is convicted of non-support of a child, the period
may be continued as long as the responsibility for support continues. If the
defendant is ordered to pay full or partial restitution, the period may be
continued as long as the amount of restitution ordered has not been paid;
and
(8) the court may modify or extend the offender's period of
supervision, pursuant to a modification hearing and a judicial finding of
necessity. Such extensions may be made for a maximum period of five
years or the maximum period of the prison sentence that could be imposed,
whichever is longer, inclusive of the original supervision term.
Sec. 13. K.S.A. 2011 Supp. 21-6611 is hereby amended to read
as follows: 21-6611. (a) A person who has been convicted of a felony may,
in addition to the sentence authorized by law, be ordered to pay a fine
which shall be fixed by the court as follows:
(1) For any off-grid felony crime, or any felony ranked in severity
levels 1 or 2 of the drug grid committed prior to July 1, 2012, or in severity
levels 1 or 2 of the drug grid committed on or after July 1, 2012, as
provided in K.S.A. 2011 Supp. 21-6805, and amendments thereto, a sum
not exceeding $500,000;
(2) for any felony ranked in severity levels 1 through 5 of the
nondrug grid as provided in K.S.A. 2011 Supp. 21-6804, and amendments
thereto, or in severity levels 2 or 3 of the drug grid committed prior to July
1, 2012, or in severity levels 3 or 4 of the drug grid committed on or after
July 1, 2012, as provided in K.S.A. 2011 Supp. 21-6805, and amendments
thereto, a sum not exceeding $300,000; and
(3) for any felony ranked in severity levels 6 through 10 of the
nondrug grid as provided in K.S.A. 2011 Supp. 21-6804, and amendments
thereto, or in severity level 4 of the drug grid committed prior to July 1,
2012, or in severity level 5 of the drug grid committed on or after July 1,
2012, as provided in K.S.A. 2011 Supp. 21-6805, and amendments thereto,
a sum not exceeding $100,000.
(b) A person who has been convicted of a misdemeanor, in addition to
or instead of the imprisonment authorized by law, may be sentenced to pay
a fine which shall be fixed by the court as follows:
(1) For a class A misdemeanor, a sum not exceeding $2,500;
(2) for a class B misdemeanor, a sum not exceeding $1,000;
(3) for a class C misdemeanor, a sum not exceeding $500; and
(4) for an unclassified misdemeanor, any sum authorized by the
statute that defines the crime. If no penalty is provided in such law, the fine
shall not exceed the fine provided herein for a class C misdemeanor.
(c) As an alternative to any of the above fines, the fine imposed may be fixed at any greater sum not exceeding double the pecuniary gain derived from the crime by the offender.

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

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

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

Sec. 14. K.S.A. 2011 Supp. 21-6614 is hereby amended to read as follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d) and (e), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, nondrug crimes ranked in severity levels 6 through 10 or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity level 4 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in level 5 of the drug grid, may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

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

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

(1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its repeal, or K.S.A. 2011 Supp. 21-5406, and amendments thereto, or as
prohibited by any law of another state which is in substantial conformity with that statute;
(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;
(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto, or resulting from the violation of a law of another state which is in substantial conformity with that statute;
(4) violating the provisions of the fifth clause of K.S.A. 8-142, and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;
(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;
(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;
(7) violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or
(8) a violation of K.S.A. 21-3405b, prior to its repeal.
(c) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed, the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation.
(d) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses:
(1) Rape as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2011 Supp. 21-5503, and amendments thereto;
(2) indecent liberties with a child or aggravated indecent liberties with a child as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal, or K.S.A. 2011 Supp. 21-5506, and amendments thereto;
(3) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of K.S.A. 2011 Supp. 21-5504, and amendments thereto;
(4) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2011 Supp. 21-5504, and amendments thereto;
50

(5) indecent solicitation of a child or aggravated indecent solicitation
of a child as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or
K.S.A. 2011 Supp. 21-5508, and amendments thereto;
(6) sexual exploitation of a child as defined in K.S.A. 21-3516, prior
to its repeal, or K.S.A. 2011 Supp. 21-5510, and amendments thereto;
(7) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal,
or K.S.A. 2011 Supp. 21-5604, and amendments thereto;
(8) endangering a child or aggravated endangering a child as defined
in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2011 Supp.
21-5601, and amendments thereto;
(9) abuse of a child as defined in K.S.A. 21-3609, prior to its repeal,
or K.S.A. 2011 Supp. 21-5602, and amendments thereto;
(10) capital murder as defined in K.S.A. 21-3439, prior to its repeal,
or K.S.A. 2011 Supp. 21-5401, and amendments thereto;
(11) murder in the first degree as defined in K.S.A. 21-3401, prior to
its repeal, or K.S.A. 2011 Supp. 21-5402, and amendments thereto;
(12) murder in the second degree as defined in K.S.A. 21-3402, prior
to its repeal, or K.S.A. 2011 Supp. 21-5403, and amendments thereto;
(13) voluntary manslaughter as defined in K.S.A. 21-3403, prior to its
repeal, or K.S.A. 2011 Supp. 21-5404, and amendments thereto;
(14) involuntary manslaughter as defined in K.S.A. 21-3404, prior to
its repeal, or K.S.A. 2011 Supp. 21-5405, and amendments thereto;
(15) sexual battery as defined in K.S.A. 21-3517, prior to its repeal,
or K.S.A. 2011 Supp. 21-5505, and amendments thereto, when the victim
was less than 18 years of age at the time the crime was committed;
(16) aggravated sexual battery as defined in K.S.A. 21-3518, prior to
its repeal, or K.S.A. 2011 Supp. 21-5505, and amendments thereto;
(17) a violation of K.S.A. 8-2,144, and amendments thereto,
including any diversion for such violation; or
(18) any conviction for any offense in effect at any time prior to July
1, 2011, that is comparable to any offense as provided in this subsection.
(e) Notwithstanding any other law to the contrary, for any offender
who is required to register as provided in the Kansas offender registration
act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no
expungement of any conviction or any part of the offender's criminal
record while the offender is required to register as provided in the Kansas
offender registration act.
(f) (1) When a petition for expungement is filed, the court shall set
a date for a hearing of such petition and shall cause notice of such hearing
to be given to the prosecutor and the arresting law enforcement agency.
The petition shall state the:
(A) Defendant's full name;
(B) full name of the defendant at the time of arrest, conviction or
1 diversion, if different than the defendant's current name;
2 (C) defendant's sex, race and date of birth;
3 (D) crime for which the defendant was arrested, convicted or
4 diverted;
5 (E) date of the defendant's arrest, conviction or diversion; and
6 (F) identity of the convicting court, arresting law enforcement
7 authority or diverting authority.
8 (2) Except as otherwise provided by law, a petition for expungement
9 shall be accompanied by a docket fee in the amount of $100. On and after
10 April 15, 2010 through June 30, 2011 May 19, 2011, through June 30,
11 2012, the supreme court may impose a charge, not to exceed $15 $19 per
12 case, to fund the costs of non-judicial personnel. The charge established in
13 this section shall be the only fee collected or moneys in the nature of a fee
14 collected for the case. Such charge shall only be established by an act of
15 the legislature and no other authority is established by law or otherwise to
16 collect a fee.
17 (3) All petitions for expungement shall be docketed in the original
18 criminal action. Any person who may have relevant information about the
19 petitioner may testify at the hearing. The court may inquire into the
20 background of the petitioner and shall have access to any reports or
21 records relating to the petitioner that are on file with the secretary of
22 corrections or the Kansas parole prisoner review board.
23 (4) At the hearing on the petition, the court shall order the
24 petitioner's arrest record, conviction or diversion expunged if the court
25 finds that:
26 (1) The petitioner has not been convicted of a felony in the past two
27 years and no proceeding involving any such crime is presently pending or
28 being instituted against the petitioner;
29 (2) the circumstances and behavior of the petitioner warrant the
30 expungement;
31 (3) the expungement is consistent with the public welfare.
32 (g) When the court has ordered an arrest record, conviction or
33 diversion expunged, the order of expungement shall state the information
34 required to be contained in the petition. The clerk of the court shall send a
35 certified copy of the order of expungement to the Kansas bureau of
36 investigation which shall notify the federal bureau of investigation, the
37 secretary of corrections and any other criminal justice agency which may
38 have a record of the arrest, conviction or diversion. After the order of
39 expungement is entered, the petitioner shall be treated as not having been
40 arrested, convicted or diverted of the crime, except that:
41 (1) Upon conviction for any subsequent crime, the conviction that
42 was expunged may be considered as a prior conviction in determining the
43 sentence to be imposed;
the petitioner shall disclose that the arrest, conviction or diversion
occurred if asked about previous arrests, convictions or diversions:
(A) In any application for licensure as a private detective, private
detective agency, certification as a firearms trainer pursuant to K.S.A.
2011 Supp. 75-7b21, and amendments thereto, or employment as a
detective with a private detective agency, as defined by K.S.A. 75-7b01,
and amendments thereto; as security personnel with a private patrol
operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
the department of social and rehabilitation services;
(B) in any application for admission, or for an order of reinstatement,
to the practice of law in this state;
(C) to aid in determining the petitioner's qualifications for
employment with the Kansas lottery or for work in sensitive areas within
the Kansas lottery as deemed appropriate by the executive director of the
Kansas lottery;
(D) to aid in determining the petitioner's qualifications for executive
director of the Kansas racing and gaming commission, for employment
with the commission or for work in sensitive areas in parimutuel racing as
deemed appropriate by the executive director of the commission, or to aid
in determining qualifications for licensure or renewal of licensure by the
commission;
(E) to aid in determining the petitioner's qualifications for the
following under the Kansas expanded lottery act: (i) Lottery gaming
facility manager or prospective manager, racetrack gaming facility
manager or prospective manager, licensee or certificate holder; or (ii) an
officer, director, employee, owner, agent or contractor thereof;
(F) upon application for a commercial driver's license under K.S.A.
8-2,125 through 8-2,142, and amendments thereto;
(G) to aid in determining the petitioner's qualifications to be an
employee of the state gaming agency;
(H) to aid in determining the petitioner's qualifications to be an
employee of a tribal gaming commission or to hold a license issued
pursuant to a tribal-state gaming compact;
(I) in any application for registration as a broker-dealer, agent,
investment adviser or investment adviser representative all as defined in
K.S.A. 17-12a102, and amendments thereto;
(J) in any application for employment as a law enforcement officer as
defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; or
(K) for applications received on and after July 1, 2006, to aid in
determining the petitioner's qualifications for a license to carry a concealed
weapon pursuant to the personal and family protection act, K.S.A. 2011
Supp. 75-7c01 et seq., and amendments thereto;
(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

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

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

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

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

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

(1) The person whose record was expunged;

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

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

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

(5) a person entitled to such information pursuant to the terms of the expungement order;
(6) a prosecutor, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

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

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

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

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

(11) the Kansas sentencing commission;

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

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

(14) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement
officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;
(15) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto; or
(16) the attorney general and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act; or
(17) the Kansas bureau of investigation for the purposes of:
(A) Completing a person's criminal history record information within the central repository, in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or
(B) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.
(l) The provisions of subsection (k)(17) shall apply to records created prior to, on and after July 1, 2011.

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

<table>
<thead>
<tr>
<th>Category</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
<th>H</th>
<th>I</th>
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<tr>
<td>Severity Level</td>
<td>3 + Person Felonies</td>
<td>2 Person Felonies</td>
<td>1 Person 2 Person Felonies</td>
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<td>3 + Person Felonies</td>
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<td>124</td>
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<td>81</td>
<td>61</td>
<td>41</td>
<td>21</td>
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</tbody>
</table>

Legend:
- Presumptive Probation
- Short Stay
- Presumptive Imprisonment

HB 2318—Am. by SCW
### Sentencing Range - Drug Offenses

<table>
<thead>
<tr>
<th>Category</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
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<td>Severity</td>
<td>3 × Person Felonies</td>
<td>2 × Person Felonies</td>
<td>1 Person &amp; 1 Nonperson Felonies</td>
<td>1 Person Felony</td>
<td>3 × Nonperson Felonies</td>
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<td>1 Nonperson Felony</td>
<td>2+ Misdemeanors</td>
<td>1 Misdemeanor No Record</td>
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<td>32</td>
<td>30</td>
<td>26</td>
<td>24</td>
<td>22</td>
</tr>
</tbody>
</table>

**Legend:**
- Presumptive Probation
- Presumptive Imprisonment
(b) Sentences expressed in the sentencing guidelines grid for drug crimes in subsection (a) represent months of imprisonment.

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

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

(A) Prison sentence;
(B) maximum potential reduction to such sentence as a result of good time; and
(C) period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

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

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

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

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

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

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

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

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

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

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

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

(A) Except as provided in subsection (g)(1)(B), an additional 6
months’ imprisonment; and
(B) if the trier of fact makes a finding that the firearm was discharged, an additional 18 months' imprisonment.

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

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

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

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

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

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

(c) Except as otherwise provided, all convictions, whether sentenced consecutively or concurrently, shall be counted separately in the offender's criminal history.
(d) Except as provided in K.S.A. 2011 Supp. 21-6815, and amendments thereto, the following are applicable to determining an offender's criminal history classification:

1. Only verified convictions will be considered and scored.
2. All prior adult felony convictions, including expunge
ments, will be considered and scored.
3. There will be no decay factor applicable for:
   (A) Adult convictions;
   (B) a juvenile adjudication for an offense which would constitute a person felony if committed by an adult;
   (C) a juvenile adjudication for an offense committed before July 1, 1993, which would have been a class A, B or C felony, if committed by an adult; or
   (D) a juvenile adjudication for an offense committed on or after July 1, 1993, which would be an off-grid felony, a nondrug severity level 1, 2, 3, 4 or 5 felony, or a drug severity level 1, 2 or 3 felony for an offense committed on or after July 1, 1993, but prior to July 1, 2012, or a drug severity level 1, 2, 3 or 4 felony for an offense committed on or after July 1, 2012, if committed by an adult.
4. Except as otherwise provided, a juvenile adjudication will decay if the current crime of conviction is committed after the offender reaches the age of 25, and the juvenile adjudication is for an offense:
   (A) Committed before July 1, 1993, which would have been a class D or E felony if committed by an adult;
   (B) committed on or after July 1, 1993, which would be a nondrug severity level 6, 7, 8, 9 or 10, or drug level 4, nonperson felony a drug severity level 4 felony for an offense committed on or after July 1, 1993, but prior to July 1, 2012, or a drug severity level 5 felony for an offense committed on or after July 1, 2012 if committed by an adult; or
   (C) which would be a misdemeanor if committed by an adult.
5. All person misdemeanors, class A nonperson misdemeanors and class B select nonperson misdemeanors, and all municipal ordinance and county resolution violations comparable to such misdemeanors, shall be considered and scored.
6. Unless otherwise provided by law, unclassified felonies and misdemeanors, shall be considered and scored as nonperson crimes for the purpose of determining criminal history.
7. Prior convictions of a crime defined by a statute which has since been repealed shall be scored using the classification assigned at the time of such conviction.
8. Prior convictions of a crime defined by a statute which has since been determined unconstitutional by an appellate court shall not be used for criminal history scoring purposes.
Prior convictions of any crime shall not be counted in determining the criminal history category if they enhance the severity level, elevate the classification from misdemeanor to felony, or are elements of the present crime of conviction. Except as otherwise provided, all other prior convictions will be considered and scored.

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

Sec. 36. K.S.A. 2011 Supp. 21-6819 is hereby amended to read as follows: 21-6819. (a) The provisions of subsections (a), (b), (c), (d), (e) and (h) of K.S.A. 2011 Supp. 21-6606, and amendments thereto, regarding multiple sentences shall apply to the sentencing of offenders pursuant to the sentencing guidelines. The mandatory consecutive sentence requirements contained in subsections (c), (d) and (e) of K.S.A. 2011 Supp. 21-6606, and amendments thereto, shall not apply if such application would result in a manifest injustice.

(b) The sentencing judge shall otherwise have discretion to impose concurrent or consecutive sentences in multiple conviction cases. The sentencing judge may consider the need to impose an overall sentence that is proportionate to the harm and culpability and shall state on the record if the sentence is to be served concurrently or consecutively. In cases where consecutive sentences may be imposed by the sentencing judge, the following shall apply:

(1) When the sentencing judge imposes multiple sentences consecutively, the consecutive sentences shall consist of an imprisonment term which may not exceed the sum of the consecutive imprisonment terms, and a supervision term. The sentencing judge shall have the discretion to impose a consecutive term of imprisonment for a crime other than the primary crime of any term of months not to exceed the nonbase sentence as determined under subsection (b)(5). The postrelease supervision term will be based on the longest supervision term imposed for any of the crimes.

(2) The sentencing judge shall establish a base sentence for the primary crime. The primary crime is the crime with the highest crime severity ranking. An off-grid crime shall not be used as the primary crime in determining the base sentence when imposing multiple sentences. If sentences for off-grid and on-grid convictions are ordered to run consecutively, the offender shall not begin to serve the on-grid sentence until paroled from the off-grid sentence, and the postrelease supervision term will be based on the off-grid crime. If more than one crime of conviction is classified in the same crime category, the sentencing judge shall designate which crime will serve as the primary crime. In the instance of sentencing with both the drug grid and the nondrug grid and simultaneously having a presumption of imprisonment and probation, the sentencing judge shall use the crime which presumes imprisonment as the primary crime. In the instance of
sentencing with both the drug grid and the nondrug grid and
simultaneously having a presumption of either both probation or both
imprisonment, the sentencing judge shall use the crime with the longest
sentence term as the primary crime.

(3) The base sentence is set using the total criminal history score
assigned.

(4) The total prison sentence imposed in a case involving multiple
convictions arising from multiple counts within an information,
complaint or indictment cannot exceed twice the base sentence. This
limit shall apply only to the total sentence, and it shall not be necessary
to reduce the duration of any of the nonbase sentences imposed to be
served consecutively to the base sentence. The postrelease supervision
term will reflect only the longest such term assigned to any of the crimes
for which consecutive sentences are imposed. Supervision periods shall
not be aggregated.

(5) Nonbase sentences shall not have criminal history scores
applied, as calculated in the criminal history I column of the grid, but
base sentences shall have the full criminal history score assigned. In the
event a conviction designated as the primary crime in a multiple
conviction case is reversed on appeal, the appellate court shall remand
the multiple conviction case for resentencing. Upon resentencing, if the
case remains a multiple conviction case the court shall follow all of the
provisions of this section concerning the sentencing of multiple
conviction cases.

(6) If the sentence for the primary crime is a prison term, the entire
imprisonment term of the consecutive sentences will be served in prison.

(7) If the sentence for the consecutive sentences is a prison term,
the postrelease supervision term is a term of postrelease supervision as
established for the primary crime.

(8) If the sentence for the primary crime is a nonprison sentence, a
nonprison term will be imposed for each crime conviction, but the
nonprison terms shall not be aggregated or served consecutively even
though the underlying prison sentences have been ordered to be served
consecutively. Upon revocation of the nonprison sentence, the offender
shall serve the prison sentences consecutively as provided in this section.

(c) The following shall apply for a departure from the presumptive
sentence based on aggravating factors within the context of consecutive
sentences:

(1) The court may depart from the presumptive limits for
consecutive sentences only if the judge finds substantial and compelling
reasons to impose a departure sentence for any of the individual crimes
being sentenced consecutively.

(2) When a departure sentence is imposed for any of the individual
crimes sentenced consecutively, the imprisonment term of that departure
sentence shall not exceed twice the maximum presumptive imprisonment
term that may be imposed for that crime.

(3) The total imprisonment term of the consecutive sentences,
including the imprisonment term for the departure crime, shall not
exceed twice the maximum presumptive imprisonment term of the
departure sentence following aggravation.

Sec. 18. {37.} K.S.A. 2011 Supp. 21-6821 is hereby amended to read
as follows: 21-6821. (a) The secretary of corrections is hereby authorized
to adopt rules and regulations providing for a system of good time
calculations. Such rules and regulations shall provide circumstances upon
which an inmate may earn good time credits and for the forfeiture of
earned credits. Such circumstances may include factors related to program
and work participation and conduct and the inmate's willingness to
examine and confront past behavioral patterns that resulted in the
commission of the inmate's crimes.

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

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

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

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

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

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

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

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

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

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

(3) testified falsely or otherwise submitted false evidence or
information to the court;
(4) attempted to create or obtain a false affidavit, testimony or evidence; or
(5) abused the discovery process in any judicial action or proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) If the offender is assigned a high risk status as determined by the drug abuse assessment performed pursuant to subsection (b)(1) and a moderate or high risk status as determined by the criminal risk-need assessment performed pursuant to subsection (b)(2), the sentencing court shall commit the offender to treatment in a drug abuse treatment program until the court determines the offender is suitable for discharge by the court. The term of treatment shall not exceed 18 months. The court may extend the term of probation, pursuant to subsection (c)(3) of K.S.A. 2011 Supp. 21-6608, and amendments thereto. The term of treatment may not exceed the term of probation.
(d) (1) Offenders who are committed to a drug abuse treatment program pursuant to subsection (c) shall be supervised by community correctional services.

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

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

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

       (A) Is convicted of a new felony; or

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

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

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

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

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

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

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

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

Sec. 20. {39.} K.S.A. 2011 Supp. 22-2802 is hereby amended to read as follows: 22-2802. (1) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to
assure the public safety. If the person is being bound over for a felony, the
bond shall also be conditioned on the person's appearance in the district
court or by way of a two-way electronic audio-video communication as
provided in subsection (14) at the time required by the court to answer the
charge against such person and at any time thereafter that the court
requires. Unless the magistrate makes a specific finding otherwise, if the
person is being bonded out for a person felony or a person misdemeanor,
the bond shall be conditioned on the person being prohibited from having
any contact with the alleged victim of such offense for a period of at least
72 hours. The magistrate may impose such of the following additional
conditions of release as will reasonably assure the appearance of the
person for preliminary examination or trial:
   (a) Place the person in the custody of a designated person or
organization agreeing to supervise such person;
   (b) place restrictions on the travel, association or place of abode of
the person during the period of release;
   (c) impose any other condition deemed reasonably necessary to
assure appearance as required, including a condition requiring that the
person return to custody during specified hours;
   (d) place the person under a house arrest program pursuant to K.S.A.
2011 Supp. 21-6609, and amendments thereto; or
   (e) place the person under the supervision of a court services officer
responsible for monitoring the person's compliance with any conditions of
release ordered by the magistrate. The magistrate may order the person to
pay for any costs associated with the supervision provided by the court
services department in an amount not to exceed $15 per week of such
supervision. The magistrate may also order the person to pay for all other
costs associated with the supervision and conditions for compliance in
addition to the $15 per week.
(2) In addition to any conditions of release provided in subsection (1),
for any person charged with a felony, the magistrate may order such
person to submit to a drug and alcohol abuse examination and evaluation
in a public or private treatment facility or state institution and, if
determined by the head of such facility or institution that such person is a
drug or alcohol abuser or is incapacitated by drugs or alcohol, to submit to
treatment for such drug or alcohol abuse, as a condition of release.
(3) The appearance bond shall be executed with sufficient solvent
sureties who are residents of the state of Kansas, unless the magistrate
determines, in the exercise of such magistrate's discretion, that requiring
sureties is not necessary to assure the appearance of the person at the time
ordered.
(4) A deposit of cash in the amount of the bond may be made in lieu
of the execution of the bond pursuant to subsection (3). Except as provided
in subsection (5), such deposit shall be in the full amount of the bond and
in no event shall a deposit of cash in less than the full amount of bond be
permitted. Any person charged with a crime who is released on a cash
bond shall be entitled to a refund of all moneys paid for the cash bond,
after deduction of any outstanding restitution, costs, fines and fees, after
the final disposition of the criminal case if the person complies with all
requirements to appear in court. The court may not exclude the option of
posting bond pursuant to subsection (3).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) provisions for restitution; and

(10) any mitigating circumstances.

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

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

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

(3) the complaint alleges a domestic violence offense, as defined in
K.S.A. 2011 Supp. 21-5111, and amendments thereto, and the defendant
has participated in two or more diversions in the previous five year period
upon complaints alleging a domestic violence offense.
(c) A county or district attorney may enter into a diversion agreement
in lieu of further criminal proceedings on a complaint for violations of
article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments
thereto, if such diversion carries the same penalties as the conviction for
the corresponding violations. If the defendant has previously participated
in one or more diversions for violations of article 10 of chapter 32 of the
Kansas Statutes Annotated, and amendments thereto, then each subsequent
diversion shall carry the same penalties as the conviction for the
corresponding violations.
Sec. 22. K.S.A. 2011 Supp. 22-3412 is hereby amended to read
as follows: 22-3412. (a) (1) For crimes committed before July 1, 1993,
peremptory challenges shall be allowed as follows:
(A) Each defendant charged with a class A felony shall be allowed 12
peremptory challenges.
(B) Each defendant charged with a class B felony shall be allowed
eight peremptory challenges.
(C) Each defendant charged with a felony other than class A or class
B felony shall be allowed six peremptory challenges.
(D) Each defendant charged with a misdemeanor shall be allowed
three peremptory challenges.
(E) Additional peremptory challenges shall not be allowed on account
of separate counts charged in the complaint, information or indictment.
(F) The prosecution shall be allowed the same number of peremptory
challenges as all the defendants.
(2) For crimes committed on or after July 1, 1993, peremptory
challenges shall be allowed as follows:
(A) Each defendant charged with an off-grid felony or, a nondrug or
drug felony ranked at severity level 1, or a drug felony ranked at severity
level 1 or 2, shall be allowed 12 peremptory challenges.
(B) Each defendant charged with a nondrug felony ranked at severity
level 2, 3, 4, 5 or 6, or a drug felony ranked at severity level 2 or 3 or 4,
shall be allowed 8 peremptory challenges.
(C) Each defendant charged with an unclassified felony, a nondrug
severity level 7, 8, 9 or 10, or a drug severity level 4 or 5 felony, shall be
allowed six peremptory challenges.
(D) Each defendant charged with a misdemeanor shall be allowed
three peremptory challenges.
(E) The prosecution shall be allowed the same number of peremptory
challenges as all defendants.
(F) The most serious penalty offense charged against each defendant
furnishes the criterion for determining the allowed number of peremptory challenges for that defendant.

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

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

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

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

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

Sec. 23. {42.} K.S.A. 2011 Supp. 22-3604 is hereby amended to read
as follows: 22-3604. (1) Except as provided in subsection (3), a defendant
shall not be held in jail nor subject to an appearance bond during the
pendency of an appeal by the prosecution.

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

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

Sec. 24. {43.} K.S.A. 2011 Supp. 22-3717 is hereby amended to read
as follows: 22-3717.(a) Except as otherwise provided by this section;
K.S.A. 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4635 through
21-4638, prior to their repeal; K.S.A. 21-4624, prior to its repeal; K.S.A.
21-4642, prior to its repeal; K.S.A. 2011 Supp. 21-6617, 21-6620, 21-
6623, 21-6624, 21-6625 and 21-6626, and amendments thereto; and
K.S.A. 8-1567, and amendments thereto; an inmate, including an inmate
sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2011
Supp. 21-6707, and amendments thereto, shall be eligible for parole after
serving the entire minimum sentence imposed by the court, less good time
credits.

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

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

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

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

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

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

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

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

(2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2011 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, the inmate shall be eligible for parole after serving the mandatory term of imprisonment.
(d) (1) Persons sentenced for crimes, other than off-grid crimes, committed on or after July 1, 1993, or persons subject to subparagraph (G), will not be eligible for parole, but will be released to a mandatory period of postrelease supervision upon completion of the prison portion of their sentence as follows:

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

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

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

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

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

(iii) In determining whether substantial and compelling reasons exist, the court shall consider:
(a) Written briefs or oral arguments submitted by either the defendant or the state;
(b) any evidence received during the proceeding;
(c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant to subsection (e) of K.S.A. 21-4714, prior to its repeal, or subsection (e) of K.S.A. 2011 Supp. 21-6813, and amendments thereto; and
(d) any other evidence the court finds trustworthy and reliable.
(iv) The sentencing judge may order that a psychological evaluation be prepared and the recommended programming be completed by the offender. The department of corrections or the parole prisoner review board shall ensure that court ordered sex offender treatment be carried out.
(v) In carrying out the provisions of subparagraph (d)(1)(D), the court shall refer to K.S.A. 21-4718, prior to its repeal, or K.S.A. 2011 Supp. 21-6817, and amendments thereto.
(vi) Upon petition, the parole prisoner review board may provide for early discharge from the postrelease supervision period upon completion of court ordered programs and completion of the presumptive postrelease supervision period, as determined by the crime of conviction, pursuant to subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from postrelease supervision is at the discretion of the parole board.
(vii) Persons convicted of crimes deemed sexually violent or sexually motivated, shall be registered according to the offender registration act, K.S.A. 22-4901 through 22-4910, and amendments thereto.
(viii) Persons convicted of K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2011 Supp. 21-5508, and amendments thereto, shall be required to participate in a treatment program for sex offenders during the postrelease supervision period.
(E) The period of postrelease supervision provided in subparagraphs (A) and (B) may be reduced by up to 12 months and the period of postrelease supervision provided in subparagraph (C) may be reduced by up to six months based on the offender's compliance with conditions of supervision and overall performance while on postrelease supervision. The reduction in the supervision period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.
(F) In cases where sentences for crimes from more than one severity level have been imposed, the offender shall serve the longest period of postrelease supervision as provided by this section available for any crime upon which sentence was imposed irrespective of the severity level of the crime. Supervision periods will not aggregate.
(G) Except as provided in subsection (u), persons convicted of a sexually violent crime committed on or after July 1, 2006, and who are released from prison, shall be released to a mandatory period of
postrelease supervision for the duration of the person's natural life.

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

(A) Rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 2011 Supp. 21-5503, and amendments thereto;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) The Kansas parole prisoner review board shall hold a parole hearing at least the month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (c). At least the month preceding the parole hearing, the county or district attorney of the county where the inmate was convicted shall give written notice of the time and place of the public comment sessions for the inmate to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's family if the family's address is known to the county or district attorney. Except as otherwise provided, failure to notify pursuant to this section shall not be a reason to postpone a
parole hearing. In the case of any inmate convicted of an off-grid felony or a class A felony the secretary of corrections shall give written notice of the time and place of the public comment session for such inmate at least one month preceding the public comment session to any victim of such inmate's crime or the victim's family pursuant to K.S.A. 74-7338, and amendments thereto. If notification is not given to such victim or such victim's family in the case of any inmate convicted of an off-grid felony or a class A felony, the board shall postpone a decision on parole of the inmate to a time at least 30 days after notification is given as provided in this section. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section. If granted parole, the inmate may be released on parole on the date specified by the board, but not earlier than the date the inmate is eligible for parole under subsections (a), (b) and (c). At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the 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 impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the Kansas parole board formally considers placing an inmate on parole and no agreement has been entered into with the inmate under K.S.A. 75-5210a, and amendments thereto, the board shall notify the inmate in writing of the reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If parole is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in writing the reasons for not granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than one year after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next three years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to three years but any such deferral shall require the board to state the basis for its findings. If parole is denied for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three years after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to 10 years but any such deferral shall require the board to state the basis for its findings.

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

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

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

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

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

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

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

(4) may order the parolee or person on postrelease supervision to pay the administrative fee imposed pursuant to K.S.A. 22-4529, and amendments thereto, unless the board finds compelling circumstances which would render payment unworkable; and
(5) unless it finds compelling circumstances which would render a
plan of payment unworkable, shall order that the parolee or person on
postrelease supervision reimburse the state for all or part of the
expenditures by the state board of indigents' defense services to provide
counsel and other defense services to the person. In determining the
amount and method of payment of such sum, the parole board shall take
account of the financial resources of the person and the nature of the
burden that the payment of such sum will impose. Such amount shall not
exceed the amount claimed by appointed counsel on the payment voucher
for indigents' defense services or the amount prescribed by the board of
indigents' defense services reimbursement tables as provided in K.S.A. 22-
4522, and amendments thereto, whichever is less, minus any previous
payments for such services.

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

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

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

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

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

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

(t) For offenders sentenced prior to May 25, 2000 who are eligible for
modification of their postrelease supervision obligation, the department of
corrections shall modify the period of postrelease supervision as provided for by this section for offenders convicted of severity level 9 and 10 crimes on the sentencing guidelines grid for nondrug crimes and severity level 4 crimes on the sentencing guidelines grid for drug crimes on or before September 1, 2000; for offenders convicted of severity level 7 and 8 crimes on the sentencing guidelines grid for nondrug crimes on or before November 1, 2000; and for offenders convicted of severity level 5 and 6 crimes on the sentencing guidelines grid for nondrug crimes and severity level 3 crimes on the sentencing guidelines grid for drug crimes on or before January 1, 2001.

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

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

Sec. 25. {44.} K.S.A. 2011 Supp. 38-2346 is hereby amended to read as follows: 38-2346. (a) Except as provided in subsection (b), each county or district attorney may adopt a policy and establish guidelines for an immediate intervention program by which a juvenile may avoid prosecution. In addition to the county or district attorney adopting policies and guidelines for the immediate intervention programs, the court, the county or district attorney and the director of the intake and assessment center, pursuant to a written agreement, may develop local programs to:

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

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

(3) Allow the intake and assessment centers to directly purchase services for the juvenile and the juvenile's family.
(4) Allow intake and assessment workers to direct the release of a juvenile prior to a detention hearing after the completion of the intake and assessment process if the juvenile intake and assessment worker has reason to believe that if released the juvenile will appear for further proceedings and is not dangerous to self or others.

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

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

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

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

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

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

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

Sec. 26. K.S.A. 2011 Supp. 38-2347 is hereby amended to read as follows: 38-2347. (a) (1) Except as otherwise provided in this section, at any time after commencement of proceedings under this code against a
juvenile and prior to the beginning of an evidentiary hearing at which the
court may enter a sentence as provided in K.S.A. 2011 Supp. 38-2356, and
amendments thereto, the county or district attorney or the county or district
attorney's designee may file a motion requesting that the court authorize
prosecution of the juvenile as an adult under the applicable criminal
statute. The juvenile shall be presumed to be a juvenile unless good cause
is shown to prosecute the juvenile as an adult.

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

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

(4) If the county or district attorney or the county or district attorney's
designee files a motion to designate the proceedings as an extended
jurisdiction juvenile prosecution and the juvenile was 14, 15, 16 or 17
years of age at the time of the offense or offenses alleged in the complaint
and: (A) charged with an offense: (i) If committed by an adult, would
constitute an off-grid crime, a person felony, or a nondrug severity level 1
through 6 felony or any; (ii) committed prior to July 1, 2012, if committed
by an adult prior to July 1, 2012, would constitute a drug
severity level 1, 2 or 3 felony; (iii) committed on or after July 1, 2012, if
comitted by an adult on or after July 1, 2012, would constitute a drug severity level 1, 2, 3 or 4 felony; or (ii) (iv) was committed while in possession of a firearm; or (B) charged with a felony or with more than, one offense, one or more of which constitutes a felony, after having been adjudicated or convicted in a separate juvenile proceeding as having committed an act which would constitute a felony if committed by an adult and the adjudications or convictions occurred prior to the date of the commission of the new offense charged, the burden is on the juvenile to rebut the designation of an extended jurisdiction juvenile prosecution by a preponderance of the evidence. In all other motions requesting that the court designate the proceedings as an extended jurisdiction juvenile prosecution, the juvenile is presumed to be a juvenile. The burden of proof is on the prosecutor to prove the juvenile should be designated as an extended jurisdiction juvenile.

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

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

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

(A) The nature of the charges in the complaint;
(B) the right of the juvenile to be presumed innocent of each charge;
(C) the right to trial without unnecessary delay and to confront and cross-examine witnesses appearing in support of the allegations of the complaint;
(D) the right to subpoena witnesses;
(E) the right of the juvenile to testify or to decline to testify; and
(F) the sentencing alternatives the court may select as the result of the juvenile being prosecuted under an extended jurisdiction juvenile prosecution.

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

(e) In determining whether or not prosecution as an adult should be
authorized or designating the proceeding as an extended jurisdiction
juvenile prosecution, the court shall consider each of the following factors:
(1) The seriousness of the alleged offense and whether the protection
of the community requires prosecution as an adult or designating the
proceeding as an extended jurisdiction juvenile prosecution;
(2) whether the alleged offense was committed in an aggressive,
vigorous, premeditated or willful manner;
(3) whether the offense was against a person or against property.
Greater weight shall be given to offenses against persons, especially if
personal injury resulted;
(4) the number of alleged offenses unadjudicated and pending against
the juvenile;
(5) the previous history of the juvenile, including whether the
juvenile had been adjudicated a juvenile offender under this code or the
Kansas juvenile justice code and, if so, whether the offenses were against
persons or property, and any other previous history of antisocial behavior
or patterns of physical violence;
(6) the sophistication or maturity of the juvenile as determined by
consideration of the juvenile's home, environment, emotional attitude,
pattern of living or desire to be treated as an adult;
(7) whether there are facilities or programs available to the court
which are likely to rehabilitate the juvenile prior to the expiration of the
court's jurisdiction under this code; and
(8) whether the interests of the juvenile or of the community would
be better served by criminal prosecution or extended jurisdiction juvenile
prosecution.

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

(f) (1) The court may authorize prosecution as an adult upon
completion of the hearing if the court finds from a preponderance of the
evidence that the alleged juvenile offender should be prosecuted as an
adult for the offense charged. In that case, the court shall direct the alleged
juvenile offender be prosecuted under the applicable criminal statute and
that the proceedings filed under this code be dismissed.
(2) The court may designate the proceeding as an extended jurisdiction juvenile prosecution upon completion of the hearing if the juvenile has failed to rebut the presumption or the court finds from a preponderance of the evidence that the juvenile should be prosecuted under an extended jurisdiction juvenile prosecution.

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

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

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

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

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

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

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

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

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

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

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

or

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

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

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

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

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

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

(iii) committed on or after July 1, 2012, which, if committed by an adult on or after July 1, 2012, would constitute one present drug severity level 4 felony adjudication and two prior felony adjudications.

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

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

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

(ii) which, if committed by an adult, would constitute one present felony adjudication and two prior drug severity level 3 drug or 5 adjudications;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Discharge the offender from the custody of the commissioner, release the commissioner from further responsibilities in the case and enter any other appropriate orders.
(b) As used in this section: (1) "Placement failure" means a juvenile offender in the custody of the juvenile justice authority has significantly failed the terms of conditional release or has been placed out-of-home in a community placement accredited by the commissioner and has significantly violated the terms of that placement or violated the terms of probation.

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

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

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

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

(b) At least 21 days prior to releasing a juvenile offender as provided in subsection (a), the person in charge of the juvenile correctional facility shall notify the committing court of the date and conditions upon which it is proposed the juvenile offender is to be released. The person in charge of the juvenile correctional facility shall notify the school district in which the juvenile offender will be residing if the juvenile is still required to attend a school. Such notification to the school shall include the name of
the juvenile offender, address upon release, contact person with whom the
juvenile offender will be residing upon release, anticipated date of release,
anticipated date of enrollment in school, name and phone number of case
worker, crime or crimes of adjudication if not confidential based upon
other statutes, conditions of release and any other information the
commissioner deems appropriate. To ensure the educational success of the
student, the community case manager or a representative from the
residential facility where the juvenile offender will reside shall contact the
principal of the receiving school in a timely manner to review the juvenile
offender's case. If such juvenile offender's offense would have constituted
an off-grid crime, a nondrug felony crime ranked at severity level 1, 2, 3, 4
or 5, or a drug felony crime ranked at severity level 1, 2 or 3, on or after
July 1, 1993, or a drug felony crime ranked at severity level 4 on or after
July 1, 2012, if committed by an adult, the person in charge of the juvenile
correctional facility shall notify the county or district attorney of the
county where the offender was adjudicated a juvenile offender of the date
and conditions upon which it is proposed the juvenile offender is to be
released. The county or district attorney shall give written notice at least
seven days prior to the release of the juvenile offender to: (1) Any victim
of the juvenile offender's crime who is alive and whose address is known
to the court or, if the victim is deceased, to the victim's family if the
family's address is known to the court; and (2) the local law enforcement
agency. Failure to notify pursuant to this section shall not be a reason to
postpone a release. Nothing in this section shall create a cause of action
against the state or county or an employee of the state or county acting
within the scope of the employee's employment as a result of the failure to
notify pursuant to this section.

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

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

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

(f) For acts committed before July 1, 1999, the juvenile justice
authority shall notify at least 45 days prior to the discharge of the juvenile
offender the county or district attorney of the county where the offender
was adjudicated a juvenile offender of the release of such juvenile
offender, if such juvenile offender's offense would have constituted a class
A, B or C felony before July 1, 1993, or an off-grid crime, a nondrug
crime ranked at severity level 1, 2, 3, 4 or 5 or a drug crime ranked at
severity level 1, 2 or 3, on or after July 1, 1993, or a drug crime ranked at
severity level 4 on or after July 1, 2012, if committed by an adult. The
county or district attorney shall give written notice at least 30 days prior to
the release of the juvenile offender to: (1) Any victim of the juvenile
offender's crime who is alive and whose address is known to the court or,
if the victim is deceased, to the victim's family if the family's address is
known to the court; and (2) the local law enforcement agency. Failure to
notify pursuant to this section shall not be a reason to postpone a release.
Nothing in this section shall create a cause of action against the state or
county or an employee of the state or county acting within the scope of the
employee's employment as a result of the failure to notify pursuant to this
section.

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

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

(b) At least 45 days prior to the discharge of the juvenile offender, the
juvenile justice authority shall notify the court and the county or district
attorney of the county where the offender was adjudicated a juvenile
offender of the pending discharge of such juvenile offender, the offense
would have constituted a class A, B or C felony before July 1, 1993, or an
off-grid crime, a nondrug crime ranked at severity level 1, 2, 3, 4 or 5 or a
drug crime ranked at severity level 1, 2 or 3, on or after July 1, 1993, or a
drug crime ranked at severity level 4 on or after July 1, 2012, if committed
by an adult. The county or district attorney shall give written notice at least
30 days prior to the discharge of the juvenile offender pursuant to K.S.A.
Sec. 30. K.S.A. 2011 Supp. 75-5291 is hereby amended to read as follows: 75-5291. (a) (1) The secretary of corrections may make grants to counties for the development, implementation, operation and improvement of community correctional services that address the criminogenic needs of felony offenders including, but not limited to, adult intensive supervision, substance abuse and mental health services, employment and residential services, and facilities for the detention or confinement, care or treatment of offenders as provided in this section except that no community corrections funds shall be expended by the secretary for the purpose of establishing or operating a conservation camp as provided by K.S.A. 75-52,127, and amendments thereto.

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

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

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

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

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

(E) on and after January 1, 2011, for offenders who are expected to be subject to supervision in Kansas, who are determined to be "high risk or needs, or both" by the use of a statewide, mandatory, standardized risk assessment tool or instrument which shall be specified by the Kansas sentencing commission;
(F) placed in a community correctional services program as a condition of supervision following the successful completion of a conservation camp program; or

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 31. {50.} K.S.A. 2011 Supp. 75-52,144 is hereby amended to
read as follows: 75-52,144. (a) Drug abuse treatment programs certified in
accordance with subsection (b) shall provide:

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

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

(3) one or more treatment options in the continuum of services
needed to reach recovery: Detoxification, rehabilitation, continuing care and aftercare, and relapse prevention;
(4) treatment options to incorporate family and auxiliary support services; and
(5) treatment options for alcohol abuse when indicated by the assessment of the offender or required by the court.
(b) The presentence criminal risk-need assessment shall be conducted by a court services officer or a community corrections officer. The presentence drug abuse treatment program placement assessment shall be conducted by a drug abuse treatment program certified in accordance with the provisions of this subsection to provide assessment and treatment services. A drug abuse treatment program shall be certified by the secretary of corrections. The secretary may establish qualifications for the certification of programs, which may include requirements for supervision and monitoring of clients; fee reimbursement procedures; handling of conflicts of interest; delivery of services to clients unable to pay; and other matters relating to quality and delivery of services by the program. Drug abuse treatment may include community based and faith based programs. The certification shall be for a four-year period. Recertification of a program shall be by the secretary. To be eligible for certification under this subsection, the secretary shall determine that a drug abuse treatment program: (1) Meets the qualifications established by the secretary; (2) is capable of providing the assessments, supervision and monitoring required under subsection (a); (3) has employed or contracted with certified treatment providers; and (4) meets any other functions and duties specified by law.
(c) Any treatment provider who is employed or has contracted with a certified drug abuse treatment program who provides services to offenders shall be certified by the secretary of corrections. The secretary shall require education and training which shall include, but not be limited to, case management and cognitive behavior training. The duties of providers who prepare the presentence drug abuse assessment may also include appearing at sentencing and probation hearings in accordance with the orders of the court, monitoring offenders in the treatment programs, notifying the probation department and the court of any offender failing to meet the conditions of probation or referrals to treatment, appearing at revocation hearings as may be required and providing assistance and data reporting and program evaluation.
(d) The cost for all drug abuse assessments and performed pursuant to subsection (a)(1), and the cost for all certified drug abuse treatment programs for any person who meets the requirements of K.S.A. 2011 Supp. 21-6824, and amendments thereto, shall be paid by the Kansas sentencing commission from funds appropriated for such purpose. The Kansas
sentencing commission shall contract for payment for such services with the supervising agency. The sentencing court shall determine the extent, if any, that such person is able to pay for such assessment and treatment. Such payments shall be used by the supervising agency to offset costs to the state. If such financial obligations are not met or cannot be met, the sentencing court shall be notified for the purpose of collection or review and further action on the offender's sentence.

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

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

Sec. 51. K.S.A. 2011 Supp. 65-1626 is hereby amended to read as follows: 65-1626. For the purposes of this act:

(a) "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(1) A practitioner or pursuant to the lawful direction of a practitioner;
(2) the patient or research subject at the direction and in the presence of the practitioner; or
(3) a pharmacist as authorized in K.S.A. 65-1635a, and amendments thereto.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser but shall not include a common carrier, public warehouseman or employee of the carrier or warehouseman when acting in the usual and lawful course of the carrier's or warehouseman's business.

(c) "Application service provider" means an entity that sells electronic prescription or pharmacy prescription applications as a hosted service where the entity controls access to the application and maintains the software and records on its server.

(d) "Authorized distributor of record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in section 1504 of the internal revenue code, complies with any one of the following: (1) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; and (2) the wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is
updated by the manufacturer on no less than a monthly basis.

(c) "Board" means the state board of pharmacy created by
K.S.A. 74-1603, and amendments thereto.

(f) "Brand exchange" means the dispensing of a different drug
product of the same dosage form and strength and of the same generic
name as the brand name drug product prescribed.

(g) "Brand name" means the registered trademark name given
to a drug product by its manufacturer, labeler or distributor.

(h) "Chain pharmacy warehouse" means a permanent physical
location for drugs or devices, or both, that acts as a central warehouse
and performs intracompany sales or transfers of prescription drugs or
devices to chain pharmacies that have the same ownership or control.
Chain pharmacy warehouses must be registered as wholesale
distributors.

(i) "Co-licensee" means a pharmaceutical manufacturer that
has entered into an agreement with another pharmaceutical
manufacturer to engage in a business activity or occupation related to
the manufacture or distribution of a prescription drug and the national
drug code on the drug product label shall be used to determine the
identity of the drug manufacturer.

(j) "DEA" means the U.S. department of justice, drug enforcement
administration.

(k) "Deliver" or "delivery" means the actual, constructive or
attempted transfer from one person to another of any drug whether or
not an agency relationship exists.

(l) "Direct supervision" means the process by which the
responsible pharmacist shall observe and direct the activities of a
pharmacy student or pharmacy technician to a sufficient degree to
assure that all such activities are performed accurately, safely and
without risk or harm to patients, and complete the final check before
dispensing.

(m) "Dispense" means to deliver prescription medication to the
ultimate user or research subject by or pursuant to the lawful order of a
practitioner or pursuant to the prescription of a mid-level practitioner.

(n) "Dispenser" means a practitioner or pharmacist who
dispenses prescription medication.

(o) "Distribute" means to deliver, other than by administering
or dispensing, any drug.

(p) "Distributor" means a person who distributes a drug.

(q) "Drop shipment" means the sale, by a manufacturer, that
manufacturer's co-licensee, that manufacturer's third party logistics
provider, or that manufacturer's exclusive distributor, of the
manufacturer's prescription drug, to a wholesale distributor whereby the
wholesale distributor takes title but not possession of such prescription
drug and the wholesale distributor invoices the pharmacy, the chain
pharmacy warehouse, or other designated person authorized by law to
dispense or administer such prescription drug, and the pharmacy, the
chain pharmacy warehouse, or other designated person authorized by
law to dispense or administer such prescription drug receives delivery of
the prescription drug directly from the manufacturer, that
manufacturer's co-licensee, that manufacturer's third party logistics
provider, or that manufacturer's exclusive distributor, of such
prescription drug. Drop shipment shall be part of the "normal
distribution channel."

"Drug" means: (1) Articles recognized in the official United
States Pharmacopoeia, or other such official compendiums of the United
States, or official national formulary, or any supplement of any of them;
(2) articles intended for use in the diagnosis, cure, mitigation, treatment
or prevention of disease in man or other animals; (3) articles, other than
food, intended to affect the structure or any function of the body of man
or other animals; and (4) articles intended for use as a component of
any articles specified in clause (1), (2) or (3) of this subsection; but does
not include devices or their components, parts or accessories, except that
the term "drug" shall not include amygdalin (laetrile) or any livestock
remedy, if such livestock remedy had been registered in accordance with
the provisions of article 5 of chapter 47 of the Kansas Statutes
Annotated, prior to its repeal.

"Durable medical equipment" means technologically
sophisticated medical devices that may be used in a residence, including
the following: (1) Oxygen and oxygen delivery system; (2) ventilators;
(3) respiratory disease management devices; (4) continuous positive
airway pressure (CPAP) devices; (5) electronic and computerized
wheelchairs and seating systems; (6) apnea monitors; (7)
transcutaneous electrical nerve stimulator (TENS) units; (8) low air loss
cutaneous pressure management devices; (9) sequential compression
devices; (10) feeding pumps; (11) home phototherapy devices; (12)
infusion delivery devices; (13) distribution of medical gases to end users
for human consumption; (14) hospital beds; (15) nebulizers; or (16)
other similar equipment determined by the board in rules and
regulations adopted by the board.

"Electronic prescription" means an electronically prepared
prescription that is authorized and transmitted from the prescriber to the
pharmacy by means of electronic transmission.

"Electronic prescription application" means software that is used
to create electronic prescriptions and that is intended to be installed on the
prescriber's computers and servers where access and records are
controlled by the prescriber:

(v) "Electronic signature" means a confidential personalized digital key, code, number or other method for secure electronic data transmissions which identified a particular person as the source of the message, authenticates the signatory of the message and indicates the person’s approval of the information contained in the transmission.

(w) "Electronic transmission" means the transmission of an electronic prescription, formatted as an electronic data file, from a prescriber's electronic prescription application to a pharmacy's computer, where the data file is imported into the pharmacy prescription application.

(x) "Electronically prepared prescription" means a prescription that is generated using an electronic prescription application.

(y) "Exclusive distributor" means any entity that: (1) Contracts with a manufacturer to provide or coordinate warehousing, wholesale distribution or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug; (2) is registered as a wholesale distributor under the pharmacy act of the state of Kansas; and (3) to be considered part of the normal distribution channel, must be an authorized distributor of record.

(s) "Electronic transmission" means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment.

(t) "Facsimile transmission" or "fax transmission" means the transmission of a digital image of a prescription from the prescriber or the prescriber's agent to the pharmacy. "Facsimile transmission" includes, but is not limited to, transmission of a written prescription between the prescriber's fax machine and the pharmacy's fax machine; transmission of an electronically prepared prescription from the prescriber's electronic prescription application to the pharmacy's fax machine, computer or printer; or transmission of an electronically prepared prescription from the prescriber's fax machine to the pharmacy's fax machine, computer or printer.

(aa) "Generic name" means the established chemical name or official name of a drug or drug product.

(bb) (1) "Institutional drug room" means any location where prescription-only drugs are stored and from which prescription-only drugs are administered or dispensed and which is maintained or operated for the purpose of providing the drug needs of:

(A) Inmates of a jail or correctional institution or facility;

(B) residents of a juvenile detention facility, as defined by the revised Kansas code for care of children and the revised Kansas juvenile
justice code;
(C) students of a public or private university or college, a
community college or any other institution of higher learning which is
located in Kansas;
(D) employees of a business or other employer; or
(E) persons receiving inpatient hospice services.
(2) "Institutional drug room" does not include:
(A) Any registered pharmacy;
(B) any office of a practitioner; or
(C) a location where no prescription-only drugs are dispensed and
no prescription-only drugs other than individual prescriptions are stored
or administered.
(cc) "Intermediary" means any technology system that receives
and transmits an electronic prescription between the prescriber and the
pharmacy.
(dd) "Intracompany transaction" means any transaction or
transfer between any division, subsidiary, parent or affiliated or related
company under common ownership or control of a corporate entity, or
any transaction or transfer between co-licensees of a co-licensed
product.
(ee) "Medical care facility" shall have the meaning provided in
K.S.A. 65-425, and amendments thereto, except that the term shall also
include facilities licensed under the provisions of K.S.A. 75-3307b, and
amendments thereto, except community mental health centers and
facilities for the mentally retarded.
(ff) "Manufacture" means the production, preparation,
propagation, compounding, conversion or processing of a drug either
directly or indirectly by extraction from substances of natural origin,
independently by means of chemical synthesis or by a combination of
extraction and chemical synthesis and includes any packaging or
repackaging of the drug or labeling or relabeling of its container, except
that this term shall not include the preparation or compounding of a
drug by an individual for the individual's own use or the preparation,
compounding, packaging or labeling of a drug by:
(1) A practitioner or a practitioner's authorized agent incident to
such practitioner's administering or dispensing of a drug in the course
of the practitioner's professional practice;
(2) a practitioner, by a practitioner's authorized agent or under a
practitioner's supervision for the purpose of, or as an incident to,
research, teaching or chemical analysis and not for sale; or
(3) a pharmacist or the pharmacist's authorized agent acting under
the direct supervision of the pharmacist for the purpose of, or incident
to, the dispensing of a drug by the pharmacist.
"Manufacturer" means a person licensed or approved by the FDA to engage in the manufacture of drugs and devices.

"Mid-level practitioner" means an advanced practice registered nurse issued a license pursuant to K.S.A. 65-1131, and amendments thereto, who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-1130, and amendments thereto, or a physician assistant licensed pursuant to the physician assistant licensure act who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-28a08, and amendments thereto.

(ii) "Normal distribution channel" means a chain of custody for a prescription-only drug that goes from a manufacturer of the prescription-only drug, from that manufacturer to that manufacturer's co-licensed partner, from that manufacturer to that manufacturer's third-party logistics provider, or from that manufacturer to that manufacturer's exclusive distributor, directly or by drop shipment, to:

(1) A pharmacy to a patient or to other designated persons authorized by law to dispense or administer such drug to a patient;

(2) a wholesale distributor to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient;

(3) a wholesale distributor to a chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or

(4) a chain pharmacy warehouse to the chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient.

"Person" means individual, corporation, government, governmental subdivision or agency, partnership, association or any other legal entity.

"Pharmacist" means any natural person licensed under this act to practice pharmacy.

"Pharmacist-in-charge" means the pharmacist who is responsible to the board for a registered establishment's compliance with the laws and regulations of this state pertaining to the practice of pharmacy, manufacturing of drugs and the distribution of drugs. The pharmacist-in-charge shall supervise such establishment on a full-time or a part-time basis and perform such other duties relating to supervision of a registered establishment as may be prescribed by the board by rules and regulations. Nothing in this definition shall relieve other pharmacists or persons from their responsibility to comply with
state and federal laws and regulations.

(mm) "Pharmacist intern" means: (1) A student currently enrolled in an accredited pharmacy program; (2) a graduate of an accredited pharmacy program serving an internship; or (3) a graduate of a pharmacy program located outside of the United States which is not accredited and who has successfully passed equivalency examinations approved by the board.

(dh)(mn) "Pharmacy," "drug store" or "apothecary" means premises, laboratory, area or other place: (1) Where drugs are offered for sale where the profession of pharmacy is practiced and where prescriptions are compounded and dispensed; or (2) which has displayed upon it or within it the words "pharmacist," "pharmaceutical chemist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "drug sundries" or any of these words or combinations of these words or words of similar import either in English or any sign containing any of these words; or (3) where the characteristic symbols of pharmacy or the characteristic prescription sign "Rx" may be exhibited. As used in this subsection, premises refers only to the portion of any building or structure leased, used or controlled by the licensee in the conduct of the business registered by the board at the address for which the registration was issued.

(ee) "Pharmacy student" means an individual, registered with the board of pharmacy, enrolled in a accredited school of pharmacy.

(oo) "Pharmacy prescription application" means software that is used to process prescription information, is installed on a pharmacy's computers or servers, and is controlled by the pharmacy.

(ff)(pp) "Pharmacy technician" means an individual who, under the direct supervision and control of a pharmacist, may perform packaging, manipulative, repetitive or other nondiscretionary tasks related to the processing of a prescription or medication order and who assists the pharmacist in the performance of pharmacy related duties, but who does not perform duties restricted to a pharmacist.

(eg)(qq) "Practitioner" means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist or scientific investigator or other person authorized by law to use a prescription-only drug in teaching or chemical analysis or to conduct research with respect to a prescription-only drug.

(hh)(rr) "Preceptor" means a licensed pharmacist who possesses at least two years' experience as a pharmacist and who supervises students obtaining the pharmaceutical experience required by law as a condition to taking the examination for licensure as a pharmacist.

(ii) "Prescription" means, according to the context, either a prescription order or a prescription medication.
"Prescriber" means a practitioner or a mid-level practitioner.

"Prescription" or "prescription order" means: (1) An order to be filled by a pharmacist for prescription medication issued and signed by a prescriber in the authorized course of such prescriber's professional practice; or (2) an order transmitted to a pharmacist through word of mouth, note, telephone or other means of communication directed by such prescriber, regardless of whether the communication is oral, electronic, facsimile or in printed form.

"Prescription medication" means any drug, including label and container according to context, which is dispensed pursuant to a prescription order.

"Prescription-only drug" means any drug whether intended for use by man or animal, required by federal or state law (including 21 U.S.C. § 353, as amended), to be dispensed only pursuant to a written or oral prescription or order of a practitioner or is restricted to use by practitioners only.

"Prescription order" means: (1) An order to be filled by a pharmacist for prescription medication issued and signed by a practitioner or a mid-level practitioner in the authorized course of professional practice; or (2) an order transmitted to a pharmacist through word of mouth, note, telephone or other means of communication directed by such practitioner or mid-level practitioner.

"Probation" means the practice or operation under a temporary license, registration or permit or a conditional license, registration or permit of a business or profession for which a license, registration or permit is granted by the board under the provisions of the pharmacy act of the state of Kansas requiring certain actions to be accomplished or certain actions not to occur before a regular license, registration or permit is issued.

"Professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes gross negligence, as determined by the board;

(2) repeated instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes ordinary negligence, as determined by the board; or

(3) a pattern of pharmacy practice or other behavior which demonstrates a manifest incapacity or incompetence to practice pharmacy.

"Readily retrievable" means that records kept by automatic data processing applications or other electronic or mechanized record-keeping systems can be separated out from all other records within a reasonable time not to exceed 48 hours of a request from the board or
other authorized agent or that hard-copy records are kept on which
certain items are asterisked, redlined or in some other manner visually
identifiable apart from other items appearing on the records.

(zz) "Retail dealer" means a person selling at retail
nonprescription drugs which are prepackaged, fully prepared by the
manufacturer or distributor for use by the consumer and labeled in
accordance with the requirements of the state and federal food, drug and
cosmetic acts. Such nonprescription drugs shall not include: (1) A
controlled substance; (2) a prescription-only drug; or (3) a drug
intended for human use by hypodermic injection.

(aaa) "Secretary" means the executive secretary of the board.

(bbb) "Third party logistics provider" means an entity that: (1)
Provides or coordinates warehousing, distribution or other services on
behalf of a manufacturer, but does not take title to the prescription drug
or have general responsibility to direct the prescription drug's sale or
disposition; (2) is registered as a wholesale distributor under the
pharmacy act of the state of Kansas; and (3) to be considered part of the
normal distribution channel, must also be an authorized distributor of
record.

(ccc) "Unprofessional conduct" means:

1. Fraud in securing a registration or permit;
2. Intentional adulteration or mislabeling of any drug, medicine,
   chemical or poison;
3. Causing any drug, medicine, chemical or poison to be
   adulterated or mislabeled, knowing the same to be adulterated or
   mislabeled;
4. Intentionally falsifying or altering records or prescriptions;
5. Unlawful possession of drugs and unlawful diversion of drugs to
   others;
6. Willful betrayal of confidential information under K.S.A. 65-
   1654, and amendments thereto;
7. Conduct likely to deceive, defraud or harm the public;
8. Making a false or misleading statement regarding the licensee's
   professional practice or the efficacy or value of a drug;
9. Commission of any act of sexual abuse, misconduct or
   exploitation related to the licensee's professional practice; or
10. Performing unnecessary tests, examinations or services which
    have no legitimate pharmaceutical purpose.

(ddd) "Mid-level practitioner" means an advanced practice registered
nurse issued a license pursuant to K.S.A. 65-1131, and amendments-
thereto, who has authority to prescribe drugs pursuant to a written protocol
with a responsible physician under K.S.A. 65-1130, and amendments-
thereto, or a physician assistant licensed pursuant to the physician assistant
licensure act who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-28a08, and amendments thereto.

(ddd) "Vaccination protocol" means a written protocol, agreed to by a pharmacist and a person licensed to practice medicine and surgery by the state board of healing arts, which establishes procedures and recordkeeping and reporting requirements for administering a vaccine by the pharmacist for a period of time specified therein, not to exceed two years.

(eee) "Valid prescription order" means a prescription that is issued for a legitimate medical purpose by an individual prescriber licensed by law to administer and prescribe drugs and acting in the usual course of such prescriber's professional practice. A prescription issued solely on the basis of an internet-based questionnaire or consultation without an appropriate prescriber-patient relationship is not a valid prescription order.

(hhh) "Veterinary medical teaching hospital pharmacy" means any location where prescription-only drugs are stored as part of an accredited college of veterinary medicine and from which prescription-only drugs are distributed for use in treatment of or administration to a nonhuman.

(ggg) "Wholesale distributor" means any person engaged in wholesale distribution of prescription drugs or devices in or into the state, including, but not limited to, manufacturers, repackagers, own-label distributors, private-label distributors, jobbers, brokers, warehouses, including manufacturers' and distributors' warehouses, co-licensees, exclusive distributors, third party logistics providers, chain pharmacy warehouses that conduct wholesale distributions, and wholesale drug warehouses, independent wholesale drug traders and retail pharmacies that conduct wholesale distributions. Wholesale distributor shall not include persons engaged in the sale of durable medical equipment to consumers or patients.

(hhh) "Wholesale distribution" means the distribution of prescription drugs or devices by wholesale distributors to persons other than consumers or patients, and includes the transfer of prescription drugs by a pharmacy to another pharmacy if the total number of units of transferred drugs during a twelve-month period does not exceed 5% of the total number of all units dispensed by the pharmacy during the immediately preceding twelve-month period. Wholesale distribution does not include:

(1) The sale, purchase or trade of a prescription drug or device, an offer to sell, purchase or trade a prescription drug or device or the dispensing of a prescription drug or device pursuant to a prescription;
(2) the sale, purchase or trade of a prescription drug or device or an offer to sell, purchase or trade a prescription drug or device for emergency medical reasons;

(3) intracompany transactions, as defined in this section, unless in violation of own use provisions;

(4) the sale, purchase or trade of a prescription drug or device or an offer to sell, purchase or trade a prescription drug or device among hospitals, chain pharmacy warehouses, pharmacies or other health care entities that are under common control;

(5) the sale, purchase or trade of a prescription drug or device or the offer to sell, purchase or trade a prescription drug or device by a charitable organization described in 503(c)(3) of the internal revenue code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(6) the purchase or other acquisition by a hospital or other similar health care entity that is a member of a group purchasing organization of a prescription drug or device for its own use from the group purchasing organization or from other hospitals or similar health care entities that are members of these organizations;

(7) the transfer of prescription drugs or devices between pharmacies pursuant to a centralized prescription processing agreement;

(8) the sale, purchase or trade of blood and blood components intended for transfusion;

(9) the return of recalled, expired, damaged or otherwise non-salable prescription drugs, when conducted by a hospital, health care entity, pharmacy, chain pharmacy warehouse or charitable institution in accordance with the board's rules and regulations;

(10) the sale, transfer, merger or consolidation of all or part of the business of a retail pharmacy or pharmacies from or with another retail pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets, in accordance with the board's rules and regulations;

(11) the distribution of drug samples by manufacturers' and authorized distributors' representatives;

(12) the sale of minimal quantities of drugs by retail pharmacies to licensed practitioners for office use; or

(13) the sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned or recalled prescription drugs to the original manufacturer, originating wholesale distributor or to a third party returns processor in accordance with the board's rules and regulations.

Sec. 52. K.S.A. 2011 Supp. 65-1637 is hereby amended to read as
follows: 65-1637. (a) In every store, shop or other place defined in this act as a "pharmacy" there shall be a pharmacist-in-charge and, except as otherwise provided by law, the compounding and dispensing of prescriptions shall be limited to pharmacists only. Except as otherwise provided by the pharmacy act of this state, when a pharmacist is not in attendance at a pharmacy, the premises shall be enclosed and secured. Prescription orders may be written, oral, telephonic or by electronic transmission unless prohibited by law. Blank forms for written prescription orders may have two signature lines. If there are two lines, one signature line shall state: "Dispense as written" and the other signature line shall state: "Brand exchange permissible." Prescriptions shall only be filled or refilled in accordance with the following requirements:

(a) All prescriptions shall be filled in strict conformity with any directions of the prescriber, except that a pharmacist who receives a prescription order for a brand-name drug product may exercise brand exchange with a view toward achieving a lesser cost to the purchaser unless:

1. The prescriber, in the case of a prescription signed by the prescriber and written on a blank form containing two signature lines, signs the signature line following the statement "Dispense as written," or
2. the prescriber, in the case of a prescription signed by the prescriber, writes in the prescriber's own handwriting "Dispense as written" on the prescription, or
3. the prescriber, in the case of a prescription other than one in writing signed by the prescriber, expressly indicates the prescription is to be dispensed as communicated, or
4. the federal food and drug administration has determined that a drug product of the same generic name is not bioequivalent to the prescribed brand-name prescription medication.

(b) Prescription orders shall be recorded in writing by the pharmacist and the record so made by the pharmacist shall constitute the original prescription to be dispensed by the pharmacist. This record, if telephoned by other than the physician shall bear the name of the person so telephoning. Nothing in this paragraph shall be construed as altering or affecting in any way laws of this state or any federal act requiring a written prescription order.

(c) (1) Except as provided in paragraph (2), no prescription shall be refilled unless authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filled by the pharmacist.

(2) A pharmacist may refill a prescription order issued on or after the effective date of this act for any prescription drug except a drug listed on schedule II of the uniform controlled substances act or a narcotic drug.
listed on any schedule of the uniform controlled substances act without the
prescriber's authorization when all reasonable efforts to contact the
prescriber have failed and when, in the pharmacist's professional
judgment, continuation of the medication is necessary for the patient's
health, safety and welfare. Such prescription refill shall only be in an
amount judged by the pharmacist to be sufficient to maintain the patient
until the prescriber can be contacted, but in no event shall a refill under
this paragraph be more than a seven day supply or one package of the
drug. However, if the prescriber states on a prescription that there shall be
no emergency refilling of that prescription, then the pharmacist shall not
dispense any emergency medication pursuant to that prescription. A
pharmacist who refills a prescription order under this subsection (c)(2)
shall contact the prescriber of the prescription order on the next business
day subsequent to the refill or as soon thereafter as possible. No
pharmacist shall be required to refill any prescription order under this
subsection (c)(2). A prescriber shall not be subject to liability for any
damages resulting from the refilling of a prescription order by a
pharmacist under this subsection (c)(2) unless such damages are
occasioned by the gross negligence or willful or wanton acts or omissions
by the prescriber.
(d) If any prescription order contains a provision that the prescription
may be refilled a specific number of times within or during any particular
period, such prescription shall not be refilled except in strict conformity
with such requirements.
(e) If a prescription order contains a statement that during any
particular time the prescription may be refilled at will, there shall be no
limitation as to the number of times that such prescription may be refilled
except that it may not be refilled after the expiration of the time specified
or one year after the prescription was originally issued, whichever occurs
first.
(f) Any pharmacist who exercises brand exchange and dispenses a
less expensive drug product shall not charge the purchaser more than the
regular and customary retail price for the dispensed drug.
Nothing contained in this section shall be construed as preventing a
pharmacist from refusing to fill or refill any prescription if in the
pharmacist's professional judgment and discretion such pharmacist is of
the opinion that it should not be filled or refilled
(b) Except as otherwise provided by the pharmacy act of this state,
when a pharmacist is not in attendance at a pharmacy, the premises shall
be enclosed and secured.
New Sec. 53. (a) The pharmacist shall exercise professional
judgment regarding the accuracy, validity and authenticity of any
prescription order consistent with federal and state laws and rules and
regulations. A pharmacist shall not dispense a prescription drug if the pharmacist, in the exercise of professional judgment, determines that the prescription is not a valid prescription order.  

(b) The prescriber may authorize an agent to transmit to the pharmacy a prescription order orally, by facsimile transmission or by electronic transmission provided that the first and last names of the transmitting agent are included in the order.  

(c) (1) A new written or electronically prepared and transmitted prescription order shall be manually or electronically signed by the prescriber. If transmitted by the prescriber's agent, the first and last names of the transmitting agent shall be included in the order.  

(2) If the prescription is for a controlled substance and is written or printed from an electronic prescription application, the prescription shall be manually signed by the prescriber prior to delivery of the prescription to the patient or prior to facsimile transmission of the prescription to the pharmacy.  

(3) An electronically prepared prescription shall not be electronically transmitted to the pharmacy if the prescription has been printed prior to electronic transmission. An electronically prepared and transmitted prescription which is printed following electronic transmission shall be clearly labeled as a copy, not valid for dispensing.  

(4) The state board of pharmacy shall conduct a study on the issues of electronic transmission of prior authorizations and step therapy protocols. The report on the results of such study shall be completed and submitted to the legislature no later than January 15, 2013. The board is hereby authorized to conduct pilot projects related to any new technology implementation when deemed necessary and practicable.  

(d) An authorization to refill a prescription order or to renew or continue an existing drug therapy may be transmitted to a pharmacist through oral communication, in writing, by facsimile transmission or by electronic transmission initiated by or directed by the prescriber.  

(1) If the transmission is completed by the prescriber's agent, and the first and last names of the transmitting agent are included in the order, the prescriber's signature is not required on the fax or alternate electronic transmission.  

(2) If the refill order or renewal order differs in any manner from the original order, such as a change of the drug strength, dosage form or directions for use, the prescriber shall sign the order as provided by paragraph (1).  

(e) Regardless of the means of transmission to a pharmacy, only a pharmacist or a pharmacist intern shall be authorized to receive a new prescription order from a prescriber or transmitting agent. A pharmacist, a pharmacist intern or a registered pharmacy technician may receive a
refill or renewal order from a prescriber or transmitting agent if such registered pharmacy technician's supervising pharmacist has authorized that function.

(f) A refill is one or more dispensings of a prescription drug or device that results in the patient's receipt of the quantity authorized by the prescriber for a single fill as indicated on the prescription order.

(1) A prescription for a prescription drug or device that is not a controlled substance may authorize no more than 12 refills within 18 months following the date on which the prescription is issued.

(2) A prescription for a schedule III, IV or V controlled substance may authorize no more than five refills within six months following the date on which the prescription is issued.

(g) Prescriptions shall only be filled or refilled in accordance with the following requirements:

(1) All prescriptions shall be filled in strict conformity with any directions of the prescriber, except that a pharmacist who receives a prescription order for a brand name drug product may exercise brand exchange with a view toward achieving a lesser cost to the purchaser unless:

(A) The prescriber, in the case of a prescription manually or electronically signed by the prescriber and prepared on a form containing two signature lines, signs the signature line following the statement "dispense as written";

(B) the prescriber, in the case of a written prescription signed by the prescriber, writes in the prescriber's own handwriting "dispense as written" on the prescription;

(C) the prescriber, in the case of a prescription other than one in writing signed by the prescriber, expressly indicates the prescription is to be dispensed as communicated; or

(D) the federal food and drug administration has determined that a drug product of the same generic name is not bioequivalent to the prescribed brand name prescription medication.

(h) If a prescription order contains a statement that during any particular time the prescription may be refilled at will, there shall be no limitation as to the number of times that such prescription may be refilled except that it may not be refilled after the expiration of the time specified or one year after the prescription was originally issued, whichever occurs first.

(i) Prescription orders shall be recorded in writing by the pharmacist and the record so made by the pharmacist shall constitute the original prescription to be dispensed by the pharmacist. This record, if telephoned by other than the prescriber, shall bear the name of the person so telephoning. Nothing in this section shall be construed as
altering or affecting in any way laws of this state or any federal act
requiring a written prescription order.

(j) (1) Except as provided in paragraph (2), no prescription shall be
refilled unless authorized by the prescriber either in the original
prescription or by oral order which is reduced promptly to writing and
filled by the pharmacist.

(2) A pharmacist may refill a prescription order issued on or after
the effective date of this act for any prescription drug except a drug
listed on schedule II of the uniform controlled substances act or a
narcotic drug listed on any schedule of the uniform controlled
substances act without the prescriber's authorization when all
reasonable efforts to contact the prescriber have failed and when, in the
pharmacist's professional judgment, continuation of the medication is
necessary for the patient's health, safety and welfare. Such prescription
refill shall only be in an amount judged by the pharmacist to be
sufficient to maintain the patient until the prescriber can be contacted,
but in no event shall a refill under this paragraph be more than a seven
day supply or one package of the drug. However, if the prescriber states
on a prescription that there shall be no emergency refilling of that
prescription, then the pharmacist shall not dispense any emergency
medication pursuant to that prescription. A pharmacist who refills a
prescription order under this subsection (j)(2) shall contact the
prescriber of the prescription order on the next business day subsequent
to the refill or as soon thereafter as possible. No pharmacist shall be
required to refill any prescription order under this subsection (j)(2). A
prescriber shall not be subject to liability for any damages resulting from
the refilling of a prescription order by a pharmacist under this
subsection (j)(2) unless such damages are occasioned by the gross
negligence or willful or wanton acts or omissions by the prescriber.

(k) If any prescription order contains a provision that the
prescription may be refilled a specific number of times within or during
any particular period, such prescription shall not be refilled except in
strict conformity with such requirements.

(l) Any pharmacist who exercises brand exchange and dispenses a
less expensive drug product shall not charge the purchaser more than
the regular and customary retail price for the dispensed drug.

(m) Nothing contained in this section shall be construed as
preventing a pharmacist from refusing to fill or refill any prescription if
in the pharmacist's professional judgment and discretion such
pharmacist is of the opinion that it should not be filled or refilled.

Sec. 54. K.S.A. 2011 Supp. 65-1683 is hereby amended to read as
follows: 65-1683. (a) The board shall establish and maintain a
prescription monitoring program for the monitoring of scheduled
substances and drugs of concern dispensed in this state or dispensed to an address in this state.

(b) Each dispenser shall submit to the board by electronic means information required by the board regarding each prescription dispensed for a substance included under subsection (a). The board shall promulgate rules and regulations specifying the nationally recognized telecommunications format to be used for submission of information that each dispenser shall submit to the board. Such information may include, but not be limited to:

1. The dispenser identification number;
2. The date the prescription is filled;
3. The prescription number;
4. Whether the prescription is new or is a refill;
5. The national drug code for the drug dispensed;
6. The quantity dispensed;
7. The number of days supply of the drug;
8. The patient identification number;
9. The patient's name;
10. The patient's address;
11. The patient's date of birth;
12. The prescriber identification number;
13. The date the prescription was issued by the prescriber; and
14. The source of payment for the prescription.

(c) The board shall promulgate rules and regulations specifying the transmission methods and frequency of the dispenser submissions required under subsection (b).

(d) The board may issue a waiver to a dispenser that is unable to submit prescription information by electronic means. Such waiver may permit the dispenser to submit prescription information by paper form or other means, provided that all information required by rules and regulations is submitted in this alternative format.

(e) The board is hereby authorized to apply for and to accept grants and may accept any donation, gift or bequest made to the board for furthering any phase of the prescription monitoring program.

(f) The board shall remit all moneys received by it under subsection (e) to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the non-federal gifts and grants fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or a person designated by the president.

Sec. 55. K.S.A. 2011 Supp. 65-1685 is hereby amended to read as
follows: 65-1685. (a) The prescription monitoring program database, all
information contained therein and any records maintained by the board,
or by any entity contracting with the board, submitted to, maintained or
stored as a part of the database, shall be privileged and confidential,
shall not be subject to subpoena or discovery in civil proceedings and
may only be used for investigatory or evidentiary purposes related to
violations of state or federal law and regulatory activities of entities
charged with administrative oversight of those persons engaged in the
prescribing or dispensing of scheduled substances and drugs of concern,
shall not be a public record and shall not be subject to the Kansas open
records act, K.S.A. 45-215 et seq., and amendments thereto, except as
provided in subsections (c) and (d).

(b) The board shall maintain procedures to ensure that the privacy
and confidentiality of patients and patient information collected,
recorded, transmitted and maintained is not disclosed to persons except
as provided in subsections (c) and (d).

(c) The board is hereby authorized to provide data in the
prescription monitoring program to the following persons:
(1) Persons authorized to prescribe or dispense scheduled
substances and drugs of concern, for the purpose of providing medical
or pharmaceutical care for their patients;
(2) an individual who requests the individual's own prescription
monitoring information in accordance with procedures established by
the board;
(3) designated representatives from the professional licensing,
certification or regulatory agencies charged with administrative
oversight of those persons engaged in the prescribing or dispensing of
scheduled substances and drugs of concern;
(4) local, state and federal law enforcement or prosecutorial
officials engaged in the administration, investigation or enforcement of
the laws governing scheduled substances and drugs of concern subject
to the requirements in K.S.A. 22-2502, and amendments thereto;
(5) designated representatives from the Kansas health policy
authority, department of health and environment regarding authorized
medicaid program recipients;
(6) persons authorized by a grand jury subpoena, inquisition
subpoena or court order in a criminal action;
(7) personnel of the prescription monitoring program advisory
committee for the purpose of operation of the program; and
(8) personnel of the board for purposes of administration and
enforcement of this act or the uniform controlled substances act, K.S.A.
65-4101 et seq., and amendments thereto;
(9) persons authorized to prescribe or dispense scheduled substances
and drugs of concern, when an individual is obtaining prescriptions in a manner that appears to be misuse, abuse or diversion of scheduled substances or drugs of concern; and

(10) medical examiners, coroners or other persons authorized under law to investigate or determine causes of death.

(d) The prescription monitoring program advisory committee established pursuant to K.S.A. 65-1689, and amendments thereto, is authorized to review and analyze the data for purposes of identifying patterns and activity of concern.

(1) If a review of information appears to indicate a person may be obtaining prescriptions in a manner that may represent misuse or abuse of controlled substances and drugs of concern, the advisory committee is authorized to notify the prescribers and dispensers who prescribed or dispensed the prescriptions. If the review identifies patterns or other evidence sufficient to create a reasonable suspicion of criminal activity, the advisory committee is authorized to notify the appropriate law enforcement agency.

(2) If a review of information appears to indicate that a violation of state or federal law relating to prescribing controlled substances and drugs of concern may have occurred, or that a prescriber or dispenser has knowingly prescribed, dispensed or obtained controlled substances and drugs of concern in a manner that is inconsistent with recognized standards of care for the profession, the advisory committee shall determine whether a report to the professional licensing, certification or regulatory agencies charged with administrative oversight of those persons engaged in prescribing or dispensing of controlled substances and drugs of concern or to the appropriate law enforcement agency is warranted.

(A) For purposes of such determination the advisory committee may, in consultation with the appropriate regulatory agencies and professional organizations, establish criteria regarding appropriate standards and utilize volunteer peer review committees of professionals with expertise in the particular practice to create such standards and review individual cases.

(B) The peer review committee or committees appointed herein shall have authority to request and receive information in the prescription monitoring program database from the director of the prescription monitoring program.

(C) If the determination is made that a referral to a regulatory or law enforcement agency is not warranted but educational or professional advising might be appropriate, the advisory committee may refer the prescribers or dispensers to other such resources.

(e) The board is hereby authorized to provide data in the
prescription monitoring program to public or private entities for statistical, research or educational purposes after removing information that could be used to identify individual practitioners, dispensers, patients or persons who received prescriptions from dispensers.

Sec. 56. K.S.A. 2011 Supp. 65-1693 is hereby amended to read as follows: 65-1693. (a) A dispenser who knowingly fails to submit prescription monitoring information to the board as required by this act or knowingly submits incorrect prescription monitoring information shall be guilty of a severity level 10, nonperson felony.

(b) A person authorized to have prescription monitoring information pursuant to this act who knowingly discloses such information in violation of this act shall be guilty of a severity level 10, nonperson felony.

(c) A person authorized to have prescription monitoring information pursuant to this act who knowingly uses such information in a manner or for a purpose in violation of this act shall be guilty of a severity level 10, nonperson felony.

(d) A person who knowingly, and without authorization, obtains or attempts to obtain prescription monitoring information shall be guilty of a severity level 10, nonperson felony.

(e) It shall not be a violation of this act for a practitioner or dispenser to disclose or use information obtained pursuant to this act when such information is disclosed or used solely in the course of such practitioner's or dispenser's care of the patient who is the subject of the information.

Sec. 57. K.S.A. 2011 Supp. 65-4101 is hereby amended to read as follows: 65-4101. As used in this act: (a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by: (1) A practitioner or pursuant to the lawful direction of a practitioner; or (2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common carrier, public warehouseman or employee of the carrier or warehouseman.

(c) "Application service provider" means an entity that sells electronic prescription or pharmacy prescription applications as a hosted service where the entity controls access to the application and maintains the software and records on its server.

(d) "Board" means the state board of pharmacy.

(e) "Bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.
"Controlled substance" means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

Controlled substance analog" means a substance that is intended for human consumption, and:

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

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

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

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

(A) A controlled substance;

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

or

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

"Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization bears the trademark, trade name or other identifying mark, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

"Cultivate" means the planting or promotion of growth of five or more plants which contain or can produce controlled substances.

"DEA" mean the U.S. department of justice, drug enforcement administration.

"Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

"Dispense" means to deliver a controlled substance to an
ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling or compounding necessary to prepare the substance for that delivery, or pursuant to the prescription of a mid-level practitioner.

(m) "Dispenser" means a practitioner or pharmacist who dispenses.

(n) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(o) "Distributor" means a person who distributes.

(p) "Drug" means:

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

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

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

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

(q) "Immediate precursor" means a substance which the board has found to be and by rule and regulation designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(r) "Electronic prescription" means an electronically prepared prescription that is authorized and transmitted from the prescriber to the pharmacy by means of electronic transmission.

(s) "Electronic prescription application" means software that is used to create electronic prescriptions and that is intended to be installed on the prescriber's computers and servers where access and records are controlled by the prescriber.

(t) "Electronic signature" means a confidential personalized digital key, code, number or other method for secure electronic data transmissions which identifies a particular person as the source of the message, authenticates the signatory of the message and indicates the person's approval of the information contained in the transmission.

(u) "Electronic transmission" means the transmission of an electronic prescription, formatted as an electronic data file, from a prescriber's electronic prescription application to a pharmacy's computer, where the data file is imported into the pharmacy prescription application.

(v) "Electronically prepared prescription" means a prescription that
is generated using an electronic prescription application.

(w) "Facsimile transmission" or "fax transmission" means the transmission of a digital image of a prescription from the prescriber or the prescriber's agent to the pharmacy. "Facsimile transmission" includes, but is not limited to, transmission of a written prescription between the prescriber's fax machine and the pharmacy's fax machine; transmission of an electronically prepared prescription from the prescriber's electronic prescription application to the pharmacy's fax machine, computer or printer; or transmission of an electronically prepared prescription from the prescriber's fax machine to the pharmacy's fax machine, computer or printer.

(x) "Intermediary" means any technology system that receives and transmits an electronic prescription between the prescriber and the pharmacy.

(y) "Isomer" means all enantiomers and diastereomers.

(z) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly or by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for the individual's own lawful use or the preparation, compounding, packaging or labeling of a controlled substance:

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

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

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

(bb) "Medical care facility" shall have the meaning ascribed to
that term in K.S.A. 65-425, and amendments thereto.

(cc) "Mid-level practitioner" means an advanced practice registered nurse issued a license pursuant to K.S.A. 65-1131, and amendments thereto, who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-1130, and amendments thereto, or a physician assistant licensed under the physician assistant licensure act who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-28a08, and amendments thereto.

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

(1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate;
(2) any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1) but not including the isoquinoline alkaloids of opium;
(3) opium poppy and poppy straw;
(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

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

(ff) "Opium poppy" means the plant of the species Papaver somniferum l. except its seeds.

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

(hh) "Pharmacist" means any natural person licensed under K.S.A. 65-1625 et seq., to practice pharmacy.

(ii) "Pharmacist intern" means: (1) A student currently enrolled in an accredited pharmacy program; (2) a graduate of an accredited pharmacy program serving such person's internship; or (3) a graduate of a pharmacy program located outside of the United States which is not
accredited and who had successfully passed equivalency examinations
approved by the board.

(jj) "Pharmacy prescription application" means software that is used
to process prescription information, is installed on a pharmacy's
computers and servers, and is controlled by the pharmacy.

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

(nn) "Pharmacist" means an individual currently licensed by the board
to practice the profession of pharmacy in this state.

(ll) "Practitioner" means a person licensed to practice medicine
and surgery, dentist, podiatrist, veterinarian, optometrist licensed under
the optometry law as a therapeutic licensee or diagnostic and therapeutic
licensee, or scientific investigator or other person authorized by law to
use a controlled substance in teaching or chemical analysis or to
conduct research with respect to a controlled substance.

(mm) "Prescriber" means a practitioner or a mid-level
practitioner.

(mm) "Production" includes the manufacture, planting, cultivation,
growing or harvesting of a controlled substance.

(oo) "Readily retrievable" means that records kept by automatic
data processing applications or other electronic or mechanized record-
keeping systems can be separated out from all other records within a
reasonable time not to exceed 48 hours of a request from the board or
other authorized agent or that hard-copy records are kept on which
certain items are asterisked, redlined or in some other manner visually
identifiable apart from other items appearing on the records.

(pp) "Ultimate user" means a person who lawfully possesses a
controlled substance for such person's own use or for the use of a
member of such person's household or for administering to an animal
owned by such person or by a member of such person's household.

(y) "Isomer" means all enantiomers and diastereomers.

(z) "Medical care facility" shall have the meaning ascribed to that
term in K.S.A. 65-425, and amendments thereto.

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

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

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

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

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

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

(A) A controlled substance;

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

or

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

(cc) "Mid-level practitioner" means an advanced practice registered nurse issued a license pursuant to K.S.A. 65-1131, and amendments thereto, who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-1130, and amendments thereto, or a physician assistant licensed under the physician assistant licensure act who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-28a08, and amendments thereto.

Sec. 58. K.S.A. 65-4123 is hereby amended to read as follows: 65-4123. (a) Except as otherwise provided in K.S.A. 65-4117, and amendments thereto, or in this subsection (a), no schedule I controlled substance may be dispensed. The board by rules and regulations may designate in accordance with the provisions of this subsection (a) a schedule I controlled substance as a schedule I designated prescription substance. A schedule I controlled substance designated as a schedule I designated prescription substance may be dispensed only upon the written prescription of a practitioner. Prior to designating a schedule I controlled substance as a schedule I designated prescription substance, the board shall find: (1) That the schedule I controlled substance has an accepted medical use in treatment in the United States; (2) that the public health will benefit by the designation of the substance as a schedule I designated prescription substance; and (3) that the substance may be sold lawfully under federal law pursuant to a prescription. No prescription for a schedule I designated prescription substance may be refilled.

(b) Except when dispensed by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II
may be dispensed without the written or electronic prescription of a practitioner or a mid-level practitioner. In emergency situations, as defined by rules and regulations of the board, schedule II drugs may be dispensed upon oral prescription of a practitioner or a mid-level practitioner reduced promptly to writing or transmitted electronically and filed by the pharmacy. No prescription for a schedule II substance may be refilled.

(c) Except when dispensed by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III, or IV or V which is a prescription drug shall not be dispensed without a written or oral prescription of a practitioner or a mid-level practitioner, either a paper prescription manually signed by a prescriber, a facsimile of a manually signed paper prescription transmitted by the prescriber or the prescriber's agent to the pharmacy, an electronic prescription that has been digitally signed by a prescriber with a digital certificate, or an oral prescription made by an individual prescriber and promptly reduced to writing. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times.

(d) A controlled substance shall not be distributed or dispensed other than for a medical purpose. Prescriptions shall be retained in conformity with the requirements of K.S.A. 65-4121 and amendments thereto, except by a valid prescription order as defined in K.S.A. 65-1626, and amendments thereto. Electronic prescriptions shall be retained electronically for five years from the date of their creation or receipt. The records must be readily retrievable from all other records and easily rendered into a format a person can read. Paper, oral and facsimile prescriptions shall be maintained as a hard copy for five years at the registered location.


Sec. 33. {60.} This act shall take effect and be in force from and after its publication in the statute book.