

SENATE BILL No. 6

By Senator Haley

12-22

9 AN ACT concerning abolition of the death penalty; amending K.S.A. 21-
10 4634, 22-3705 and 22-4210 and K.S.A. 2004 Supp. 21-3105, 21-4619,
11 21-4635, 22-3405, 22-3717, 22-4505 and 22-4506 and repealing the
12 existing sections; also repealing K.S.A. 21-3439, 21-4627, 21-4629, 21-
13 4630, 22-3704, 22-4002, 22-4004, 22-4005 and 22-4016 and K.S.A.
14 2004 Supp. 21-4622, 21-4623, 21-4624, 22-4001, 22-4003, 22-4006,
15 22-4009, 22-4011, 22-4012, 22-4013 and 22-4014.
16

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

18 New Section 1. (a) No person is to be sentenced to death after the
19 effective date of this act.

20 (b) Anyone who has been sentenced to death before the effective
21 date of this act may be put to death as under prior law.

22 Sec. 2. K.S.A. 2004 Supp. 21-3105 is hereby amended to read as
23 follows: 21-3105. (a) A crime is an act or omission defined by law and for
24 which, upon conviction, ~~a sentence of death~~, imprisonment or fine, or
25 both imprisonment and fine, is authorized or, in the case of a traffic
26 infraction or a cigarette or tobacco infraction, a fine is authorized.

27 (b) Crimes are classified as felonies, misdemeanors, traffic infractions
28 and cigarette or tobacco infractions.

29 (1) A felony is a crime punishable ~~by death or~~ by imprisonment in
30 any state correctional institution or a crime which is defined as a felony
31 by law.

32 (2) A traffic infraction is a violation of any of the statutory provisions
33 listed in subsection (c) of K.S.A. 8-2118 and amendments thereto.

34 (3) A cigarette or tobacco infraction is a violation of subsection (m)
35 or (n) of K.S.A. 79-3321 and amendments thereto.

36 (4) All other crimes are misdemeanors.

37 Sec. 3. K.S.A. 2004 Supp. 21-4619 is hereby amended to read as
38 follows: 21-4619. (a) (1) Except as provided in subsections (b) and (c),
39 any person convicted in this state of a traffic infraction, cigarette or to-
40 bacco infraction, misdemeanor or a class D or E felony, or for crimes
41 committed on or after July 1, 1993, nondrug crimes ranked in severity
42 levels 6 through 10 or any felony ranked in severity level 4 of the drug
43 grid, may petition the convicting court for the expungement of such con-

1 viction or related arrest records if three or more years have elapsed since
2 the person: (A) Satisfied the sentence imposed; or (B) was discharged
3 from probation, a community correctional services program, parole, post-
4 release supervision, conditional release or a suspended sentence.

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

10 (b) Except as provided in subsection (c), no person may petition for
11 expungement until five or more years have elapsed since the person sat-
12 isfied the sentence imposed, the terms of a diversion agreement or was
13 discharged from probation, a community correctional services program,
14 parole, postrelease supervision, conditional release or a suspended sen-
15 tence, if such person was convicted of a class A, B or C felony, or for
16 crimes committed on or after July 1, 1993, if convicted of an off-grid
17 felony or any nondrug crime ranked in severity levels 1 through 5 or any
18 felony ranked in severity levels 1 through 3 of the drug grid, or:

19 (1) Vehicular homicide, as defined by K.S.A. 21-3405 and amend-
20 ments thereto or as prohibited by any law of another state which is in
21 substantial conformity with that statute;

22 (2) a violation of K.S.A. 8-1567 and amendments thereto, or a viola-
23 tion of any law of another state, which declares to be unlawful the acts
24 prohibited by that statute;

25 (3) driving while the privilege to operate a motor vehicle on the public
26 highways of this state has been canceled, suspended or revoked, as pro-
27 hibited by K.S.A. 8-262 and amendments thereto or as prohibited by any
28 law of another state which is in substantial conformity with that statute;

29 (4) perjury resulting from a violation of K.S.A. 8-261a and amend-
30 ments thereto or resulting from the violation of a law of another state
31 which is in substantial conformity with that statute;

32 (5) violating the provisions of the fifth clause of K.S.A. 8-142 and
33 amendments thereto, relating to fraudulent applications or violating the
34 provisions of a law of another state which is in substantial conformity with
35 that statute;

36 (6) any crime punishable as a felony wherein a motor vehicle was
37 used in the perpetration of such crime;

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

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

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

2 (c) There shall be no expungement of convictions for the following
3 offenses or of convictions for an attempt to commit any of the following
4 offenses: (1) Rape as defined in subsection (a)(2) of K.S.A. 21-3502 and
5 amendments thereto; (2) indecent liberties with a child as defined in
6 K.S.A. 21-3503 and amendments thereto; (3) aggravated indecent liber-
7 ties with a child as defined in K.S.A. 21-3504 and amendments thereto;
8 (4) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-
9 3505 and amendments thereto; (5) aggravated criminal sodomy as defined
10 in K.S.A. 21-3506 and amendments thereto; (6) indecent solicitation of a
11 child as defined in K.S.A. 21-3510 and amendments thereto; (7) aggra-
12 vated indecent solicitation of a child as defined in K.S.A. 21-3511 and
13 amendments thereto; (8) sexual exploitation of a child as defined in K.S.A.
14 21-3516 and amendments thereto; (9) aggravated incest as defined in
15 K.S.A. 21-3603 and amendments thereto; (10) endangering a child as
16 defined in K.S.A. 21-3608 and amendments thereto; (11) abuse of a child
17 as defined in K.S.A. 21-3609 and amendments thereto; (12) ~~capital murder~~
18 ~~as defined in K.S.A. 21-3439 and amendments thereto;~~ (13) murder
19 in the first degree as defined in K.S.A. 21-3401 and amendments thereto;
20 ~~(14)~~ (13) murder in the second degree as defined in K.S.A. 21-3402 and
21 amendments thereto; ~~(15)~~ (14) voluntary manslaughter as defined in
22 K.S.A. 21-3403 and amendments thereto; ~~(16)~~ (15) involuntary man-
23 slaughtering as defined in K.S.A. 21-3404 and amendments thereto; ~~(17)~~ (16)
24 involuntary manslaughter while driving under the influence of alcohol or
25 drugs as defined in K.S.A. 2004 Supp. 21-3442 and amendments thereto;
26 ~~(18)~~ (17) sexual battery as defined in K.S.A. 21-3517 and amendments
27 thereto; ~~(19)~~ (18) aggravated sexual battery as defined in K.S.A. 21-3518
28 and amendments thereto; or ~~(20)~~ (19) any conviction for any offense in
29 effect at any time prior to the effective date of this act, that is comparable
30 to any offense as provided in this subsection.

31 (d) When a petition for expungement is filed, the court shall set a
32 date for a hearing of such petition and shall cause notice of such hearing
33 to be given to the prosecuting attorney and the arresting law enforcement
34 agency. The petition shall state: (1) The defendant's full name;
35 (2) the full name of the defendant at the time of arrest, conviction or
36 diversion, if different than the defendant's current name;
37 (3) the defendant's sex, race and date of birth;
38 (4) the crime for which the defendant was arrested, convicted or
39 diverted;
40 (5) the date of the defendant's arrest, conviction or diversion; and
41 (6) the identity of the convicting court, arresting law enforcement
42 authority or diverting authority. There shall be no docket fee for filing a
43 petition pursuant to this section. All petitions for expungement shall be

1 docketed in the original criminal action. Any person who may have rel-
2 evant information about the petitioner may testify at the hearing. The
3 court may inquire into the background of the petitioner and shall have
4 access to any reports or records relating to the petitioner that are on file
5 with the secretary of corrections or the Kansas parole board.

6 (e) At the hearing on the petition, the court shall order the peti-
7 tioner's arrest record, conviction or diversion expunged if the court finds
8 that:

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

12 (2) the circumstances and behavior of the petitioner warrant the
13 expungement; and

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

15 (f) When the court has ordered an arrest record, conviction or diver-
16 sion expunged, the order of expungement shall state the information re-
17 quired to be contained in the petition. The clerk of the court shall send
18 a certified copy of the order of expungement to the Kansas bureau of
19 investigation which shall notify the federal bureau of investigation, the
20 secretary of corrections and any other criminal justice agency which may
21 have a record of the arrest, conviction or diversion. After the order of
22 expungement is entered, the petitioner shall be treated as not having been
23 arrested, convicted or diverted of the crime, except that:

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

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

29 (A) In any application for licensure as a private detective, private
30 detective agency, certification as a firearms trainer pursuant to K.S.A.
31 2004 Supp. 75-7b21, and amendments thereto, or employment as a de-
32 tective with a private detective agency, as defined by K.S.A. 75-7b01 and
33 amendments thereto; as security personnel with a private patrol operator,
34 as defined by K.S.A. 75-7b01 and amendments thereto; or with an insti-
35 tution, as defined in K.S.A. 76-12a01 and amendments thereto, of the
36 department of social and rehabilitation services;

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

39 (C) to aid in determining the petitioner's qualifications for employ-
40 ment with the Kansas lottery or for work in sensitive areas within the
41 Kansas lottery as deemed appropriate by the executive director of the
42 Kansas lottery;

43 (D) to aid in determining the petitioner's qualifications for executive

1 director of the Kansas racing commission, for employment with the com-
2 mission or for work in sensitive areas in parimutuel racing as deemed
3 appropriate by the executive director of the commission, or to aid in
4 determining qualifications for licensure or renewal of licensure by the
5 commission;

6 (E) upon application for a commercial driver's license under K.S.A.
7 8-2,125 through 8-2,142, and amendments thereto;

8 (F) to aid in determining the petitioner's qualifications to be an em-
9 ployee of the state gaming agency;

10 (G) to aid in determining the petitioner's qualifications to be an em-
11 ployee of a tribal gaming commission or to hold a license issued pursuant
12 to a tribal-state gaming compact;

13 (H) in any application for registration as a broker-dealer, agent, in-
14 vestment adviser or investment adviser representative all as defined in
15 ~~K.S.A. 17-1252~~ *section 2 of chapter 154 of the 2004 Session Laws of*
16 *Kansas* and amendments thereto; or

17 (I) in any application for a commercial guide permit or associate
18 guide permit under K.S.A. 32-964, and amendments thereto; or

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

21 (3) the court, in the order of expungement, may specify other cir-
22 cumstances under which the conviction is to be disclosed;

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

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

30 (g) Whenever a person is convicted of a crime, pleads guilty and pays
31 a fine for a crime, is placed on parole, postrelease supervision or proba-
32 tion, is assigned to a community correctional services program, is granted
33 a suspended sentence or is released on conditional release, the person
34 shall be informed of the ability to expunge the arrest records or convic-
35 tion. Whenever a person enters into a diversion agreement, the person
36 shall be informed of the ability to expunge the diversion.

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

1 or possession of firearms by persons convicted of a felony.

2 (i) Whenever the record of any arrest, conviction or diversion has
3 been expunged under the provisions of this section or under the provi-
4 sions of any other existing or former statute, the custodian of the records
5 of arrest, conviction, diversion and incarceration relating to that crime
6 shall not disclose the existence of such records, except when requested
7 by:

8 (1) The person whose record was expunged;

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

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

15 (4) the secretary of social and rehabilitation services, or a designee of
16 the secretary, for the purpose of obtaining information relating to em-
17 ployment in an institution, as defined in K.S.A. 76-12a01 and amend-
18 ments thereto, of the department of social and rehabilitation services of
19 any person whose record has been expunged;

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

22 (6) a prosecuting attorney, and such request is accompanied by a
23 statement that the request is being made in conjunction with a prosecu-
24 tion of an offense that requires a prior conviction as one of the elements
25 of such offense;

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

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

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

- 1 (10) the Kansas sentencing commission;
- 2 (11) the state gaming agency, and the request is accompanied by a
3 statement that the request is being made to aid in determining qualifi-
4 cations: (A) To be an employee of the state gaming agency; or (B) to be
5 an employee of a tribal gaming commission or to hold a license issued
6 pursuant to a tribal-gaming compact;
- 7 (12) the Kansas securities commissioner or a designee of the com-
8 missioner, and the request is accompanied by a statement that the request
9 is being made in conjunction with an application for registration as a
10 broker-dealer, agent, investment adviser or investment adviser represen-
11 tative by such agency and the application was submitted by the person
12 whose record has been expunged;
- 13 (13) the department of wildlife and parks and the request is accom-
14 panied by a statement that the request is being made to aid in determining
15 qualifications for a permit as a commercial guide or associate guide under
16 K.S.A. 32-964, and amendments thereto;
- 17 (14) the Kansas law enforcement training commission and the re-
18 quest is accompanied by a statement that the request is being made to
19 aid in determining certification eligibility as a law enforcement officer
20 pursuant to K.S.A. 74-5601 et seq., and amendments thereto; or
- 21 (15) a law enforcement agency and the request is accompanied by a
22 statement that the request is being made to aid in determining eligibility
23 for employment as a law enforcement officer as defined by K.S.A. 22-
24 2202, and amendments thereto.
- 25 Sec. 4. K.S.A. 21-4634 is hereby amended to read as follows: 21-
26 4634. (a) ~~If a defendant is convicted of the crime of capital murder and~~
27 ~~a sentence of death is not imposed, or if~~ a defendant is convicted of the
28 crime of murder in the first degree based upon the finding of premeditated
29 murder *or an offense for which the sentence is life in prison without*
30 *the possibility of parole*, the defendant's counsel or the director of the
31 correctional institution or sheriff having custody of the defendant may
32 request a determination by the court of whether the defendant is mentally
33 retarded. If the court determines that there is not sufficient reason to
34 believe that the defendant is mentally retarded, the court shall so find
35 and the defendant shall be sentenced in accordance with K.S.A. 21-4635
36 through 21-4638, *and amendments thereto*. If the court determines that
37 there is sufficient reason to believe that the defendant is mentally re-
38 tarded, the court shall conduct a hearing to determine whether the de-
39 fendant is mentally retarded.
- 40 (b) At the hearing, the court shall determine whether the defendant
41 is mentally retarded. The court shall order a psychiatric or psychological
42 examination of the defendant. For that purpose, the court shall appoint
43 two licensed physicians or licensed psychologists, or one of each, qualified

1 by training and practice to make such examination, to examine the de-
2 fendant and report their findings in writing to the judge within 10 days
3 after the order of examination is issued. The defendant shall have the
4 right to present evidence and cross-examine any witnesses at the hearing.
5 No statement made by the defendant in the course of any examination
6 provided for by this section, whether or not the defendant consents to
7 the examination, shall be admitted in evidence against the defendant in
8 any criminal proceeding.

9 (c) If, at the conclusion of a hearing pursuant to this section, the court
10 determines that the defendant is not mentally retarded, the defendant
11 shall be sentenced in accordance with K.S.A. 21-4635 through 21-4638,
12 *and amendments thereto*.

13 (d) If, at the conclusion of a hearing pursuant to this section, the court
14 determines that the defendant is mentally retarded, the court shall sen-
15 tence the defendant as otherwise provided by law, and no mandatory term
16 of imprisonment shall be imposed hereunder.

17 ~~(e) Unless otherwise ordered by the court for good cause shown, the~~
18 ~~provisions of this section shall not apply if it has been determined, pur-~~
19 ~~suant to K.S.A. 21-4623 and amendments thereto, that the defendant is~~
20 ~~not mentally retarded.~~

21 ~~(f)~~—As used in this section, “mentally retarded” means having signif-
22 icantly subaverage general intellectual functioning, as defined by K.S.A.
23 76-12b01 and amendments thereto, to an extent which substantially im-
24 pairs one’s capacity to appreciate the criminality of one’s conduct or to
25 conform one’s conduct to the requirements of law.

26 Sec. 5. K.S.A. 2004 Supp. 21-4635 is hereby amended to read as
27 follows: 21-4635. (a) ~~Except as provided in K.S.A. 21-4622, 21-4623 and~~
28 ~~21-4634 and amendments thereto, if a defendant is convicted of the crime~~
29 ~~of capital murder and a sentence of death is not imposed pursuant to~~
30 ~~subsection (c) of K.S.A. 21-4624, and amendments thereto, or requested~~
31 ~~pursuant to subsection (a) or (b) of K.S.A. 21-4624, and amendments~~
32 ~~thereto, the defendant shall be sentenced to life without the possibility~~
33 ~~of parole. If a defendant is convicted of any of the following crimes, the~~
34 ~~defendant shall be sentenced to life in prison without the possibility of~~
35 ~~parole:~~

36 (1) *The intentional and premeditated killing of any person in the com-*
37 *mission of kidnapping, as defined in K.S.A. 21-3420 and amendments*
38 *thereto, or aggravated kidnapping, as defined in K.S.A. 21-3421 and*
39 *amendments thereto, when the kidnapping or aggravated kidnapping was*
40 *committed with the intent to hold such person for ransom;*

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

- 1 (3) *the intentional and premeditated killing of any person by an in-*
2 *mate or prisoner confined in a state correctional institution, community*
3 *correctional institution or jail or while in the custody of an officer or*
4 *employee of a state correctional institution, community correctional in-*
5 *stitution or jail;*
- 6 (4) *the intentional and premeditated killing of the victim of one of the*
7 *following crimes in the commission of, or subsequent to, such crime: Rape,*
8 *as defined in K.S.A. 21-3502 and amendments thereto, criminal sodomy,*
9 *as defined in subsections (a)(2) or (a)(3) of K.S.A. 21-3505 and amend-*
10 *ments thereto, aggravated criminal sodomy, as defined in K.S.A. 21-3506*
11 *and amendments thereto, or any attempt at rape, criminal sodomy or*
12 *aggravated criminal sodomy, as defined in K.S.A. 21-3301 and amend-*
13 *ments thereto;*
- 14 (5) *the intentional and premeditated killing of a law enforcement of-*
15 *ficer, as defined in K.S.A. 21-3110 and amendments thereto;*
- 16 (6) *the intentional and premeditated killing of more than one person*
17 *as a part of the same act or transaction or in two or more acts or trans-*
18 *actions connected together or constituting parts of a common scheme or*
19 *course of conduct; or*
- 20 (7) *the intentional and premeditated killing of a child under the age*
21 *of 14 in the commission of kidnapping, as defined in K.S.A. 21-3420, and*
22 *amendments thereto, or aggravated kidnapping, as defined in K.S.A. 21-*
23 *3421, and amendments thereto, when the kidnapping or aggravated kid-*
24 *napping was committed with intent to commit a sex offense upon or with*
25 *the child or with intent that the child commit or submit to a sex offense.*
- 26 (b) *For purposes of this subsection, “sex offense” means rape, as de-*
27 *fined in K.S.A. 21-3502 and amendments thereto, aggravated indecent*
28 *liberties with a child, as defined in K.S.A. 21-3504 and amendments*
29 *thereto, aggravated criminal sodomy, as defined in K.S.A. 21-3506 and*
30 *amendments thereto, prostitution, as defined in K.S.A. 21-3512 and*
31 *amendments thereto, promoting prostitution, as defined in K.S.A. 21-3513*
32 *and amendments thereto or sexual exploitation of a child, as defined in*
33 *K.S.A. 21-3516 and amendments thereto.*
- 34 ~~(b)~~ (c) *If a defendant is convicted of murder in the first degree based*
35 *upon the finding of premeditated murder, the court shall determine*
36 *whether the defendant shall be required to serve a mandatory term of*
37 *imprisonment of 40 years or, for crimes committed on and after July 1,*
38 *1999, a mandatory term of imprisonment of 50 years or sentenced as*
39 *otherwise provided by law.*
- 40 ~~(c)~~ (d) *In order to make such determination, the court may be pre-*
41 *sented evidence concerning any matter that the court deems relevant to*
42 *the question of sentence and shall include matters relating to any of the*
43 *aggravating circumstances enumerated in K.S.A. 21-4636 and amend-*

1 ments thereto and any mitigating circumstances. Any such evidence
 2 which the court deems to have probative value may be received regardless
 3 of its admissibility under the rules of evidence, provided that the defend-
 4 ant is accorded a fair opportunity to rebut any hearsay statements. Only
 5 such evidence of aggravating circumstances as the state has made known
 6 to the defendant prior to the sentencing shall be admissible and no evi-
 7 dence secured in violation of the constitution of the United States or of
 8 the state of Kansas shall be admissible. No testimony by the defendant
 9 at the time of sentencing shall be admissible against the defendant at any
 10 subsequent criminal proceeding. At the conclusion of the evidentiary
 11 presentation, the court shall allow the parties a reasonable period of time
 12 in which to present oral argument.

13 ~~(d)~~ (e) If the court finds that one or more of the aggravating circum-
 14 stances enumerated in K.S.A. 21-4636 and amendments thereto exist and,
 15 further, that the existence of such aggravating circumstances is not out-
 16 weighed by any mitigating circumstances which are found to exist, the
 17 defendant shall be sentenced pursuant to K.S.A. 21-4638 and amend-
 18 ments thereto; otherwise, the defendant shall be sentenced as provided
 19 by law. The court shall designate, in writing, the statutory aggravating
 20 circumstances which it found. The court may make the findings required
 21 by this subsection for the purpose of determining whether to sentence a
 22 defendant pursuant to K.S.A. 21-4638 and amendments thereto notwith-
 23 standing contrary findings made by the jury or court pursuant to subsec-
 24 tion (e) of K.S.A. 21-4624 and amendments thereto ~~for the purpose of~~
 25 ~~determining whether to sentence such defendant to death.~~

26 Sec. 6. K.S.A. 2004 Supp. 22-3405 is hereby amended to read as
 27 follows: 22-3405. ~~(1)~~ (a) The defendant in a felony case shall be present
 28 at the arraignment, at every stage of the trial including the impaneling of
 29 the jury and the return of the verdict, and at the imposition of sentence,
 30 except as otherwise provided by law. ~~In prosecutions for crimes not pun-~~
 31 ~~ishable by death,~~ The defendant's voluntary absence after the trial has
 32 been commenced in such person's presence shall not prevent continuing
 33 the trial to and including the return of the verdict. A corporation may
 34 appear by counsel for all purposes.

35 ~~(2)~~ (b) The defendant must be present, either personally or by coun-
 36 sel, at every stage of the trial of traffic infraction, cigarette or tobacco
 37 infraction and misdemeanor cases.

38 Sec. 7. K.S.A. 22-3705 is hereby amended to read as follows: 22-
 39 3705. The governor may, when ~~he~~ *the governor* deems it proper or ad-
 40 visable, commute a sentence in any criminal case by reducing the penalty
 41 as follows:

42 (a) ~~If the sentence is death, to imprisonment for life or for any term~~
 43 ~~not less than ten years;~~

1 ~~(b)~~ if the sentence is to imprisonment, by reducing the duration of
2 such imprisonment;

3 ~~(c)~~ (b) if the sentence is a fine, by reducing the amount thereof; *or*
4 ~~(d)~~ (c) if the sentence is both imprisonment and fine, by reducing
5 either or both.

6 Sec. 8. K.S.A. 2004 Supp. 22-3717 is hereby amended to read as
7 follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A.
8 1993 Supp. 21-4628 prior to its repeal; K.S.A. 21-4635 through 21-4638
9 and amendments thereto; *or* K.S.A. 8-1567; and amendments thereto;
10 ~~and K.S.A. 21-4624, and amendments thereto~~, an inmate, including an
11 inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto,
12 shall be eligible for parole after serving the entire minimum sentence
13 imposed by the court, less good time credits.

14 (b) (1) Except as provided by K.S.A. 21-4635 through 21-4638 and
15 amendments thereto, an inmate sentenced to imprisonment for the crime
16 of capital murder, *prior to its repeal*, or an inmate sentenced for the crime
17 of murder in the first degree based upon a finding of premeditated mur-
18 der, committed on or after July 1, 1994, shall be eligible for parole after
19 serving 25 years of confinement, without deduction of any good time
20 credits.

21 (2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993
22 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638,
23 and amendments thereto, an inmate sentenced to imprisonment for an
24 off-grid offense committed on or after July 1, 1993, but prior to July 1,
25 1999, shall be eligible for parole after serving 15 years of confinement,
26 without deduction of any good time credits and an inmate sentenced to
27 imprisonment for an off-grid offense committed on or after July 1, 1999,
28 shall be eligible for parole after serving 20 years of confinement without
29 deduction of any good time credits.

30 (3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its
31 repeal, an inmate sentenced for a class A felony committed before July
32 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618 and
33 amendments thereto, shall be eligible for parole after serving 15 years of
34 confinement, without deduction of any good time credits.

35 (4) An inmate sentenced to imprisonment for a violation of subsec-
36 tion (a) of K.S.A. 21-3402 and amendments thereto committed on or after
37 July 1, 1996, but prior to July 1, 1999, shall be eligible for parole after
38 serving 10 years of confinement without deduction of any good time
39 credits.

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

43 (1) The aggregate minimum sentences, as determined pursuant to

1 K.S.A. 21-4608 and amendments thereto, less good time credits for those
2 crimes which are not class A felonies; and

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

5 (d) (1) Persons sentenced for crimes, other than off-grid crimes,
6 committed on or after July 1, 1993, will not be eligible for parole, but will
7 be released to a mandatory period of postrelease supervision upon com-
8 pletion of the prison portion of their sentence as follows:

9 (A) Except as provided in subparagraphs (D) and (E), persons sen-
10 tenced for nondrug severity level 1 through 4 crimes and drug severity
11 levels 1 and 2 crimes must serve 36 months, plus the amount of good
12 time earned and retained pursuant to K.S.A. 21-4722 and amendments
13 thereto, on postrelease supervision.

14 (B) Except as provided in subparagraphs (D) and (E), persons sen-
15 tenced for nondrug severity levels 5 and 6 crimes and drug severity level
16 3 crimes must serve 24 months, plus the amount of good time earned
17 and retained pursuant to K.S.A. 21-4722, and amendments thereto, on
18 postrelease supervision.

19 (C) Except as provided in subparagraphs (D) and (E), persons sen-
20 tenced for nondrug severity level 7 through 10 crimes and drug severity
21 level 4 crimes must serve 12 months, plus the amount of good time earned
22 and retained pursuant to K.S.A. 21-4722 and amendments thereto, on
23 postrelease supervision.

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

31 (ii) If the sentencing judge departs from the presumptive postrelease
32 supervision period, the judge shall state on the record at the time of
33 sentencing the substantial and compelling reasons for the departure. De-
34 partures in this section are subject to appeal pursuant to K.S.A. 21-4721
35 and amendments thereto.

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

38 (a) Written briefs or oral arguments submitted by either the defend-
39 ant or the state;

40 (b) any evidence received during the proceeding;

41 (c) the presentence report, the victim's impact statement and any
42 psychological evaluation as ordered by the court pursuant to subsection
43 (e) of K.S.A. 21-4714 and amendments thereto; and

- 1 (d) any other evidence the court finds trustworthy and reliable.
- 2 (iv) The sentencing judge may order that a psychological evaluation
3 be prepared and the recommended programming be completed by the
4 offender. The department of corrections or the parole board shall ensure
5 that court ordered sex offender treatment be carried out.
- 6 (v) In carrying out the provisions of subparagraph (d)(1)(D), the court
7 shall refer to K.S.A. 21-4718 and amendments thereto.
- 8 (vi) Upon petition, the parole board may provide for early discharge
9 from the postrelease supervision period upon completion of court or-
10 dered programs and completion of the presumptive postrelease super-
11 vision period, as determined by the crime of conviction, pursuant to sub-
12 paragraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from
13 postrelease supervision is at the discretion of the parole board.
- 14 (vii) Persons convicted of crimes deemed sexually violent or sexually
15 motivated, shall be registered according to the habitual sex offender reg-
16 istration act, K.S.A. 22-4901 through 22-4910 and amendments thereto.
- 17 (E) The period of postrelease supervision provided in subparagraphs
18 (A) and (B) may be reduced by up to 12 months and the period of post-
19 release supervision provided in subparagraph (C) may be reduced by up
20 to six months based on the offender's compliance with conditions of su-
21 pervision and overall performance while on postrelease supervision. The
22 reduction in the supervision period shall be on an earned basis pursuant
23 to rules and regulations adopted by the secretary of corrections.
- 24 (F) In cases where sentences for crimes from more than one severity
25 level have been imposed, the offender shall serve the longest period of
26 postrelease supervision as provided by this section available for any crime
27 upon which sentence was imposed irrespective of the severity level of the
28 crime. Supervision periods will not aggregate.
- 29 (2) As used in this section, "sexually violent crime" means:
- 30 (A) Rape, K.S.A. 21-3502, and amendments thereto;
- 31 (B) indecent liberties with a child, K.S.A. 21-3503, and amendments
32 thereto;
- 33 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, and
34 amendments thereto;
- 35 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505
36 and amendments thereto;
- 37 (E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments
38 thereto;
- 39 (F) indecent solicitation of a child, K.S.A. 21-3510, and amendments
40 thereto;
- 41 (G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and
42 amendments thereto;
- 43 (H) sexual exploitation of a child, K.S.A. 21-3516, and amendments

1 thereto;

2 (I) aggravated sexual battery, K.S.A. 21-3518, and amendments
3 thereto;

4 (J) any conviction for a felony offense in effect at any time prior to
5 the effective date of this act, that is comparable to a sexually violent crime
6 as defined in subparagraphs (A) through (I), or any federal or other state
7 conviction for a felony offense that under the laws of this state would be
8 a sexually violent crime as defined in this section;

9 (K) an attempt, conspiracy or criminal solicitation, as defined in
10 K.S.A. 21-3301, 21-3302, 21-3303, and amendments thereto, of a sexually
11 violent crime as defined in this section; or

12 (L) any act which at the time of sentencing for the offense has been
13 determined beyond a reasonable doubt to have been sexually motivated.
14 As used in this subparagraph, "sexually motivated" means that one of the
15 purposes for which the defendant committed the crime was for the pur-
16 pose of the defendant's sexual gratification.

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

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

1 by the Kansas parole board.

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

17 (h) The Kansas parole board shall hold a parole hearing at least the
18 month prior to the month an inmate will be eligible for parole under
19 subsections (a), (b) and (c). At least the month preceding the parole hear-
20 ing, the county or district attorney of the county where the inmate was
21 convicted shall give written notice of the time and place of the public
22 comment sessions for the inmate to any victim of the inmate's crime who
23 is alive and whose address is known to the county or district attorney or,
24 if the victim is deceased, to the victim's family if the family's address is
25 known to the county or district attorney. Except as otherwise provided,
26 failure to notify pursuant to this section shall not be a reason to postpone
27 a parole hearing. In the case of any inmate convicted of an off-grid felony
28 or a class A felony the secretary of corrections shall give written notice
29 of the time and place of the public comment session for such inmate at
30 least one month preceding the public comment session to any victim of
31 such inmate's crime or the victim's family pursuant to K.S.A. 74-7338 and
32 amendments thereto. If notification is not given to such victim or such
33 victim's family in the case of any inmate convicted of an off-grid felony
34 or a class A felony, the board shall postpone a decision on parole of the
35 inmate to a time at least 30 days after notification is given as provided in
36 this section. Nothing in this section shall create a cause of action against
37 the state or an employee of the state acting within the scope of the em-
38 ployee's employment as a result of the failure to notify pursuant to this
39 section. If granted parole, the inmate may be released on parole on the
40 date specified by the board, but not earlier than the date the inmate is
41 eligible for parole under subsections (a), (b) and (c). At each parole hear-
42 ing and, if parole is not granted, at such intervals thereafter as it deter-
43 mines appropriate, the Kansas parole board shall consider: (1) Whether

1 the inmate has satisfactorily completed the programs required by any
2 agreement entered under K.S.A. 75-5210a and amendments thereto, or
3 any revision of such agreement; and (2) all pertinent information regard-
4 ing such inmate, including, but not limited to, the circumstances of the
5 offense of the inmate; the presentence report; the previous social history
6 and criminal record of the inmate; the conduct, employment, and attitude
7 of the inmate in prison; the reports of such physical and mental exami-
8 nations as have been made; comments of the victim and the victim's
9 family including in person comments, contemporaneous comments and
10 prerecorded comments made by any technological means; comments of
11 the public; official comments; and capacity of state correctional
12 institutions.

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

23 (j) Before ordering the parole of any inmate, the Kansas parole board
24 shall have the inmate appear before either in person or via a video con-
25 ferencing format and shall interview the inmate unless impractical be-
26 cause of the inmate's physical or mental condition or absence from the
27 institution. Every inmate while on parole shall remain in the legal custody
28 of the secretary of corrections and is subject to the orders of the secretary.
29 Whenever the Kansas parole board formally considers placing an inmate
30 on parole and no agreement has been entered into with the inmate under
31 K.S.A. 75-5210a and amendments thereto, the board shall notify the in-
32 mate in writing of the reasons for not granting parole. If an agreement
33 has been entered under K.S.A. 75-5210a and amendments thereto and
34 the inmate has not satisfactorily completed the programs specified in the
35 agreement, or any revision of such agreement, the board shall notify the
36 inmate in writing of the specific programs the inmate must satisfactorily
37 complete before parole will be granted. If parole is not granted only
38 because of a failure to satisfactorily complete such programs, the board
39 shall grant parole upon the secretary's certification that the inmate has
40 successfully completed such programs. If an agreement has been entered
41 under K.S.A. 75-5210a and amendments thereto and the secretary of
42 corrections has reported to the board in writing that the inmate has sat-
43 isfactorily completed the programs required by such agreement, or any

1 revision thereof, the board shall not require further program participa-
2 tion. However, if the board determines that other pertinent information
3 regarding the inmate warrants the inmate's not being released on parole,
4 the board shall state in writing the reasons for not granting the parole. If
5 parole is denied for an inmate sentenced for a crime other than a class A
6 or class B felony or an off-grid felony, the board shall hold another parole
7 hearing for the inmate not later than one year after the denial unless the
8 parole board finds that it is not reasonable to expect that parole would
9 be granted at a hearing if held in the next three years or during the interim
10 period of a deferral. In such case, the parole board may defer subsequent
11 parole hearings for up to three years but any such deferral by the board
12 shall require the board to state the basis for its findings. If parole is denied
13 for an inmate sentenced for a class A or class B felony or an off-grid
14 felony, the board shall hold another parole hearing for the inmate not
15 later than three years after the denial unless the parole board finds that
16 it is not reasonable to expect that parole would be granted at a hearing if
17 held in the next 10 years or during the interim period of a deferral. In
18 such case, the parole board may defer subsequent parole hearings for up
19 to 10 years but any such deferral shall require the board to state the basis
20 for its findings.

21 (k) Parolees and persons on postrelease supervision shall be assigned,
22 upon release, to the appropriate level of supervision pursuant to the cri-
23 teria established by the secretary of corrections.

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

32 (m) Whenever the Kansas parole board orders the parole of an in-
33 mate or establishes conditions for an inmate placed on postrelease su-
34 pervision, the board:

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

43 (2) to the extent practicable, shall order as a condition of parole or

- 1 postrelease supervision that the parolee or the person on postrelease su-
2 pervision make progress towards or successfully complete the equivalent
3 of a secondary education if the inmate has not previously completed such
4 educational equivalent and is capable of doing so;
- 5 (3) may order that the parolee or person on postrelease supervision
6 perform community or public service work for local governmental agen-
7 cies, private corporations organized not-for-profit or charitable or social
8 service organizations performing services for the community;
- 9 (4) may order the parolee or person on postrelease supervision to pay
10 the administrative fee imposed pursuant to K.S.A. 2004 Supp. 22-4529,
11 and amendments thereto, unless the board finds compelling circum-
12 stances which would render payment unworkable; and
- 13 (5) unless it finds compelling circumstances which would render a
14 plan of payment unworkable, shall order that the parolee or person on
15 postrelease supervision reimburse the state for all or part of the expend-
16 itures by the state board of indigents' defense services to provide counsel
17 and other defense services to the person. In determining the amount and
18 method of payment of such sum, the parole board shall take account of
19 the financial resources of the person and the nature of the burden that
20 the payment of such sum will impose. Such amount shall not exceed the
21 amount claimed by appointed counsel on the payment voucher for indi-
22 gents' defense services or the amount prescribed by the board of indi-
23 gents' defense services reimbursement tables as provided in K.S.A. 22-
24 4522 and amendments thereto, whichever is less, minus any previous
25 payments for such services.
- 26 (n) If the court which sentenced an inmate specified at the time of
27 sentencing the amount and the recipient of any restitution ordered as a
28 condition of parole or postrelease supervision, the Kansas parole board
29 shall order as a condition of parole or postrelease supervision that the
30 inmate pay restitution in the amount and manner provided in the journal
31 entry unless the board finds compelling circumstances which would ren-
32 der a plan of restitution unworkable.
- 33 (o) Whenever the Kansas parole board grants the parole of an inmate,
34 the board, within 10 days of the date of the decision to grant parole, shall
35 give written notice of the decision to the county or district attorney of the
36 county where the inmate was sentenced.
- 37 (p) When an inmate is to be released on postrelease supervision, the
38 secretary, within 30 days prior to release, shall provide the county or
39 district attorney of the county where the inmate was sentenced written
40 notice of the release date.
- 41 (q) Inmates shall be released on postrelease supervision upon the
42 termination of the prison portion of their sentence. Time served while
43 on postrelease supervision will vest.

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

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

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

23 Sec. 9. K.S.A. 22-4210 is hereby amended to read as follows: 22-
24 4210. (a) If a person confined in a penal institution in any other state may
25 be a material witness in a criminal action pending in a court of record or
26 in a grand jury investigation in this state, a judge of the court may certify
27 (1) that there is a criminal proceeding or investigation by a grand jury or
28 a criminal action pending in the court, (2) that a person who is confined
29 in a penal institution in the other state may be a material witness in the
30 proceeding, investigation, or action, and (3) that ~~his~~ *the person's* presence
31 will be required during a specified time. The certificate shall be presented
32 to a judge of a court of record in the other state having jurisdiction over
33 the prisoner confined, and a notice shall be given to the attorney general
34 of the state in which the prisoner is confined.

35 (b) This act does not apply to any person in this state confined as
36 mentally ill; ~~or in need of mental treatment, or under sentence of death.~~

37 Sec. 10. K.S.A. 2004 Supp. 22-4505 is hereby amended to read as
38 follows: 22-4505. (a) When a defendant has been convicted in the district
39 court of any felony, the court shall inform the defendant of such defend-
40 ant's right to appeal the conviction to the appellate court having jurisdic-
41 tion and that if the defendant is financially unable to pay the costs of such
42 appeal such defendant may request the court to appoint an attorney to
43 represent the defendant on appeal and to direct that the defendant be

1 supplied with a transcript of the trial record.

2 (b) If the defendant files an affidavit stating that the defendant in-
3 tends to take an appeal in the case and if the court determines, as provided
4 in K.S.A. 22-4504 and amendments thereto, that the defendant is not
5 financially able to employ counsel, the court shall appoint counsel from
6 the panel for indigents' defense services or otherwise in accordance with
7 the applicable system for providing legal defense services for indigent
8 persons prescribed by the state board of indigents' defense services, to
9 represent the defendant and to perfect and handle the appeal. If the
10 defendant files a verified motion for transcript stating that a transcript of
11 the trial record is necessary to enable the defendant to prosecute the
12 appeal and that the defendant is not financially able to pay the cost of
13 procuring such transcript, and if the court finds that the statements con-
14 tained therein are true, the court shall order that such transcript be sup-
15 plied to the defendant as provided in K.S.A. 22-4509 and amendments
16 thereto and paid for by the state board of indigents' defense services
17 pursuant to claims submitted therefor.

18 (c) Upon an appeal or petition for certiorari addressed to the supreme
19 court of the United States, if the defendant is without means to pay the
20 cost of making and forwarding the necessary records, the supreme court
21 of Kansas may by order provide for the furnishing of necessary records.

22 ~~(d) (1) The state board of indigents' defense services shall provide~~
23 ~~by rule and regulation for: (A) The assignment of attorneys to the panel~~
24 ~~for indigents' defense services to represent indigent persons who have~~
25 ~~been convicted of capital murder and are under sentence of death, in the~~
26 ~~direct review of the judgment;~~

27 ~~—(B)—standards of competency and qualification for the appointment~~
28 ~~of counsel in capital cases under this section; and~~

29 ~~—(C)—the reasonable compensation of counsel appointed to represent~~
30 ~~individuals convicted of capital murder and under a sentence of death in~~
31 ~~the appeal of such cases and for reasonable and necessary litigation ex-~~
32 ~~pense associated with such appeals.~~

33 ~~—(2)—If a defendant has been convicted of capital murder and is under~~
34 ~~a sentence of death, the district court shall make a determination on the~~
35 ~~record whether the defendant is indigent. Upon a finding that the de-~~
36 ~~fendant is indigent and accepts the offer of representation or is unable~~
37 ~~competently to decide whether to accept or reject the offer, the court~~
38 ~~shall appoint one or more counsel, in accordance with subsection (d)(1),~~
39 ~~to represent the defendant. If the defendant rejects the offer of repre-~~
40 ~~sentation, the court shall find on the record, after a hearing if necessary,~~
41 ~~whether the defendant rejected the offer of representation with the un-~~
42 ~~derstanding of its legal consequences. The court shall deny the appoint-~~
43 ~~ment of counsel upon a finding that the defendant is competent and not~~

1 indigent.

2 ~~—(3)— Counsel appointed to represent the defendant, under this section,~~
3 ~~shall not have represented the defendant at trial unless the defendant and~~
4 ~~counsel expressly request continued representation.~~

5 Sec. 11. K.S.A. 2004 Supp. 22-4506 is hereby amended to read as
6 follows: 22-4506. (a) Whenever any person who is in custody under a
7 sentence of imprisonment upon conviction of a felony files a petition for
8 writ of habeas corpus or a motion attacking sentence under K.S.A. 60-
9 1507 and files with such petition or motion such person's affidavit stating
10 that the petition or motion is filed in good faith and that such person is
11 financially unable to pay the costs of such action and to employ counsel
12 therefor, the court shall make a preliminary examination of the petition
13 or motion and the supporting papers.

14 (b) If the court finds that the petition or motion presents substantial
15 questions of law or triable issues of fact and if the petitioner or movant
16 has been or is thereafter determined to be an indigent person as provided
17 in K.S.A. 22-4504 and amendments thereto, the court shall appoint coun-
18 sel from the panel for indigents' defense services or otherwise in accord-
19 ance with the applicable system for providing legal defense services for
20 indigent persons prescribed by the state board of indigents' defense serv-
21 ices, to assist such person and authorize the action to be filed without a
22 deposit of security for costs. If the petition or motion in such case raises
23 questions shown by the trial record, the court shall order that the peti-
24 tioner or movant be supplied with a transcript of the trial proceedings,
25 or so much thereof as may be necessary to present the issue, without cost
26 to such person.

27 (c) If an appeal is taken in such action and if the trial court finds that
28 the petitioner or movant is an indigent person, the trial court shall appoint
29 counsel to conduct the appeal, order that the appellant be supplied with
30 a record of the proceedings or so much thereof as such counsel deter-
31 mines to be necessary and order that the deposit of security for costs be
32 waived.

33 ~~(d) (1) The state board of indigents' defense services shall provide~~
34 ~~by rule and regulation for: (A) The assignment of attorneys to the panel~~
35 ~~for indigents' defense services to represent indigent persons, who have~~
36 ~~been convicted of capital murder and are under sentence of death, upon~~
37 ~~a filing of a petition for writ of habeas corpus or a motion attacking sen-~~
38 ~~tence under K.S.A. 60-1507 and amendments thereto;~~

39 ~~—(B)— standards of competency and qualification for the appointment~~
40 ~~of counsel in capital cases under this section; and~~

41 ~~—(C)— the reasonable compensation of counsel appointed to represent~~
42 ~~individuals convicted of capital murder and under a sentence of death,~~
43 ~~during proceedings conducted pursuant to subsection (a), (b) or (c) and~~

1 ~~for reasonable and necessary litigation expense associated with such~~
2 ~~proceedings.~~

3 ~~—(2)— If a petitioner or movant, who has been convicted of capital mur-~~
4 ~~der and is under a sentence of death, files a petition for writ of habeas~~
5 ~~corpus or a motion attacking sentence under K.S.A. 60-1507 and amend-~~
6 ~~ments thereto, the district court shall make a determination on the record~~
7 ~~whether the petitioner or movant is indigent. Upon a finding that the~~
8 ~~petitioner or movant is indigent and accepts the offer of representation~~
9 ~~or is unable competently to decide whether to accept or reject the offer,~~
10 ~~the court shall appoint one or more counsel, in accordance with subsec-~~
11 ~~tion (d) (1), to represent the petitioner or movant. If the petitioner or~~
12 ~~movant rejects the offer of representation, the court shall find on the~~
13 ~~record, after a hearing if necessary, whether the petitioner or movant~~
14 ~~rejected the offer of representation with the understanding of its legal~~
15 ~~consequences. The court shall deny the appointment of counsel upon a~~
16 ~~finding that the petitioner or movant is competent and not indigent.~~

17 ~~—(3)— Counsel appointed to represent the petitioner or movant shall not~~
18 ~~have represented the petitioner or movant at trial or on direct appeal~~
19 ~~therefrom unless the petitioner or movant and counsel expressly request~~
20 ~~continued representation.~~

21 Sec. 12. K.S.A. 21-3439, 21-4627, 21-4629, 21-4630, 21-4634, 22-
22 3704, 22-3705, 22-4002, 22-4004, 22-4005, 22-4016 and 22-4210 and
23 K.S.A. 2004 Supp. 21-3105, 21-4619, 21-4622, 21-4623, 21-4624, 21-
24 4635, 22-3405, 22-3717, 22-4001, 22-4003, 22-4006, 22-4009, 22-4011,
25 22-4012, 22-4013, 22-4014, 22-4505 and 22-4506 are hereby repealed.

26 Sec. 13. This act shall take effect and be in force from and after its
27 publication in the statute book.