

## House Substitute for SENATE BILL No. 55

AN ACT concerning crimes, punishment and criminal procedure; relating to expunged records; petitions for relief; house arrest; electronic communications; warrants for interception and information; conditions of release and bond; grand juries; appeals; community corrections; sexual exploitation of a child; harassment by telecommunications device; amending K.S.A. 22-3001, 22-3601, 22-4603, 22-4701 and 22-4705 and K.S.A. 2010 Supp. 12-4509, 12-4516a, as amended by section 103 of 2011 House Bill No. 2339, 22-2410, 22-2502, 22-2516, 22-2802, as amended by section 118 of 2011 House Bill No. 2339, 38-2312, as amended by section 162 of 2011 House Bill No. 2339, 75-5291 and 75-52,112 and sections 184 and 249 of chapter 136 of the 2010 Session Laws of Kansas and section 74 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 32 of 2011 House Bill No. 2339, section 244 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 66 of 2011 House Bill No. 2339, section 254 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 67 of 2011 House Bill No. 2339 and section 285 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 1 of 2011 Senate Substitute for House Bill No. 2008 and repealing the existing sections; also repealing K.S.A. 22-2501 and K.S.A. 2010 Supp. 21-3516, 21-4619, 22-2410, as amended by section 114 of 2011 House Bill No. 2339, 22-2410, as amended by section 12 of 2011 Senate Bill No. 247, 22-2802, as amended by section 2 of 2011 House Bill No. 2118, 22-2802, as amended by section 13 of 2011 Senate Bill No. 247, 22-2807a and 75-5291, as amended by section 280 of 2011 House Bill No. 2339 and section 244 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 3 of 2011 House Bill No. 2118, section 244 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 36 of 2011 Senate Bill No. 247, section 285 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 77 of 2011 House Bill No. 2339 and section 285 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 38 of 2011 Senate Bill No. 247.

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

New Section 1. (a) An individual who has been adjudicated as a mentally ill person subject to involuntary commitment for care and treatment, or who is prohibited from shipping, transporting, possessing or receiving firearms or ammunition by subsection (d)(4) or (g)(4) of 18 U.S.C. § 922, may petition for relief of disabilities for the purpose of firearm prohibitions imposed under state and federal laws.

(b) A petitioner shall submit such petition to a court of competent jurisdiction within this state.

(c) The court may only consider petitions for relief due to mental health adjudications or commitments that occurred within the state.

(d) The court shall consider the petition for relief, in accordance with the principles of due process. Such petitioner shall submit, and such court shall receive and consider:

(1) The circumstances regarding the firearm disability imposed by federal law;

(2) such petitioner's mental health records;

(3) such petitioner's criminal history records; and

(4) such petitioner's reputation, developed through character witness statements, testimony or other character evidence.

(e) The court shall grant relief only if such court determines there is clear and convincing evidence that:

(1) The petitioner will not be likely to act in a manner dangerous to public safety; and

(2) granting such relief would not be contrary to the public interest.

(f) If the court denies the petition for relief, the petitioner may petition a court of proper jurisdiction for a de novo judicial review of the court's decision to deny such petition.

(g) Documentation of a granted petition shall be submitted to the Kansas bureau of investigation. The Kansas bureau of investigation shall immediately cause such order to be entered into the appropriate state and federal databases.

(h) As used in this section:

(1) "Mentally ill person subject to involuntary commitment for care and treatment" has the same meaning as defined in K.S.A. 59-2946, and amendments thereto.

(2) "Due process" requires that:

(A) The petitioner shall have the opportunity to submit such petitioner's own evidence to the court;

(B) an independent decision maker, other than the individual who gathered the evidence for the court acting on the application, shall review such evidence; and

(C) a record of the proceedings shall be created and maintained for review.

Sec. 2. K.S.A. 2010 Supp. 12-4509 is hereby amended to read as fol-

laws: 12-4509. (a) Whenever a person is found guilty of the violation of an ordinance, the municipal judge may:

- (1) Release the person without imposition of sentence;
- (2) release the person on probation after the imposition of sentence, without imprisonment or the payment of a fine or a portion thereof, subject to conditions imposed by the court as provided in subsection (e); ~~or~~
- (3) impose such sentence of fine or imprisonment, or both, as authorized for the ordinance violation; *or*
- (4) *impose a sentence of house arrest as provided in section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.*

(b) In addition to or in lieu of any other sentence authorized by law, whenever a person is found guilty of the violation of an ordinance and there is evidence that the act constituting the violation of the ordinance was substantially related to the possession, use or ingestion of cereal malt beverage or alcoholic liquor by such person, the judge may order such person to attend and satisfactorily complete an alcohol or drug education or training program certified by the chief judge of the judicial district or licensed by the secretary of social and rehabilitation services.

(c) Except as provided in subsection (d), in addition to or in lieu of any other sentence authorized by law, whenever a person is convicted of having violated, while under 21 years of age, an ordinance prohibiting an act prohibited by K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, or K.S.A. 8-1599, 41-719 or 41-727, and amendments thereto, the municipal judge shall order such person to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. If the judge finds that the person is indigent, the fee may be waived.

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

(e) The court may impose any conditions of probation or suspension of sentence that the court deems proper, including, but not limited to, requiring that the defendant:

- (1) Avoid such injurious or vicious habits, as directed by the court or the probation officer;
- (2) avoid such persons or places of disreputable or harmful character, as directed by the court or the probation officer;
- (3) report to the probation officer as directed;
- (4) permit the probation officer to visit the defendant at home or elsewhere;
- (5) work faithfully at suitable employment insofar as possible;
- (6) remain within the state unless the court grants permission to leave;
- (7) pay a fine or costs, applicable to the ordinance violation, in one or several sums and in the manner as directed by the court;
- (8) support the defendant's dependents;
- (9) reside in a residential facility located in the community and participate in educational counseling, work and other correctional or rehabilitative programs;
- (10) 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;
- (11) perform services under a system of day fines whereby the defendant is required to satisfy fines, costs or reparation or restitution obligations by performing services for a period of days determined by the court on the basis of ability to pay, standard of living, support obligations and other factors;
- (12) make reparation or restitution to the aggrieved party for the damage or loss caused by the defendant's crime, in an amount and manner determined by the court and to the person specified by the court; or
- (13) reimburse the city, in accordance with any order made under subsection (f), for all or a part of the reasonable expenditures by the city to provide counsel and other defense services to the defendant.

(f) In addition to or in lieu of any other sentence authorized by law, whenever a person is found guilty of the violation of an ordinance the judge may order such person to reimburse the city for all or a part of the reason-

able expenditures by the city 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 of 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.

Sec. 3. K.S.A. 2010 Supp. 12-4516a, as amended by section 103 of 2011 House Bill No. 2339, is hereby amended to read as follows: 12-4516a. (a) Any person who has been arrested on a violation of a city ordinance of this state may petition the court for the expungement of such arrest record.

(b) When a petition for expungement is filed, the court shall set a date for hearing on such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. When a petition for expungement is filed, the official court file shall be separated from the other records of the court, and shall be disclosed only to a judge of the court and members of the staff of the court designated by a judge of the district court, the prosecuting attorney, the arresting law enforcement agency, or any other person when authorized by a court order, subject to any conditions imposed by the order. The petition shall state: (1) The petitioner's full name;

(2) the full name of the petitioner at the time of arrest, if different than the petitioner's current name;

(3) the petitioner's sex, race and date of birth;

(4) the crime for which the petitioner was arrested;

(5) the date of the petitioner's arrest, and

(6) the identity of the arresting law enforcement agency.

A municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section, except that no fee shall be charged to a person who was arrested as a result of being a victim of identity theft under K.S.A. 21-4018, prior to its repeal, or section 177 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(c) At the hearing on a petition for expungement, the court shall order the arrest record and subsequent court proceedings, if any, expunged upon finding: (1) The arrest occurred because of mistaken identity;

(2) a court has found that there was no probable cause for the arrest;

(3) the petitioner was found not guilty in court proceedings; or

(4) the expungement would be in the best interests of justice and (A) charges have been dismissed; or (B) no charges have been or are likely to be filed.

(d) When the court has ordered expungement of an arrest record and subsequent court proceedings, if any, the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (c). The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest. If an order of expungement is entered, the petitioner shall be treated as not having been arrested.

(e) If the ground for expungement is as provided in subsection (c)(4), the court shall determine whether, in the interest of public welfare, the records should be available for any of the following purposes: (1) In any application for 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;

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

(3) 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;

(4) to aid in determining the petitioner's qualifications for executive director of the Kansas racing 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;

(5) in any application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142 and amendments thereto;

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

(7) 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; or

(8) in any other circumstances which the court deems appropriate.

*(f) The court shall make all expunged records and related information in such court's possession, created prior to, on and after July 1, 2011, available to the Kansas bureau of investigation for the purposes of:*

*(1) 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*

*(2) 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.*

~~(f)~~ (g) Subject to any disclosures required under subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records have been expunged as provided in this section may state that such person has never been arrested.

~~(g)~~ (h) Whenever a petitioner's arrest records have been expunged as provided in this section, the custodian of the records of arrest, incarceration due to arrest or court proceedings related to the arrest, shall not disclose the arrest or any information related to the arrest, except as directed by the order of expungement or when requested by the person whose arrest record was expunged.

Sec. 4. K.S.A. 2010 Supp. 22-2410 is hereby amended to read as follows: 22-2410. (a) Any person who has been arrested in this state may petition the district court for the expungement of such arrest record.

(b) When a petition for expungement is filed, the court shall set a date for hearing on such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. When a petition for expungement is filed, the official court file shall be separated from the other records of the court, and shall be disclosed only to a judge of the court and members of the staff of the court designated by a judge of the district court, the prosecuting attorney, the arresting law enforcement agency, or any other person when authorized by a court order, subject to any conditions imposed by the order. Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$100. Except as provided further, the docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, 2011, the supreme court may impose an additional charge, not to exceed \$15 per docket fee, to fund the costs of nonjudicial personnel. The petition shall state:

- (1) The petitioner's full name;
- (2) the full name of the petitioner at the time of arrest, if different than the petitioner's current name;
- (3) the petitioner's sex, race and date of birth;
- (4) the crime for which the petitioner was arrested;
- (5) the date of the petitioner's arrest; and
- (6) the identity of the arresting law enforcement agency.

No surcharge or fee shall be imposed to any person filing a petition pursuant to this section, who was arrested as a result of being a victim of

identity theft under K.S.A. 21-4018, prior to its repeal, or section 177 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or who has had criminal charges dismissed because a court has found that there was no probable cause for the arrest, the petitioner was found not guilty in court proceedings or the charges have been dismissed. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(c) At the hearing on a petition for expungement, the court shall order the arrest record and subsequent court proceedings, if any, expunged upon finding:

- (1) The arrest occurred because of mistaken identity;
- (2) a court has found that there was no probable cause for the arrest;
- (3) the petitioner was found not guilty in court proceedings; or
- (4) the expungement would be in the best interests of justice and (A) charges have been dismissed; or (B) no charges have been or are likely to be filed.

(d) When the court has ordered expungement of an arrest record and subsequent court proceedings, if any, the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (c). The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest. If an order of expungement is entered, the petitioner shall be treated as not having been arrested.

(e) If the ground for expungement is as provided in subsection (c)(4), the court shall determine whether, in the interests of public welfare, the records should be available for any of the following purposes: (1) In any application for employment as a detective with a private detective agency, as defined in 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;

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

(3) 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;

(4) to aid in determining the petitioner's qualifications for executive director of the Kansas racing 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;

(5) in any application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

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

(7) 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; or

(8) in any other circumstances which the court deems appropriate.

(f) *The court shall make all expunged records and related information in such court's possession, created prior to, on and after July 1, 2011, available to the Kansas bureau of investigation for the purposes of:*

(1) *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*

(2) *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.*

~~(g)~~ (g) Subject to any disclosures required under subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records have been expunged as provided in this section may state that such person has never been arrested.

~~(h)~~ (h) Whenever a petitioner's arrest records have been expunged as

provided in this section, the custodian of the records of arrest, incarceration due to arrest or court proceedings related to the arrest, shall not disclose the arrest or any information related to the arrest, except as directed by the order of expungement or when requested by the person whose arrest record was expunged.

~~(h)~~ (i) The docket fee collected at the time the petition for expungement is filed shall be disbursed in accordance with K.S.A. 20-362, and amendments thereto.

Sec. 5. K.S.A. 2010 Supp. 22-2502 is hereby amended to read as follows: 22-2502. (a) A search warrant shall be issued only upon the oral or written statement, including those conveyed or received by electronic communication, of any person under oath or affirmation which states facts sufficient to show probable cause that a crime has been or is being committed and which particularly describes a person, place or means of conveyance to be searched and things to be seized. Any statement which is made orally shall be either taken down by a certified shorthand reporter, sworn to under oath and made part of the application for a search warrant, or recorded before the magistrate from whom the search warrant is requested and sworn to under oath. Any statement orally made shall be reduced to writing as soon thereafter as possible. If the magistrate is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, the magistrate may issue a search warrant for the seizure of the following:

(1) Any things which have been used in the commission of a crime, or any contraband or any property which constitutes or may be considered a part of the evidence, fruits or instrumentalities of a crime under the laws of this state, any other state or of the United States. The term “fruits” as used in this act shall be interpreted to include any property into which the thing or things unlawfully taken or possessed may have been converted.

(2) Any person who has been kidnapped in violation of the laws of this state or who has been kidnapped in another jurisdiction and is now concealed within this state.

(3) Any human fetus or human corpse.

(4) Any person for whom a valid felony arrest warrant has been issued in this state or in another jurisdiction.

(5) (A) *Any information concerning the user of an electronic communication service; any information concerning the location of electronic communications systems, including, but not limited to, towers transmitting cellular signals involved in any wire communication; and any other information made through an electronic communications system.*

(B) *The jurisdiction granted in this paragraph shall extend to information held by entities registered to do business in the state of Kansas, submitting to the jurisdiction thereof, and entities primarily located outside the state of Kansas if the jurisdiction in which the entity is primarily located recognizes the authority of the magistrate to issue the search warrant.*

(b) Before ruling on a request for a search warrant, the magistrate may require the affiant to appear personally and may examine under oath the affiant and any witnesses that the affiant may produce. Such proceeding shall be taken down by a certified shorthand reporter or recording equipment and made part of the application for a search warrant.

(c) Affidavits or sworn testimony in support of the probable cause requirement of this section shall not be made available for examination without a written order of the court, except that such affidavits or testimony when requested shall be made available to the defendant or the defendant’s counsel for such disposition as either may desire.

(d) As used in this section: (1) “Electronic communication” means the use of electronic equipment to send or transfer a copy of an original document; and

(2) “*electronic communication service*” and “*electronic communication system*” have the meaning as defined in K.S.A. 22-2514, and amendments thereto.

(e) *Nothing in this section shall be construed as requiring a search warrant for cellular location information in an emergency situation pursuant to K.S.A. 22-4615, and amendments thereto.*

Sec. 6. K.S.A. 2010 Supp. 22-2516 is hereby amended to read as follows: 22-2516. (1) Each application for an order authorizing the interception of a wire, oral or electronic communication shall be made in writing, upon oath or affirmation, to a judge of competent jurisdiction, and shall

state the applicant's authority to make such application. Each application shall include the following information:

(a) The identity of the prosecuting attorney making the application, and the identity of the investigative or law enforcement officer requesting such application to be made;

(b) a full and complete statement of the facts and circumstances relied upon by the applicant to justify such applicant's belief that an order should be issued, including (i) details as to the particular offense that has been, is being or is about to be committed, (ii) except as provided in subsection (10), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, and (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) a statement of the period of time for which the interception is required to be maintained and, if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication first has been obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) a full and complete statement of the facts known to the applicant concerning all previous applications made to any judge for authorization to intercept wire, oral or electronic communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

(f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application. Oral testimony shall be under oath or affirmation, and a record of such testimony shall be made by a certified shorthand reporter and reduced to writing.

(3) Upon such application the judge may enter an *ex parte* order, as requested or as modified, authorizing the interception of wire, oral or electronic communications within the territorial jurisdiction of such judge, if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause for belief that a person is committing, has committed or is about to commit a particular offense enumerated in subsection (1) of K.S.A. 22-2515, and amendments thereto;

(b) there is probable cause for belief that particular communications concerning the offense will be obtained through such interception;

(c) normal investigative procedures have been tried and have failed, or reasonably appear to be unlikely to succeed if tried, or to be too dangerous; and

(d) except as provided in subsection (10), there is probable cause for belief that the facilities from which, or the place where, the wire, oral or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of or commonly used by such person.

(4) Each order authorizing the interception of any wire, oral or electronic communication shall:

(a) Specify the identity of the person, if known, whose communications are to be intercepted;

(b) specify the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) specify with particularity a description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) specify the identity of each agency authorized to intercept the communications, and of the person authorizing the application;

(e) specify the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained; and

(f) upon request of the applicant, direct that a provider of wire *communication*, ~~or~~ electronic communication service, *regardless of the location or principal place of business of such provider of electronic communication service*, or public utility, landlord, custodian or other person shall furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, utility, landlord, custodian or person is according the person whose communications are to be intercepted. Any provider of wire or electronic communication service or public utility, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant for reasonable expenses incurred in providing such facilities or technical assistance.

(5) No order entered under this section may authorize the interception of any wire, oral or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or 10 days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (1) of this section and the court making the findings required by subsection (3) of this section. The period of any such extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than 30 days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this act, and must terminate upon attainment of the authorized objective, or in any event in 30 days. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by government personnel, or by an individual operating under a contract with the government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.

(6) Whenever an order authorizing the interception of wire or oral communications is entered pursuant to this act, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

(7) (a) The contents of any wire, oral or electronic communication intercepted by any means authorized by this act shall be recorded, if possible, on tape or wire or other comparable device. The recording of the contents of any wire, oral or electronic communication under this subsection shall be done in a manner which will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under such judge's directions. Custody of the recordings shall be wherever the judge orders, and the recordings shall not be destroyed except upon order of the issuing or denying judge and, in any event, shall be kept for not less than 10 years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (b) and (c) of K.S.A. 22-2515, and amendments thereto, for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, oral or electronic communication or evidence derived therefrom under subsection (d) of K.S.A. 22-2515, and amendments thereto.

(b) Applications made and orders granted under this act shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for not less than 10 years.



(c) Any violation of the provisions of paragraph (a) or (b) of this subsection may be punished as contempt of the issuing or denying judge.

(d) Within a reasonable time but not later than 90 days after the termination of the period of an order or extensions thereof the issuing or denying judge shall cause to be served on the persons named in the order or the application and, in the interest of justice, such other parties to intercepted communications as the judge may determine, an inventory which shall include notice of:

- (i) The fact of the entry of the order or the application;
- (ii) the date of the entry and the period of authorized, approved or disapproved interception, or the denial of the application; and
- (iii) the fact that during the period wire, oral or electronic communications were or were not intercepted.

The judge, upon the filing of a motion in such judge's discretion, may make available to such person or such person's counsel for inspection, such portions of the intercepted communications, applications and orders as the judge determines to be in the interest of justice. On an *ex parte* showing of good cause to a judge of competent jurisdiction the serving of the inventory required by this subsection may be postponed.

(8) The contents of any intercepted wire, oral or electronic communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any federal court or court of this state, unless each party, not less than 10 days before the trial, hearing or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized. Such ten-day period may be waived by the judge, if the judge finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing or proceeding, and that the party will not be prejudiced by the delay in receiving such information.

(9) (a) Any aggrieved person in any trial, hearing or proceeding in or before any court, department, officer, agency, regulatory body or other authority of the United States, this state, or a political subdivision thereof, may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that:

- (i) The communication was unlawfully intercepted;
- (ii) the order of authorization under which it was intercepted is insufficient on its face; or
- (iii) the interception was not made in conformity with the order of authorization.

Such motion shall be made before the trial, hearing or proceeding, unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this act. Upon the filing of such motion by the aggrieved person, the judge in such judge's discretion may make available to the aggrieved person or such person's counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interest of justice.

(b) In addition to any other right to appeal, the state shall have the right to appeal:

- (i) From an order granting a motion to suppress made under paragraph (a) of this subsection. Such appeal shall be taken within 14 days after the order of suppression was entered and shall be diligently prosecuted as in the case of other interlocutory appeals or under such rules as the supreme court may adopt;
- (ii) from an order denying an application for an order authorizing the interception of wire or oral communications, and any such appeal shall be *ex parte* and shall be in camera in preference to all other pending appeals in accordance with rules promulgated by the supreme court.

(10) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

(a) In the case of an application with respect to the interception of an oral communication:

- (i) The application is by a law enforcement officer and is approved by the attorney general and the county or district attorney where the application is sought;

(ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

(iii) the judge finds that such specification is not practical; and

(b) in the case of an application with respect to a wire or electronic communication:

(i) The application is by a law enforcement officer and is approved by the attorney general and the county or district attorney where the application is sought;

(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

(iii) the judge finds that such purpose has been adequately shown.

(11) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (3)(d) of this section do not apply by reason of subsection (10) shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (10)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.

~~(e)~~ (12) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this act involving such communications.

(13) *Nothing in this section shall be construed as requiring a search warrant for cellular location information in an emergency situation pursuant to K.S.A. 22-4615, and amendments thereto.*

Sec. 7. K.S.A. 2010 Supp. 22-2802, as amended by section 118 of 2011 House Bill No. 2339, 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 section 249 of chapter 136 of the 2010 Session Laws of Kansas, 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 ~~paragraph~~ subsection (3). Except as provided in ~~paragraph~~ 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 ~~paragraph~~ 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 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 section 244 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, the court may impose the full amount of any such costs in addition to the \$15 per week, including, but not limited to, costs for treatment and evaluation under subsection (2).*

Sec. 8. K.S.A. 22-3001 is hereby amended to read as follows: 22-3001. ~~(1)~~ (a) A majority of the district judges in any judicial district may order a grand jury to be summoned in any county in the district when it is determined to be in the public interest.

(b) *The district or county attorney in such attorney's county may petition the chief judge or the chief judge's designee in such district court to order a grand jury to be summoned in the designated county in the district to investigate alleged violations of an off-grid felony, a severity level 1, 2, 3 or 4 felony or a drug severity level 1 or 2 felony. The chief judge or the chief judge's designee in the district court of the county shall then consider the petition and, if it is found that the petition is in proper form, as set forth in this subsection, shall order a grand jury to be summoned.*

~~(2)~~ (c) A grand jury shall be summoned in any county within 60 days after a petition praying therefor is presented to the district court, bearing the signatures of a number of electors equal to 100 plus 2% of the total number of votes cast for governor in the county in the last preceding election. The petition shall be in substantially the following form:

The undersigned qualified electors of the county of \_\_\_\_\_ and state of Kansas hereby request that the district court of \_\_\_\_\_ county, Kansas, within 60 days after the filing of this petition, cause a grand jury to be summoned in the county to investigate alleged violations of law and to perform such other duties as may be authorized by law.

The signatures to the petition need not all be affixed to one paper, but each paper to which signatures are affixed shall have substantially the foregoing form written or printed at the top thereof. Each signer shall add to such signer's signature such signer's place of residence, giving the street and number or rural route number, if any. One of the signers of each paper shall verify upon oath that each signature appearing on the paper is the genuine signature of the person whose name it purports to be and that such signer believes that the statements in the petition are true. The petition shall be filed in the office of the clerk of the district court who shall forthwith transmit it to the county election officer, who shall determine whether the persons whose signatures are affixed to the petition are qualified electors of the county. Thereupon, the county election officer shall return the petition to the clerk of the district court, together with such election officer's certificate stating the number of qualified electors of the county whose signatures appear on the petition and the aggregate number of votes cast for all candidates for governor in the county in the last preceding election.

The judge or judges of the district court of the county shall then consider the petition and, if it is found that the petition is in proper form and bears the signatures of the required number of electors, a grand jury shall be ordered to be summoned.

~~(3)~~ (d) The grand jury shall consist of 15 members and shall be drawn and summoned in the same manner as petit jurors for the district court. Twelve members thereof shall constitute a quorum. The judge or judges ordering the grand jury shall direct that a sufficient number of legally qualified persons be summoned for service as grand jurors.

Sec. 9. K.S.A. 22-3601 is hereby amended to read as follows: 22-3601.

(a) Any appeal permitted to be taken from a *district court's* final judgment ~~of a district court~~ in a criminal case shall be taken to the court of appeals, except in those cases reviewable by law in the district court ~~and those cases where a or in which a~~ direct appeal to the supreme court is required. Whenever an interlocutory appeal is permitted in a criminal case in the district court, such appeal shall be taken to the court of appeals.

(b) Any appeal permitted to be taken from a *district court's* final judgment ~~of a district court~~ in a criminal case shall be taken directly to the supreme court in the following cases:

~~(1) Any case in which the defendant has been convicted of a class A felony or in which a maximum sentence of life imprisonment has been imposed or for crimes committed on or after July 1, 1993, any case in which the defendant has been convicted of an off-grid crime; and~~

~~(2) (1) Any case in which a statute of this state or of the United States has been held unconstitutional; ;~~

~~(2) any case in which the defendant has been convicted of a class A felony;~~

~~(3) any case in which a maximum sentence of life imprisonment has been imposed, unless the maximum sentence has been imposed pursuant to K.S.A. 21-4643, prior to its repeal, or section 267 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and~~

~~(4) except as provided further, any case in which the crime was committed on or after July 1, 1993, and the defendant has been convicted of an off-grid crime. The provisions of this paragraph shall not apply to any case in which the off-grid crime was:~~

~~(A) Aggravated human trafficking, subsection (c)(2)(B) of section 61 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;~~

~~(B) rape, subsection (b)(2)(B) of section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;~~

~~(C) aggravated criminal sodomy, subsection (c)(2)(B)(ii) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;~~

~~(D) aggravated indecent liberties with a child, subsection (c)(2)(C)(ii) of section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;~~

~~(E) sexual exploitation of a child, subsection (b)(2)(B) of section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;~~

~~(F) promoting prostitution, subsection (b)(4) of section 230 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or~~

~~(G) an attempt, conspiracy or criminal solicitation, as defined in section 33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, of any such felony.~~

Sec. 10. K.S.A. 22-4603 is hereby amended to read as follows: 22-4603. (1) Whenever any able-bodied prisoner is confined in the county jail or the jail of any town or city, having been convicted of a misdemeanor or of a violation of an ordinance of such town or city, the sheriff of such county, or the marshal or the chief of police of such town or city, under the direction of the county commissioners or the governing body of the town or city, may ~~cause~~ allow such persons to work at suitable public or charitable employment for not ~~to exceed~~ more than eight hours on each working day.

(2) A person so employed shall ~~be given credit at the rate of five dollars a day on any fine and costs imposed upon him.~~ receive a credit on any fine and costs imposed in an amount equal to \$5 for each full hour spent by the person in the specified work.

(3) Persons held in jail and awaiting trial or held on civil process, may, with their consent, be likewise so employed and shall receive a credit on

*any fines and costs in an amount equal to \$5 for each full hour spent by the person in the specified work, or if there are no such fines and costs, compensation at the rate of five dollars a day for such employment in an amount agreed to by the person and the city or county, but not less than \$5 a day, to be paid by the city or the county.*

(4) Any prisoner employed as above provided, shall continue to be deemed prisoners during the hours of their employment and subject to all laws, rules and regulations relating to prisoners.

Sec. 11. K.S.A. 22-4701 is hereby amended to read as follows: 22-4701. As used in this act, unless the context clearly requires otherwise:

(a) “Central repository” means the criminal justice information system central repository created by this act and the juvenile offender information system created pursuant to K.S.A. ~~2007~~ 2010 Supp. 38-2326, and amendments thereto.

(b) “Criminal history record information” means *all* data initiated or collected by a criminal justice agency on a person pertaining to a reportable event, *and any supporting documentation*. ~~The term Criminal history record information does not include:~~

(1) Data contained in intelligence or investigatory files or police work-product records used solely for police investigation purposes;

(2) wanted posters, police blotter entries, court records of public judicial proceedings or published court opinions;

(3) data pertaining to violations of the traffic laws of the state or any other traffic law or ordinance, other than vehicular homicide; or

(4) presentence investigation and other reports prepared for use by a court in the exercise of criminal jurisdiction or by the governor in the exercise of the power of pardon, reprieve or commutation.

(c) “Criminal justice agency” means any government agency or subdivision of any such agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation or release of persons suspected, charged or convicted of a crime and which allocates a substantial portion of its annual budget to any of these functions. The term includes, but is not limited to, the following agencies, when exercising jurisdiction over criminal matters or criminal history record information:

(1) State, county, municipal and railroad police departments, sheriffs’ offices and countywide law enforcement agencies, correctional facilities, jails and detention centers;

(2) the offices of the attorney general, county or district attorneys and any other office in which are located persons authorized by law to prosecute persons accused of criminal offenses;

(3) the district courts, the court of appeals, the supreme court, the municipal courts and the offices of the clerks of these courts;

(4) the Kansas sentencing commission;

(5) the Kansas parole board; and

(6) the juvenile justice authority.

(d) “Criminal justice information system” means the equipment (including computer hardware and software), facilities, procedures, agreements and personnel used in the collection, processing, preservation and dissemination of criminal history record information.

(e) “Director” means the director of the Kansas bureau of investigation.

(f) “Disseminate” means to transmit criminal history record information in any oral or written form. The term does not include:

(1) The transmittal of such information within a criminal justice agency;

(2) the reporting of such information as required by this act; or

(3) the transmittal of such information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.

(g) “Reportable event” means an event specified or provided for in K.S.A. 22-4705, and amendments thereto.

Sec. 12. K.S.A. 22-4705 is hereby amended to read as follows: 22-4705. (a) The following events are reportable events under this act:

(1) Issuance of an arrest warrant;

(2) an arrest;

(3) release of a person after arrest without the filing of a charge;

- (4) dismissal or quashing of an indictment or criminal information;
- (5) an acquittal, conviction or other disposition at or following trial, including a finding of probation before judgment;
- (6) imposition of a sentence;
- (7) commitment to a correctional facility, whether state or locally operated;
- (8) release from detention or confinement;
- (9) an escape from confinement;
- (10) a pardon, reprieve, commutation of sentence or other change in a sentence, including a change ordered by a court;
- (11) judgment of an appellate court that modifies or reverses the lower court decision;
- (12) order of a court in a collateral proceeding that affects a person's conviction, sentence or confinement, including any expungement or annulment of arrests or convictions pursuant to state statute; and
- (13) any other event arising out of or occurring during the course of criminal justice proceedings declared to be reportable by rule or regulation of the director.

(b) There is hereby established a criminal justice information system central repository for the collection, storage, and dissemination of criminal history record information. The central repository shall be operated by the Kansas bureau of investigation under the administrative control of the director.

(c) Except as otherwise provided by this subsection, every criminal justice agency shall report criminal history record information, whether collected manually or by means of an automated system, to the central repository, in accordance with rules and regulations adopted pursuant to this act. A criminal justice agency shall report to the central repository those reportable events involving a violation of a county resolution or city ordinance only when required by rules and regulations adopted by the director.

(d) Reporting methods may include:

- (1) Submittal of criminal history record information by a criminal justice agency directly to the central repository;
- (2) if the information can readily be collected and reported through the court system, submittal to the central repository by the administrative office of the courts; or
- (3) if the information can readily be collected and reported through criminal justice agencies that are part of a geographically based information system, submittal to the central repository by the agencies.

(e) Nothing in this section shall prevent a criminal justice agency from maintaining more detailed information than is required to be reported to the central repository. However, the dissemination of that criminal history record information is governed by the provisions of this act.

(f) The director may determine, by rule and regulation, the reportable events to be reported by each criminal justice agency, in order to avoid duplication in reporting.

(g) *Except as otherwise provided in this subsection, no court or criminal justice agency may assess fees or charges against the central repository for providing criminal history record information created prior to, on or after July 1, 2011. A court or criminal justice agency may assess a fee or charge against the central repository for providing criminal history record information if such court or criminal justice agency has previously provided such criminal history record information as required by law.*

Sec. 13. K.S.A. 2010 Supp. 38-2312, as amended by section 162 of 2011 House Bill No. 2339, is hereby amended to read as follows: 38-2312.

(a) Except as provided in subsection (b) and (c), any records or files specified in this code concerning a juvenile may be expunged upon application to a judge of the court of the county in which the records or files are maintained. The application for expungement may be made by the juvenile, if 18 years of age or older or, if the juvenile is less than 18 years of age, by the juvenile's parent or next friend.

(b) There shall be no expungement of records or files concerning acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-3401, prior to its repeal, or section 37 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, murder in the first degree, K.S.A. 21-3402, prior to its repeal, or section 38 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto,

murder in the second degree, K.S.A. 21-3403, prior to its repeal, or section 39 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, voluntary manslaughter, K.S.A. 21-3404, prior to its repeal, or section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, involuntary manslaughter, K.S.A. 21-3439, prior to its repeal, or section 36 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, capital murder, K.S.A. 21-3442, prior to its repeal, involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3502, prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, rape, K.S.A. 21-3503, prior to its repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, indecent liberties with a child, K.S.A. 21-3504, prior to its repeal, or subsection (b) of section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, aggravated indecent liberties with a child, K.S.A. 21-3506, prior to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, aggravated criminal sodomy, K.S.A. 21-3510, prior to its repeal, or subsection (a) of section 72 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, indecent solicitation of a child, K.S.A. 21-3511, prior to its repeal, or subsection (b) of section 72 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, aggravated indecent solicitation of a child, K.S.A. 21-3516, prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, sexual exploitation, K.S.A. 21-3603, prior to its repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, aggravated incest, K.S.A. 21-3608, prior to its repeal, or subsection (a) of section 78 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, endangering a child, K.S.A. 21-3608a, prior to its repeal, or subsection (b) of section 78 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, aggravated endangering a child, K.S.A. 21-3609, prior to its repeal, or section 79 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, abuse of a child, or which would constitute an attempt to commit a violation of any of the offenses specified in this subsection.

*(c) 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.*

~~(e)~~ (d) When a petition for expungement is filed, the court shall set a date for a hearing on the petition and shall give notice thereof to the county or district attorney. The petition shall state: (1) The juvenile's full name; (2) the full name of the juvenile as reflected in the court record, if different than (1); (3) the juvenile's sex and date of birth; (4) the offense for which the juvenile was adjudicated; (5) the date of the trial; and (6) the identity of the trial court. Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$100. On and after the effective date of this act through June 30, 2011, the supreme court may impose a charge, not to exceed \$15 per case, to fund the costs of non-judicial personnel. All petitions for expungement shall be docketed in the original action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

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

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

(B) since the final discharge of the juvenile, the juvenile has not been convicted of a felony or of a misdemeanor other than a traffic offense or adjudicated as a juvenile offender under the revised Kansas juvenile justice code and no proceedings are pending seeking such a conviction or adjudication; and

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

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



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

~~(f)~~ (g) ~~Copies~~ A certified copy of any order made pursuant to subsection (a) or ~~(e)~~ (d) shall be sent to ~~each public officer and agency in the county having possession of any~~ the Kansas bureau of investigation, which shall notify every juvenile or criminal justice agency which may possess records or files ordered to be expunged. If the ~~officer or~~ agency fails to comply with the order within a reasonable time after its receipt, ~~the officer or such~~ agency may be adjudged in contempt of court and punished accordingly.

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

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

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

~~(j)~~ (k) Whenever the records or files of any adjudication have been expunged under the provisions of this section, the custodian of the records or files of adjudication relating to that offense shall not disclose the existence of such records or files, 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) 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;
  - (7) the governor or the Kansas racing 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; ~~or~~
  - (8) the Kansas sentencing commission; *or*
  - (9) *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)(9) shall apply to all records created prior to, on and after July 1, 2011.*

Sec. 14. K.S.A. 2010 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 community correctional services programs 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-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes. 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 community correctional services programs as a condition of supervision following the successful completion of a conservation camp program; or

(G) who has been sentenced to community corrections supervision pursuant to K.S.A. 21-4729, *prior to its repeal, or section 305 of chapter 136 of the 2010 Session Laws of Kansas*, 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 ~~January~~ *July 1, 2011* ~~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 ~~January~~ *July 1, 2011* ~~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. 15. K.S.A. 2010 Supp. 75-52,112 is hereby amended to read as follows: 75-52,112. (a) *As used in this section, "supervision success rate" means the percentage of those persons under supervision in a community corrections program whose supervision is not revoked and remanded to the custody of the department of corrections for imprisonment.*

(b) On and after July 1, ~~2007~~ 2011, subject to the provision of appropriation acts, the secretary of corrections shall develop and implement a grant program with the goal of increasing public safety, reducing the risk of offenders on community supervision and ~~reducing each community corrections program's revocations rate by at least 20% from such program's fiscal year 2006 revocation rate~~ *achieving and maintaining a supervision success rate of at least 75% or improving such rate by at least 3% from the previous year.*

(c) Any county or counties operating community correctional services may apply for the grant. The program shall give priority to a county or counties in which the ~~revocation~~ *supervision success* rate for offenders on community supervision is significantly ~~higher~~ *lower* than the statewide average, which target a higher ~~percentage of revocation reductions~~ *supervision success rate* than the required ~~minimum of 20%~~ *supervision success rate of 75% or 3% annual supervision success rate improvement* or which target the successful reentry of offenders who are considered medium or high risk for revocation.

~~(b)~~ (d) The secretary shall adopt grant requirements in accordance with this section. Proposals for grants under this program shall include, but not be limited to, provisions to:

- (1) Target offenders at medium and high risk for revocation utilizing risk assessment instruments approved by the secretary;
- (2) reduce and specialize caseloads for community corrections officers;
- (3) provide the offenders with the needed supervision and services to

improve such offenders' opportunity to successfully complete community correctional services programs, resulting in a reduction in revocations to prison. Such services may include, but not be limited to, employment training and placement, educational assistance, transportation and housing. Such services shall be evidence-based and address offenders' criminogenic risks, needs and responsivity characteristics;

(4) use an intermediate sanctions community supervision model;

(5) provide staff training and skill development for community corrections officers in risk reduction and intervention. Such training and development shall be approved and certified by the secretary;

(6) utilize treatment options, including substance abuse treatment, mental health treatment, and cognitive and behavioral programs for offenders. For identified need areas, approved assessment and evaluation instruments should be utilized to ensure offender placement into appropriate levels of treatment and intervention;

(7) use gang intervention strategies;

(8) address safety concerns of the community;

(9) implement a method of tracking and reporting revocations;

(10) establish a goal of reducing the number of offenders, by a specified percentage, whose supervision is revoked and the offender sentenced to prison by providing *a plan to*: (A) ~~A plan to reduce the revocation rate for offenders on community supervision by at least 20% from such program's fiscal year 2006 revocations rate;~~ (B) ~~a plan to reduce the revocation rate at a percentage greater than the 20% minimum established to receive such grants;~~ *or Achieve and maintain a supervision success rate of at least 75% or improve such rate by at least 3% from the previous year; or (C) a plan which targets (B) target the successful reentry of offenders who are considered medium or high risk for revocation;*

(11) develop a specific accountability system for monitoring, tracking and utilizing the grant funds and to evaluate the effectiveness of the grant funds; and

(12) develop a consistent set of policies that will guide judges and community corrections officers in the supervision and revocation of offenders on community corrections supervision.

~~(e)~~ (e) The department of corrections shall establish a date for achieving goals based upon implementation time-lines and goals specific to each grant, which may include an overall reduction or a reduction for a specifically targeted population.

~~(f)~~ (f) The department of corrections shall evaluate the programs which received a grant using a research-based process evaluation targeting the critical components of effective programs to ensure that the program is being delivered as such program was designed. Continued funding shall be contingent on the program meeting the established goals.

~~(g)~~ (g) The secretary shall prepare a report which states the number of programs receiving grants pursuant to this section, specifically identifying each program, summarizing the provisions of each program and the success of the program in reducing revocations. Such report shall be delivered to the governor, the secretary of the senate, the chief clerk of the house of representatives and the Kansas reentry policy council on or before the first day of the regular legislative session each year in which the grant program is funded.

Sec. 16. Section 74 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 32 of 2011 House Bill No. 2339, is hereby amended to read as follows: Sec. 74. (a) Sexual exploitation of a child is:

(1) Employing, using, persuading, inducing, enticing or coercing a child under 18 years of age, *or a person whom the offender believes to be a child under 18 years of age*, to engage in sexually explicit conduct with the intent to promote any performance;

(2) possessing any visual depiction of a child under 18 years of age shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person;

(3) being a parent, guardian or other person having custody or control of a child under 18 years of age and knowingly permitting such child to engage in, or assist another to engage in, sexually explicit conduct for any purpose described in subsection (a)(1) or (2); or

(4) promoting any performance that includes sexually explicit conduct

by a child under 18 years of age, or a person whom the offender believes to be a child under 18 years of age, knowing the character and content of the performance.

(b) (1) Sexual exploitation of a child as defined in:

(A) Subsection (a)(2) or (a)(3) is a severity level 5, person felony; and

(B) subsection (a)(1) or (a)(4) is a severity level 5, person felony, except as provided in subsection (b)(2).

(2) Sexual exploitation of a child as defined in subsection (a)(1) or (a)(4) or attempt, conspiracy or criminal solicitation to commit sexual exploitation of a child as defined in subsection (a)(1) or (a)(4) is an off-grid person felony, when the offender is 18 years of age or older and the child is under 14 years of age.

(c) If the offender is 18 years of age or older and the child is under 14 years of age, the provisions of:

(1) Subsection (c) of section 33 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of attempting to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4);

(2) subsection (c) of section 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4); and

(3) subsection (d) of section 35 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4).

(d) As used in this section:

(1) “Sexually explicit conduct” means actual or simulated: Exhibition in the nude; sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex; masturbation; sado-masochistic abuse with the intent of sexual stimulation; or lewd exhibition of the genitals, female breasts or pubic area of any person;

(2) “promoting” means procuring, transmitting, distributing, circulating, presenting, producing, directing, manufacturing, issuing, publishing, displaying, exhibiting or advertising:

(A) For pecuniary profit; or

(B) with intent to arouse or gratify the sexual desire or appeal to the prurient interest of the offender or any other person;

(3) “performance” means any film, photograph, negative, slide, book, magazine or other printed or visual medium, any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer generated image that contains or incorporates in any manner any film, photograph, negative, photocopy, video tape or video laser disk or any play or other live presentation;

(4) “nude” means any state of undress in which the human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered; and

(5) “visual depiction” means any photograph, film, video picture, digital or computer-generated image or picture, whether made or produced by electronic, mechanical or other means.

Sec. 17. Section 184 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 184. (a) Harassment by telecommunication device is the use of:

(1) ~~Telephone communication~~ A telecommunications device to:

(A) Knowingly make or transmit any comment, request, suggestion or proposal, *image or text* which is obscene, lewd, lascivious, ~~filthy~~ or indecent;

~~(B) make a telephone call, whether or not conversation ensues, or transmit a telefacsimile communication with intent to abuse, threaten or harass any person at the called number;~~

(B) *make or transmit a call, whether or not conversation ensues, with intent to abuse, threaten or harass any person at the receiving end;*

(C) *make or transmit any comment, request, suggestion, proposal, image or text with intent to abuse, threaten or harass any person at the receiving end;*

~~(C)~~ (D) make or cause the telephone of another ring a telecommunications device to repeatedly ring or activate with intent to harass any person at the called number receiving end;

~~(D)~~ make repeated telephone calls, during which conversation ensues, or repeatedly transmit a telefacsimile communication with intent to harass any person at the called number;

~~(E)~~ knowingly play any recording on a telephone, except recordings such as weather information or sports information when the number thereof is dialed, unless the person or group playing the recording shall be identified and state that it is a recording; or

~~(F)~~ knowingly permit any telephone or telefacsimile communication machine telecommunications device under one's control to be used in violation of this paragraph.

(2) Telefacsimile communication to send or transmit such communication to a court in the state of Kansas for a use other than court business, with no requirement of culpable mental state.

(b) Harassment by telecommunication device is a class A nonperson misdemeanor.

(c) Every telephone directory published for distribution to members of the general public shall contain a notice setting forth a summary of the provisions of this section. Such notice shall be printed in type which is no smaller than any other type on the same page and shall be preceded by the word "WARNING."

(d) As used in this section, ~~"telefacsimile communication" means the use of electronic equipment to send or transmit a copy of a document via telephone line~~ "telecommunications device" includes telephones, cellular telephones, telefacsimile machines and any other electronic device which makes use of an electronic communication service, as defined in K.S.A. 22-2514, and amendments thereto.

(e) An offender who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any other offense in sections 72, 73, 74 or 212 of chapter 136 of the 2010 Session Laws of Kansas.

Sec. 18. Section 244 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 66 of 2011 House Bill No. 2339, is hereby amended to read as follows: Sec. 244. (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 section 249 of chapter 136 of the 2010 Session Laws of Kansas, 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

section 242 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 136 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 98 of chapter 136 of the 2010 Session Laws of Kansas, 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 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 section 285 of chapter 136 of the 2010 Session Laws of Kansas, 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), ~~and~~ (11) and (12); or

~~(13)~~ (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 section 177 of chapter 136 of the 2010 Session Laws of Kansas, 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 non-compliance 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 section 242 of chapter 136 of the 2010 Session Laws of Kansas, 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 imposing a fine the court may authorize the payment thereof in installments.~~ 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 section 246 of chapter 136 of the 2010 Session Laws of Kansas, 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. 2010 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 section 246 of chapter 136 of the 2010 Session Laws of Kansas, 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, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of section 305 of chapter 136 of the 2010 Session Laws of Kansas, 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 guideline grid for drug crimes and whose offense does not meet the requirements of section 305 of chapter 136 of the 2010 Session Laws of Kansas, 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, 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, or for an offense which is classified in grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes and such offense does not meet the requirements of section 305 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 248 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 286 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, in addition to any of the above, for felony violations of K.S.A. 2010 Supp. 21-36a06, and amendments thereto, the court shall require the defendant who meets the requirements established in section 305 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to participate in a certified drug abuse treatment program, as provided in K.S.A. 2010 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 section 286 of chapter 136 of the 2010 Session Laws of Kansas, 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. 2010 Supp. 21-36a06, 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 section 1 of chapter 101 of the 2010 Session Laws of Kansas, 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 rescission or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date. All credits for community service shall be subject to review and approval by the court.*

Sec. 19. Section 249 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 249. (a) The court or the secretary of corrections may implement a house arrest program for defendants or inmates being sentenced by the court or in the custody of the secretary of corrections *or as a sanction for offenders who have failed to*

*comply with the conditions of probation, parole or postrelease supervision, except:*

(1) No defendant shall be placed by the court under house arrest if found guilty of:

(A) Any crime designated as a class A or B felony in article 34 or 35 of the Kansas Statutes Annotated, prior to their repeal;

(B) subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; ~~or~~

(C) section 79 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(D) any off-grid felony; or

(E) any nondrug crime ranked in severity levels 1 through 5 or any felony ranked in severity levels 1 through 3 of the drug grid, unless the offender has been sentenced to probation;

(2) no inmate shall be placed under house arrest if such inmate's security status is greater than minimum security; or

(3) no inmate shall be placed under house arrest who has been denied parole by the parole board within the last 6 months. Any inmate who, while participating in the house arrest program, is denied parole by the parole board shall be allowed to remain under house arrest until the completion of the sentence or until the inmate is otherwise removed from the program.

(b) ~~Prior to the~~ *At the time of* placement of an inmate under house arrest, the court ~~or~~, secretary or house arrest staff shall provide written notification to the sheriff and district or county attorney of the county in which any person under house arrest is to be placed and to the chief law enforcement officer of any incorporated city or town in which such person is to be placed of the placement of the person under house arrest within the county or incorporated city or town.

(c) House arrest sanctions shall be administered by the court and the secretary of corrections, respectively, through rules and regulations, and may include, but are not limited to, rehabilitative restitution in money or in kind, curfew, revocation or suspension of the driver's license, community service, deprivation of nonessential activities or privileges, or other appropriate restraints on the inmate's liberty.

(d) *Upon placement in a house arrest program, the court, secretary or house arrest staff shall inform the offender, and any other people residing with such offender, of the nature and extent of such house arrest monitoring, and shall obtain the written agreement of such offender to comply with all requirements of the program.*

(e) *The offender shall remain within the property boundaries of the offender's residence at all times during the term of house arrest, except as provided under the house arrest agreement with such offender.*

(f) *The offender shall allow any law enforcement officer, community corrections officer, court services officer or duly authorized agent of the department of corrections, to enter such offender's residence at any time to verify the offender's compliance with the conditions of the house release.*

(g) *As a condition of house arrest, the court or secretary may require an offender placed under house arrest to pay any supervision costs associated with the house arrest program.*

(h) *The offender shall consent to be monitored by:*

(1) *An electronic monitoring device on such offender's person;*

(2) *an electronic monitoring device in such offender's home;*

(3) *a remote blood alcohol monitoring device;*

(4) *a home telephone verification procedure;*

(5) *radio frequency devices; or*

(6) *any combination of monitoring methods as the court, secretary or house arrest staff finds necessary.*

(i) *The secretary or the court may contract for independent monitoring services. Such independent monitoring service shall be able to provide monitoring 24 hours a day, every day of the year, and any other services as determined by the secretary or the court.*

(j) *An offender violating the provisions of K.S.A. 8-1567, and amendments thereto, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. On a second conviction of K.S.A. 8-1567, and amendments thereto, an offender placed under house arrest shall serve a total of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in*

*the house arrest agreement shall not be counted as part of the 120 hours. On a third or subsequent conviction of K.S.A. 8-1567, and amendments thereto, an offender placed under house arrest shall serve a total of 240 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 240 hours.*

(k) *As used in this section:*

(1) *“House arrest staff” means an independent contractor or government entity, and agents thereof, utilized by the secretary or court to administer the provisions of a house arrest program;*

(2) *“electronic monitoring device” means:*

(A) *An active or passive global positioning system-enabled device capable of recording and transmitting an offender's location at all times or at designated intervals. Such monitoring device may record or transmit sound, visual images or other information regarding such offender's location, via wireless communication; or*

(B) *a radio frequency device capable of monitoring an offender's location; and*

(3) *“remote alcohol monitoring device” means a device capable of monitoring an offender's blood alcohol content via micro fuel cell or deep lung tissue sample. Such monitoring devices shall be of comparable accuracy to roadside breath alcohol testing devices utilized by law enforcement, and shall have wireless or landline telephone transmission capabilities. Such device may be used in conjunction with an alcohol and drug-sensing bracelet to monitor such offender's compliance with the terms of house arrest.*

Sec. 20. Section 254 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 67 of 2011 House Bill No. 2339, is hereby amended to read as follows: Sec. 254. (a) (1) Except as provided in subsections (b) ~~and (e)~~, (c) and (d), 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 any felony ranked in severity level 4 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) ~~and (e)~~, (c) and (d), 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 subsection (c) and (d), 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 any felony ranked in severity levels 1 through 3 of the drug grid, or:

(1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its repeal, or section 41 of chapter 136 of the 2010 Session Laws of Kansas, 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 pro-

visions 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) 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 section 67 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 70 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(4) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior to its repeal, or section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(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 section 72 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(6) sexual exploitation of a child as defined in K.S.A. 21-3516, prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(7) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal, or section 81 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 78 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(9) abuse of a child as defined in K.S.A. 21-3609, prior to its repeal, or section 79 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(10) capital murder as defined in K.S.A. 21-3439, prior to its repeal, or section 36 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(11) murder in the first degree as defined in K.S.A. 21-3401, prior to its repeal, or section 37 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(12) murder in the second degree as defined in K.S.A. 21-3402, prior to its repeal, or section 38 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(13) voluntary manslaughter as defined in K.S.A. 21-3403, prior to its repeal, or section 39 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(14) involuntary manslaughter as defined in K.S.A. 21-3404, prior to its repeal, or section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(15) sexual battery as defined in K.S.A. 21-3517, prior to its repeal, or section 69 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 69 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(17) a violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation;

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

(19) 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.

*(d) 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.*

~~(e)~~ (e) (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 diversion, if different than the defendant's current name;
- (C) defendant's sex, race and date of birth;
- (D) crime for which the defendant was arrested, convicted or diverted;
- (E) date of the defendant's arrest, conviction or diversion; and
- (F) identity of the convicting court, arresting law enforcement authority or diverting authority.

(2) Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$100. On and after April 15, 2010 through June 30, 2011, the supreme court may impose a charge, not to exceed \$15 per case, to fund the costs of non-judicial personnel. The charge established in this section shall be the only fee collected or moneys in the nature of a fee collected for the case. Such charge shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

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

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

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

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

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

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

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

(2) 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. 2010 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. 2010 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.

~~(g)~~ (h) 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.

~~(h)~~ (i) Subject to the disclosures required pursuant to subsection ~~(g)~~ (g), 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.

~~(i)~~ (j) 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.*

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

Sec. 21. Section 285 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 1 of 2011 Senate Substitute for House Bill No. 2008, is hereby amended to read as follows: Sec. 285. (a) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. The following sentencing guidelines grid shall be applicable to nondrug felony crimes:

**SENTENCING RANGE - NONDRUG OFFENSES**

Category ↓	A 3+ Person Felonies	B 2 Person Felonies	C 1 Person & 1 Nonperson Felonies	D 1 Person Felony	E 3+ Nonperson Felonies	F 2 Nonperson Felonies	G 1 Nonperson Felony	H 2+ Misdemeanors	I 1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 33 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	5 5 5

**LEGEND**

Presumptive Probation
Solely Probation
Presumptive Imprisonment

(b) Sentences expressed in the sentencing guidelines grid for nondrug crimes represent months of imprisonment.

(c) The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool. The grid's vertical axis is the crime severity scale which classifies current crimes of conviction. The grid's horizontal axis is the criminal history scale which classifies criminal histories.

(d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions, subject to the sentencing court's discretion to enter a departure sentence. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to all other crimes and the offender's criminal history.

(e) (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.

(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:

(A) Prison sentence; and

(B) duration of the nonprison sanction at the sentencing hearing.

(f) 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 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence as provided in subsection (q).

(g) The sentence for a violation of K.S.A. 21-3415, prior to its repeal, aggravated battery against a law enforcement officer committed prior to July 1, 2006, or a violation of subsection (d) of section 47 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, aggravated assault against a law enforcement officer, which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(h) When a firearm is used to commit any person felony, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(i) (1) The sentence for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of section 49 of chapter 136 of the 2010 Session Laws of Kansas, subsections (b)(3) and (b)(4) of section 109 of chapter 136 of the 2010 Session Laws of Kansas, section 223 of chapter 136 of the 2010 Session Laws of Kansas and section 227 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or section 288 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(2) If because of the offender's criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the offender is subject to imprisonment, the provisions of this section and section 288 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in section 109 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(3) Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of section 49 of chapter 136 of the 2010 Session

Laws of Kansas, subsections (b)(3) and (b)(4) of section 109 of chapter 136 of the 2010 Session Laws of Kansas, section 223 and section 227 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not be served in a state facility in the custody of the secretary of corrections, except that the term of imprisonment for felony violations of K.S.A. 8-1567, and amendments thereto, may be served in a state correctional facility designated by the secretary of corrections if the secretary determines that substance abuse treatment resources and facility capacity is available. The secretary's determination regarding the availability of treatment resources and facility capacity shall not be subject to review. *Prior to imposing any sentence pursuant to this subsection, the court may consider assigning the defendant to a house arrest program pursuant to section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.*

(j) (1) The sentence for any persistent sex offender whose current convicted crime carries a presumptive term of imprisonment shall be double the maximum duration of the presumptive imprisonment term. The sentence for any persistent sex offender whose current conviction carries a presumptive nonprison term shall be presumed imprisonment and shall be double the maximum duration of the presumptive imprisonment term.

(2) Except as otherwise provided in this subsection, as used in this subsection, "persistent sex offender" means a person who:

(A) (i) Has been convicted in this state of a sexually violent crime, as defined in K.S.A. 22-3717, and amendments thereto; and

(ii) at the time of the conviction under subsection (j)(2)(A)(i) has at least one conviction for a sexually violent crime, as defined in K.S.A. 22-3717, and amendments thereto, in this state or comparable felony under the laws of another state, the federal government or a foreign government; or

(B) (i) has been convicted of rape, as defined in K.S.A. 21-3502, prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and

(ii) at the time of the conviction under subsection (j)(2)(B)(i) has at least one conviction for rape in this state or comparable felony under the laws of another state, the federal government or a foreign government.

(3) Except as provided in subsection (j)(2)(B), the provisions of this subsection shall not apply to any person whose current convicted crime is a severity level 1 or 2 felony.

(k) (1) If it is shown at sentencing that the offender committed any felony violation for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(2) As used in this subsection, "criminal street gang" means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities:

(A) The commission of one or more person felonies; or

(B) the commission of felony violations of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, *or any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009*; and

(C) its members have a common name or common identifying sign or symbol; and

(D) its members, individually or collectively, engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, *any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009*, or any substantially similar offense from another jurisdiction.

(l) Except as provided in subsection (o), the sentence for a violation of subsection (a)(1) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or any attempt or conspiracy, as defined in sections 33 and 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to commit such offense, when such person being sentenced has a prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715, prior to its repeal, 21-3716, prior to its repeal, subsection (a)(1) or (a)(2) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, or subsection (b) of section 93 of chapter 136 of the 2010 Session

Laws of Kansas, and amendments thereto, or any attempt or conspiracy to commit such offense, shall be presumptive imprisonment.

(m) The sentence for a violation of K.S.A. 22-4903 or subsection (a)(2) of section 138 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be presumptive imprisonment. If an offense under such sections is classified in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison sentence as provided in subsection (q).

(n) The sentence for a violation of criminal deprivation of property, as defined in section 89 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such property is a motor vehicle, and when such person being sentenced has any combination of two or more prior convictions of subsection (b) of K.S.A. 21-3705, prior to its repeal, or of criminal deprivation of property, as defined in section 89 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such property is a motor vehicle, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(o) The sentence for a felony violation of theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary as defined in subsection (a) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has no prior convictions for a violation of K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary as defined in subsection (a) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or the sentence for a felony violation of theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has one or two prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary or aggravated burglary as defined in section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or the sentence for a felony violation of burglary as defined in subsection (a) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has one prior felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary or aggravated burglary as defined in section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be the sentence as provided by this section, except that the court may order an optional nonprison sentence for a defendant to participate in a drug treatment program, including, but not limited to, an approved after-care plan, if the court makes the following findings on the record:

(1) Substance abuse was an underlying factor in the commission of the crime;

(2) substance abuse treatment in the community is likely to be more effective than a prison term in reducing the risk of offender recidivism; and

(3) participation in an intensive substance abuse treatment program will serve community safety interests.

A defendant sentenced to an optional nonprison sentence under this subsection shall be supervised by community correctional services. The provisions of subsection (f)(1) of section 305 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall apply to a defendant sentenced under this subsection. The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(p) The sentence for a felony violation of theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has any combination of three or more prior felony convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary or aggravated burglary as defined in section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or the sentence for a violation of burglary as defined in subsection (a) of section 93 of chapter 136 of the 2010 Session Laws of

Kansas, and amendments thereto, when such person being sentenced has any combination of two or more prior convictions for violations of K.S.A. 21-3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary or aggravated burglary as defined in section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section, except that the court may recommend that an offender be placed in the custody of the secretary of corrections, in a facility designated by the secretary to participate in an intensive substance abuse treatment program, upon making the following findings on the record:

(1) Substance abuse was an underlying factor in the commission of the crime;

(2) substance abuse treatment with a possibility of an early release from imprisonment is likely to be more effective than a prison term in reducing the risk of offender recidivism; and

(3) participation in an intensive substance abuse treatment program with the possibility of an early release from imprisonment will serve community safety interests by promoting offender reformation.

The intensive substance abuse treatment program shall be determined by the secretary of corrections, but shall be for a period of at least four months. 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 within statutory limits. If the offender's term of imprisonment expires, the offender shall be placed under the applicable period of postrelease supervision. The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(q) As used in this section, an "optional nonprison sentence" is a sentence which the court may impose, in lieu of the presumptive sentence, upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

(3) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence shall not be considered a departure and shall not be subject to appeal.

(r) The sentence for a violation of subsection (c)(2) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

(s) The sentence for a violation of section 76 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(t) (1) If the trier of fact makes a finding that an offender wore or used ballistic resistant material in the commission of, or attempt to commit, or flight from any felony, in addition to the sentence imposed pursuant to the Kansas sentencing guidelines act, the offender shall be sentenced to an additional 30 months' imprisonment.

(2) The sentence imposed pursuant to subsection (t)(1) shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

(3) As used in this subsection, "ballistic resistant material" means: (A) Any commercially produced material designed with the purpose of providing ballistic and trauma protection, including, but not limited to, bulletproof vests and kevlar vests; and (B) any homemade or fabricated substance or item designed with the purpose of providing ballistic and trauma protection.

(u) The sentence for a violation of section 177 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or any attempt or conspiracy, as defined in sections 33 and 34 of chapter 136 of the 2010

Session Laws of Kansas, and amendments thereto, to commit such offense, when such person being sentenced has a prior conviction for a violation of K.S.A. 21-4018, prior to its repeal, or section 177 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or any attempt or conspiracy to commit such offense, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

Sec. 22. K.S.A. 22-2501, 22-3001, 22-3601, 22-4603, 22-4701 and 22-4705 and K.S.A. 2010 Supp. 12-4509, 12-4516a, as amended by section 103 of 2011 House Bill No. 2339, 21-3516, 21-4619, 22-2410, 22-2410, as amended by section 114 of 2011 House Bill No. 2339, 22-2410, as amended by section 12 of 2011 Senate Bill No. 247, 22-2502, 22-2516, 22-2802, as amended by section 118 of 2011 House Bill No. 2339, 22-2802, as amended by section 2 of 2011 House Bill No. 2118, 22-2802, as amended by section 13 of 2011 Senate Bill No. 247, 22-2807a, 38-2312, as amended by section 162 of 2011 House Bill No. 2339, 75-5291, 75-5291, as amended by section 280 of 2011 House Bill No. 2339 and 75-52,112 and sections 184 and 249 of chapter 136 of the 2010 Session Laws of Kansas and section 74 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 32 of 2011 House Bill No. 2339, section 244 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 66 of 2011 House Bill No. 2339, section 244 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 3 of 2011 House Bill No. 2118, section 244 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 36 of 2011 Senate Bill No. 247, section 254 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 67 of 2011 House Bill No. 2339, section 285 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 1 of 2011 Senate Substitute for House Bill No. 2008, section 285 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 77 of 2011 House Bill No. 2339 and section 285 of chapter 136 of the 2010 Session Laws of Kansas, as amended by section 38 of 2011 Senate Bill No. 247 are hereby repealed.

Sec. 23. This act shall take effect and be in force from and after its publication in the statute book.

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

\_\_\_\_\_  
SENATE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE  
as amended \_\_\_\_\_

HOUSE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_  
\_\_\_\_\_  
*Governor.*