

Senate Substitute for HOUSE BILL No. 2387

By Committee on Judiciary

1-28

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to murder; sentencing of certain persons to mandatory minimum term
3 of imprisonment; amending K.S.A. 2013 Supp. 21-6620 and 22-3717
4 and repealing the existing sections.
5

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

7 Section 1. K.S.A. 2013 Supp. 21-6620 is hereby amended to read as
8 follows: 21-6620. (a) Except as provided in K.S.A. 2013 Supp. 21-6618
9 and 21-6622, and amendments thereto, if a defendant is convicted of the
10 crime of capital murder and a sentence of death is not imposed pursuant to
11 subsection (e) of K.S.A. 2013 Supp. 21-6617, and amendments thereto, or
12 requested pursuant to subsection (a) or (b) of K.S.A. 2013 Supp. 21-6617,
13 and amendments thereto, the defendant shall be sentenced to life without
14 the possibility of parole.

15 (b) *The provisions of this subsection shall apply only to the crime of*
16 *murder in the first degree as described in subsection (a)(2) of K.S.A. 2013*
17 *Supp. 21-5402, and amendments thereto, committed on or after July 1,*
18 *2014.*

19 (1) *Except as provided in subsection (b)(2), a defendant convicted of*
20 *murder in the first degree as described in subsection (a)(2) of K.S.A. 2013*
21 *Supp. 21-5402, and amendments thereto, shall be sentenced to*
22 *imprisonment for life and shall not be eligible for probation or suspension,*
23 *modification or reduction of sentence. In addition, the defendant shall not*
24 *be eligible for parole prior to serving 25 years' imprisonment, and such 25*
25 *years' imprisonment shall not be reduced by the application of good time*
26 *credits. No other sentence shall be permitted.*

27 (2) *The provisions of subsection (b)(1) requiring the court to impose*
28 *a mandatory minimum term of imprisonment of 25 years shall not apply if*
29 *the court finds the defendant, because of the defendant's criminal history*
30 *classification, is subject to presumptive imprisonment pursuant to the*
31 *sentencing guidelines grid for nondrug crimes and the sentencing range*
32 *exceeds 300 months. In such case, the defendant is required to serve a*
33 *mandatory minimum term equal to the sentence established pursuant to*
34 *the sentencing range.*

35 (c) *The provisions of this subsection shall apply only to the crime of*
36 *murder in the first degree based upon the finding of premeditated murder*

1 committed on or after July 1, 2014.

2 (1) (A) Except as provided in subsection (c)(1)(B), a defendant
3 convicted of murder in the first degree based upon the finding of
4 premeditated murder shall be sentenced pursuant to K.S.A. 2013 Supp. 21-
5 6623, and amendments thereto, unless the sentencing judge finds
6 substantial and compelling reasons, following a review of mitigating
7 circumstances, to impose the sentence specified in subsection (c)(2).

8 (B) The provisions of subsection (c)(1)(A) requiring the court to
9 impose the mandatory minimum term of imprisonment required by K.S.A.
10 2013 Supp. 21-6623, and amendments thereto, shall not apply if the court
11 finds the defendant, because of the defendant's criminal history
12 classification, is subject to presumptive imprisonment pursuant to the
13 sentencing guidelines grid for nondrug crimes and the sentencing range
14 exceeds 600 months. In such case, the defendant is required to serve a
15 mandatory minimum term equal to the sentence established pursuant to
16 the sentencing range.

17 (2) (A) If the sentencing judge does not impose the mandatory
18 minimum term of imprisonment required by K.S.A. 2013 Supp. 21-6623,
19 and amendments thereto, the judge shall state on the record at the time of
20 sentencing the substantial and compelling reasons therefor, and, except as
21 provided in subsection (c)(2)(B), the defendant shall be sentenced to
22 imprisonment for life and shall not be eligible for probation or suspension,
23 modification or reduction of sentence. In addition, the defendant shall not
24 be eligible for parole prior to serving 25 years' imprisonment, and such 25
25 years' imprisonment shall not be reduced by the application of good time
26 credits. No other sentence shall be permitted.

27 (B) The provisions of subsection (c)(2)(A) requiring the court to
28 impose a mandatory minimum term of imprisonment of 25 years shall not
29 apply if the court finds the defendant, because of the defendant's criminal
30 history classification, is subject to presumptive imprisonment pursuant to
31 the sentencing guidelines grid for nondrug crimes and the sentencing
32 range exceeds 300 months. In such case, the defendant is required to serve
33 a mandatory minimum term equal to the sentence established pursuant to
34 the sentencing range.

35 ~~(b) (d)~~ The provisions of this subsection shall apply only to the crime
36 of murder in the first degree based upon the finding of premeditated
37 murder committed on or after ~~the effective date of this act~~ September 6,
38 2013, but prior to July 1, 2014.

39 (1) If a defendant is convicted of murder in the first degree based
40 upon the finding of premeditated murder, upon reasonable notice by the
41 prosecuting attorney, the court shall determine, in accordance with this
42 subsection, whether the defendant shall be required to serve a mandatory
43 minimum term of imprisonment of 50 years or sentenced as otherwise

1 provided by law.

2 (2) The court shall conduct a separate proceeding following the
3 determination of the defendant's guilt for the jury to determine whether
4 one or more aggravating circumstances exist. Such proceeding shall be
5 conducted by the court before a jury as soon as practicable. If any person
6 who served on the trial jury is unable to serve on the jury for the
7 proceeding, the court shall substitute an alternate juror who has been
8 impaneled for the trial jury. If there are insufficient alternate jurors to
9 replace trial jurors who are unable to serve at the proceeding, the court
10 may conduct such proceeding before a jury which may have 12 or less
11 jurors, but at no time less than six jurors. If the jury has been discharged
12 prior to the proceeding, a new jury shall be impaneled. Any decision of the
13 jury regarding the existence of an aggravating circumstance shall be
14 beyond a reasonable doubt. Jury selection procedures, qualifications of
15 jurors and grounds for exemption or challenge of prospective jurors in
16 criminal trials shall be applicable to the selection of such jury. The jury at
17 the proceeding may be waived in the manner provided by K.S.A. 22-3403,
18 and amendments thereto, for waiver of a trial jury. If the jury at the
19 proceeding has been waived, such proceeding shall be conducted by the
20 court.

21 (3) In the proceeding, evidence may be presented concerning any
22 matter relating to any of the aggravating circumstances enumerated in
23 K.S.A. 2013 Supp. 21-6624, and amendments thereto. Only such evidence
24 of aggravating circumstances as the prosecuting attorney has made known
25 to the defendant prior to the proceeding shall be admissible and no
26 evidence secured in violation of the constitution of the United States or of
27 the state of Kansas shall be admissible. No testimony by the defendant at
28 the time of the proceeding shall be admissible against the defendant at any
29 subsequent criminal proceeding. At the conclusion of the evidentiary
30 presentation, the court shall allow the parties a reasonable period of time in
31 which to present oral argument.

32 (4) At the conclusion of the evidentiary portion of the proceeding, the
33 court shall provide oral and written instructions to the jury to guide its
34 deliberations. If the prosecuting attorney relies on subsection (a) of K.S.A.
35 2013 Supp. 21-6624, and amendments thereto, as an aggravating
36 circumstance, and the court finds that one or more of the defendant's prior
37 convictions satisfy such subsection, the jury shall be instructed that a
38 certified journal entry of a prior conviction is presumed to prove the
39 existence of such prior conviction or convictions beyond a reasonable
40 doubt.

41 (5) If, by unanimous vote, the jury finds beyond a reasonable doubt
42 that one or more of the aggravating circumstances enumerated in K.S.A.
43 2013 Supp. 21-6624, and amendments thereto, exist, the jury shall

1 designate, in writing, signed by the foreman of the jury, the statutory
2 aggravating circumstances which it found. If, after a reasonable time for
3 deliberation, the jury is unable to reach a unanimous sentencing decision,
4 the court shall dismiss the jury and the defendant shall be sentenced as
5 provided by law. In nonjury cases, the court shall designate, in writing, the
6 specific circumstance or circumstances which the court found beyond a
7 reasonable doubt.

8 (6) If one or more of the aggravating circumstances enumerated in
9 K.S.A. 2013 Supp. 21-6624, and amendments thereto, are found to exist
10 beyond a reasonable doubt pursuant to this subsection, the defendant shall
11 be sentenced pursuant to K.S.A. 2013 Supp. 21-6623, and amendments
12 thereto, unless the sentencing judge finds substantial and compelling
13 reasons, following a review of mitigating circumstances, to impose the
14 sentence specified in this paragraph. If the sentencing judge does not
15 impose the mandatory minimum term of imprisonment required by K.S.A.
16 2013 Supp. 21-6623, and amendments thereto, the judge shall state on the
17 record at the time of sentencing the substantial and compelling reasons
18 therefor, and the defendant shall be sentenced to imprisonment for life and
19 shall not be eligible for probation or suspension, modification or reduction
20 of sentence. In addition, the defendant shall not be eligible for parole prior
21 to serving 25 years' imprisonment, and such 25 years' imprisonment shall
22 not be reduced by the application of good time credits. No other sentence
23 shall be permitted.

24 (e) The provisions of this subsection shall apply only to the crime
25 of murder in the first degree based upon the finding of premeditated
26 murder committed prior to the effective date of this act *September 6, 2013*.

27 (1) If a defendant is convicted of murder in the first degree based
28 upon the finding of premeditated murder, upon reasonable notice by the
29 prosecuting attorney, the court shall conduct a separate sentencing
30 proceeding in accordance with this subsection to determine whether the
31 defendant shall be required to serve a mandatory minimum term of
32 imprisonment of 40 years or for crimes committed on and after July 1,
33 1999, a mandatory minimum term of imprisonment of 50 years or
34 sentenced as otherwise provided by law.

35 (2) The sentencing proceeding shall be conducted by the court before
36 a jury as soon as practicable. If the trial jury has been discharged prior to
37 sentencing, a new jury shall be impaneled. Any decision to impose a
38 mandatory minimum term of imprisonment of 40 or 50 years shall be by a
39 unanimous jury. Jury selection procedures, qualifications of jurors and
40 grounds for exemption or challenge of prospective jurors in criminal trials
41 shall be applicable to the selection of such jury. The jury at the sentencing
42 proceeding may be waived in the manner provided by K.S.A. 22-3403, and
43 amendments thereto, for waiver of a trial jury. If the jury at the sentencing

1 proceeding has been waived, such proceeding shall be conducted by the
2 court.

3 (3) In the sentencing proceeding, evidence may be presented
4 concerning any matter that the court deems relevant to the question of
5 sentence and shall include matters relating to any of the aggravating
6 circumstances enumerated in K.S.A. 2013 Supp. 21-6624, and
7 amendments thereto, or for crimes committed prior to July 1, 2011, K.S.A.
8 21-4636, prior to its repeal, and any mitigating circumstances. Any such
9 evidence which the court deems to have probative value may be received
10 regardless of its admissibility under the rules of evidence, provided that
11 the defendant is accorded a fair opportunity to rebut any hearsay
12 statements. Only such evidence of aggravating circumstances as the
13 prosecuting attorney has made known to the defendant prior to the
14 sentencing proceeding shall be admissible and no evidence secured in
15 violation of the constitution of the United States or of the state of Kansas
16 shall be admissible. Only such evidence of mitigating circumstances
17 subject to discovery pursuant to K.S.A. 22-3212, and amendments thereto,
18 that the defendant has made known to the prosecuting attorney prior to the
19 sentencing proceeding shall be admissible. No testimony by the defendant
20 at the time of sentencing shall be admissible against the defendant at any
21 subsequent criminal proceeding. At the conclusion of the evidentiary
22 presentation, the court shall allow the parties a reasonable period of time in
23 which to present oral argument.

24 (4) At the conclusion of the evidentiary portion of the sentencing
25 proceeding, the court shall provide oral and written instructions to the jury
26 to guide its deliberations. If the prosecuting attorney relies on subsection
27 (a) of K.S.A. 2013 Supp. 21-6624, and amendments thereto, or for crimes
28 committed prior to July 1, 2011, subsection (a) of K.S.A. 21-4636, prior to
29 its repeal, as an aggravating circumstance, and the court finds that one or
30 more of the defendant's prior convictions satisfy such subsection, the jury
31 shall be instructed that a certified journal entry of a prior conviction is
32 presumed to prove the existence of such prior conviction or convictions
33 beyond a reasonable doubt.

34 (5) If, by unanimous vote, the jury finds beyond a reasonable doubt
35 that one or more of the aggravating circumstances enumerated in K.S.A.
36 2013 Supp. 21-6624, and amendments thereto, or for crimes committed
37 prior to July 1, 2011, K.S.A. 21-4636, prior to its repeal, exist and, further,
38 that the existence of such aggravating circumstances is not outweighed by
39 any mitigating circumstances which are found to exist, the defendant shall
40 be sentenced pursuant to K.S.A. 2013 Supp. 21-6623, and amendments
41 thereto; otherwise, the defendant shall be sentenced as provided by law.
42 The sentencing jury shall designate, in writing, signed by the foreman of
43 the jury, the statutory aggravating circumstances which it found. The trier

1 of fact may make the findings required by this subsection for the purpose
2 of determining whether to sentence a defendant pursuant to K.S.A. 2013
3 Supp. 21-6623, and amendments thereto, notwithstanding contrary
4 findings made by the jury or court pursuant to subsection (e) of K.S.A.
5 2013 Supp. 21-6617, and amendments thereto, for the purpose of
6 determining whether to sentence such defendant to death. If, after a
7 reasonable time for deliberation, the jury is unable to reach a unanimous
8 sentencing decision, the court shall dismiss the jury and the defendant
9 shall be sentenced as provided by law. In nonjury cases, the court shall
10 designate in writing the specific circumstance or circumstances which the
11 court found beyond a reasonable doubt.

12 ~~(d)~~ (f) The amendments to subsection ~~(e)~~ by this act (e) by chapter 1
13 of the 2013 Session Laws of Kansas (Special Session):

14 (1) Establish a procedural rule for sentencing proceedings, and as
15 such shall be construed and applied retroactively to all crimes committed
16 prior to the effective date of this act, except as provided further in this
17 subsection; (2) shall not apply to cases in which the defendant's conviction
18 and sentence were final prior to June 17, 2013, unless the conviction or
19 sentence has been vacated in a collateral proceeding, including, but not
20 limited to, K.S.A. 22-3504 or 60-1507, and amendments thereto; and (3)
21 shall apply only in sentencing proceedings otherwise authorized by law.

22 ~~(e)~~ (g) Notwithstanding the provisions of subsection ~~(f)~~ (h), for all
23 cases on appeal on or after the effective date of this act September 6, 2013,
24 if a sentence imposed under this section, prior to amendment by this act
25 chapter 1 of the 2013 Session Laws of Kansas (Special Session), or under
26 K.S.A. 21-4635, prior to its repeal, is vacated for any reason other than
27 sufficiency of the evidence as to all aggravating circumstances,
28 resentencing shall be required under this section, as amended by this act
29 chapter 1 of the 2013 Session Laws of Kansas (Special Session), unless the
30 prosecuting attorney chooses not to pursue such a sentence.

31 ~~(f)~~ (h) In the event any sentence imposed under this section is held to
32 be unconstitutional, the court having jurisdiction over a person previously
33 sentenced shall cause such person to be brought before the court and shall
34 sentence such person to the maximum term of imprisonment otherwise
35 provided by law.

36 ~~(g)~~ (i) If any provision or provisions of this section or the application
37 thereof to any person or circumstance is held invalid, the invalidity shall
38 not affect other provisions or applications of this section which can be
39 given effect without the invalid provision or provisions or application, and
40 to this end the provisions of this section are severable.

41 Sec. 2. K.S.A. 2013 Supp. 22-3717 is hereby amended to read as
42 follows: 22-3717. (a) Except as otherwise provided by this section: K.S.A.
43 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4635 through 21-4638,

1 prior to their repeal; K.S.A. 21-4624, prior to its repeal; K.S.A. 21-4642,
2 prior to its repeal; K.S.A. 2013 Supp. 21-6617, 21-6620, 21-6623, 21-
3 6624, 21-6625 and 21-6626, and amendments thereto; and K.S.A. 8-1567,
4 and amendments thereto; an inmate, including an inmate sentenced
5 pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2013 Supp. 21-
6 6707, and amendments thereto, shall be eligible for parole after serving the
7 entire minimum sentence imposed by the court, less good time credits.

8 (b) (1) Except as provided by K.S.A. 21-4635 through 21-4638, prior
9 to their repeal, and K.S.A. 2013 Supp. 21-6620, 21-6623, 21-6624 and 21-
10 6625, and amendments thereto, an inmate sentenced to imprisonment for
11 the crime of: ~~(A) Capital murder, or an inmate sentenced for the crime of~~
12 ~~murder in the first degree based upon a finding of premeditated murder,~~
13 committed on or after July 1, 1994, shall be eligible for parole after
14 serving 25 years of confinement, without deduction of any good time
15 credits; *(B) murder in the first degree based upon a finding of*
16 *premeditated murder committed on or after July 1, 1994, but prior to July*
17 *1, 2014, shall be eligible for parole after serving 25 years of confinement,*
18 *without deduction of any good time credits; and (C) murder in the first*
19 *degree as described in subsection (a)(2) of K.S.A. 2013 Supp. 21-5402,*
20 *and amendments thereto, committed on or after July 1, 2014, shall be*
21 *eligible for parole after serving 25 years of confinement, without*
22 *deduction of any good time credits.*

23 (2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993
24 Supp. 21-4628, prior to its repeal, K.S.A. 21-4635 through 21-4638, prior
25 to their repeal, and K.S.A. 2013 Supp. 21-6620, 21-6623, 21-6624 and 21-
26 6625, and amendments thereto, an inmate sentenced to imprisonment for
27 an off-grid offense committed on or after July 1, 1993, but prior to July 1,
28 1999, shall be eligible for parole after serving 15 years of confinement,
29 without deduction of any good time credits and an inmate sentenced to
30 imprisonment for an off-grid offense committed on or after July 1, 1999,
31 shall be eligible for parole after serving 20 years of confinement without
32 deduction of any good time credits.

33 (3) Except as provided by K.S.A. 1993 Supp. 21-4628, prior to its
34 repeal, an inmate sentenced for a class A felony committed before July 1,
35 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to
36 its repeal, or K.S.A. 2013 Supp. 21-6707, and amendments thereto, shall
37 be eligible for parole after serving 15 years of confinement, without
38 deduction of any good time credits.

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

1 (5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
2 4643, prior to its repeal, or K.S.A. 2013 Supp. 21-6627, and amendments
3 thereto, committed on or after July 1, 2006, shall be eligible for parole
4 after serving the mandatory term of imprisonment without deduction of
5 any good time credits.

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

10 (A) The aggregate minimum sentences, as determined pursuant to
11 K.S.A. 21-4608, prior to its repeal, or K.S.A. 2013 Supp. 21-6606, and
12 amendments thereto, less good time credits for those crimes which are not
13 class A felonies; and

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

16 (2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-
17 4643, prior to its repeal, or K.S.A. 2013 Supp. 21-6627, and amendments
18 thereto, for crimes committed on or after July 1, 2006, the inmate shall be
19 eligible for parole after serving the mandatory term of imprisonment.

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

25 (A) Except as provided in subparagraphs (D) and (E), persons
26 sentenced for nondrug severity levels 1 through 4 crimes, drug severity
27 levels 1 and 2 crimes committed on or after July 1, 1993, but prior to July
28 1, 2012, and drug severity levels 1, 2 and 3 crimes committed on or after
29 July 1, 2012, must serve 36 months on postrelease supervision.

30 (B) Except as provided in subparagraphs (D) and (E), persons
31 sentenced for nondrug severity levels 5 and 6 crimes, drug severity level 3
32 crimes committed on or after July 1, 1993, but prior to July 1, 2012, and
33 drug severity level 4 crimes committed on or after July 1, 2012, must serve
34 24 months on postrelease supervision.

35 (C) Except as provided in subparagraphs (D) and (E), persons
36 sentenced for nondrug severity levels 7 through 10 crimes, drug severity
37 level 4 crimes committed on or after July 1, 1993, but prior to July 1,
38 2012, and drug severity level 5 crimes committed on or after July 1, 2012,
39 must serve 12 months on postrelease supervision.

40 (D) Persons sentenced to a term of imprisonment that includes a
41 sentence for a sexually violent crime as defined in K.S.A. 22-3717, and
42 amendments thereto, a sexually motivated crime in which the offender has
43 been ordered to register pursuant to subsection (d)(1)(D)(vii) of K.S.A. 22-

1 3717, and amendments thereto, electronic solicitation, K.S.A. 21-3523,
2 prior to its repeal, or K.S.A. 2013 Supp. 21-5509, and amendments
3 thereto, or unlawful sexual relations, K.S.A. 21-3520, prior to its repeal, or
4 K.S.A. 2013 Supp. 21-5512, and amendments thereto, shall serve the
5 period of postrelease supervision as provided in subsections (d)(1)(A), (d)
6 (1)(B) or (d)(1)(C) plus the amount of good time and program credit
7 earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or
8 K.S.A. 2013 Supp. 21-6821, and amendments thereto, on postrelease
9 supervision.

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

14 (ii) If the sentencing judge departs from the presumptive postrelease
15 supervision period, the judge shall state on the record at the time of
16 sentencing the substantial and compelling reasons for the departure.
17 Departures in this section are subject to appeal pursuant to K.S.A. 21-
18 4721, prior to its repeal, or K.S.A. 2013 Supp. 21-6820, and amendments
19 thereto.

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

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

24 (b) any evidence received during the proceeding;

25 (c) the presentence report, the victim's impact statement and any
26 psychological evaluation as ordered by the court pursuant to subsection (e)
27 of K.S.A. 21-4714, prior to its repeal, or subsection (e) of K.S.A. 2013
28 Supp. 21-6813, and amendments thereto; and

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

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

34 (v) In carrying out the provisions of subsection (d)(1)(D), the court
35 shall refer to K.S.A. 21-4718, prior to its repeal, or K.S.A. 2013 Supp. 21-
36 6817, and amendments thereto.

37 (vi) Upon petition and payment of any restitution ordered pursuant to
38 K.S.A. 2013 Supp. 21-6604, and amendments thereto, the prisoner review
39 board may provide for early discharge from the postrelease supervision
40 period imposed pursuant to subsection (d)(1)(D)(i) upon completion of
41 court ordered programs and completion of the presumptive postrelease
42 supervision period, as determined by the crime of conviction, pursuant to
43 subsection (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from

1 postrelease supervision is at the discretion of the board.

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

5 (viii) Persons convicted of K.S.A. 21-3510 or 21-3511, prior to their
6 repeal, or K.S.A. 2013 Supp. 21-5508, and amendments thereto, shall be
7 required to participate in a treatment program for sex offenders during the
8 postrelease supervision period.

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

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

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

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

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

32 (4) Offenders whose crime of conviction was committed on or after
33 July 1, 2013, and whose probation, assignment to a community
34 correctional services program, suspension of sentence or nonprison
35 sanction is revoked pursuant to subsection (c) of K.S.A. 22-3716, and
36 amendments thereto, or whose underlying prison term expires while
37 serving a sanction pursuant to subsection (c)(1)(C) or (c)(1)(D) of K.S.A.
38 22-3716, and amendments thereto, shall serve a period of postrelease
39 supervision upon the completion of the underlying prison term.

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

41 (A) Rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 2013 Supp.
42 21-5503, and amendments thereto;

43 (B) indecent liberties with a child, K.S.A. 21-3503, prior to its repeal,

1 or subsection (a) of K.S.A. 2013 Supp. 21-5506, and amendments thereto;

2 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, prior
3 to its repeal, or subsection (b) of K.S.A. 2013 Supp. 21-5506, and
4 amendments thereto;

5 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505,
6 prior to its repeal, or subsection (a)(3) and (a)(4) of K.S.A. 2013 Supp. 21-
7 5504, and amendments thereto;

8 (E) aggravated criminal sodomy, K.S.A. 21-3506, prior to its repeal,
9 or subsection (b) of K.S.A. 2013 Supp. 21-5504, and amendments thereto;

10 (F) indecent solicitation of a child, K.S.A. 21-3510, prior to its repeal,
11 or subsection (a) of K.S.A. 2013 Supp. 21-5508, and amendments thereto;

12 (G) aggravated indecent solicitation of a child, K.S.A. 21-3511, prior
13 to its repeal, or subsection (b) of K.S.A. 2013 Supp. 21-5508, and
14 amendments thereto;

15 (H) sexual exploitation of a child, K.S.A. 21-3516, prior to its repeal,
16 or K.S.A. 2013 Supp. 21-5510, and amendments thereto;

17 (I) aggravated sexual battery, K.S.A. 21-3518, prior to its repeal, or
18 subsection (b) of K.S.A. 2013 Supp. 21-5505, and amendments thereto;

19 (J) aggravated incest, K.S.A. 21-3603, prior to its repeal, or
20 subsection (b) of K.S.A. 2013 Supp. 21-5604, and amendments thereto;

21 (K) aggravated human trafficking, as defined in K.S.A. 21-3447,
22 prior to its repeal, or subsection (b) of K.S.A. 2013 Supp. 21-5426, and
23 amendments thereto, if committed in whole or in part for the purpose of
24 the sexual gratification of the defendant or another;

25 (L) commercial sexual exploitation of a child, as defined in K.S.A.
26 2013 Supp. 21-6422, and amendments thereto; or

27 (M) an attempt, conspiracy or criminal solicitation, as defined in
28 K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2013
29 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a
30 sexually violent crime as defined in this section.

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

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

41 (f) If a person is sentenced to prison for a crime committed on or after
42 July 1, 1993, while on probation, parole, conditional release or in a
43 community corrections program, for a crime committed prior to July 1,

1 1993, and the person is not eligible for retroactive application of the
2 sentencing guidelines and amendments thereto pursuant to K.S.A. 21-
3 4724, prior to its repeal, the new sentence shall not be aggregated with the
4 old sentence, but shall begin when the person is paroled or reaches the
5 conditional release date on the old sentence. If the offender was past the
6 offender's conditional release date at the time the new offense was
7 committed, the new sentence shall not be aggregated with the old sentence
8 but shall begin when the person is ordered released by the prisoner review
9 board or reaches the maximum sentence expiration date on the old
10 sentence, whichever is earlier. The new sentence shall then be served as
11 otherwise provided by law. The period of postrelease supervision shall be
12 based on the new sentence, except that those offenders whose old sentence
13 is a term of imprisonment for life, imposed pursuant to K.S.A. 1993 Supp.
14 21-4628, prior to its repeal, or an indeterminate sentence with a maximum
15 term of life imprisonment, for which there is no conditional release or
16 maximum sentence expiration date, shall remain on postrelease
17 supervision for life or until discharged from supervision by the prisoner
18 review board.

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

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

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

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

(j) (1) Before ordering the parole of any inmate, the prisoner review board shall have the inmate appear either in person or via a video conferencing format and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the board formally considers placing an inmate on parole and no agreement has been entered into with the inmate under K.S.A. 75-5210a, and amendments thereto, the board shall notify the inmate in writing of the reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If parole is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in writing the reasons for not granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than one year after the denial unless the board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next three years or during the interim period of a deferral. In such case, the board may defer subsequent parole hearings for up to three years but any such deferral by the board shall require the board to state the basis for its findings. If parole is denied for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three years after the denial unless the board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the interim period of a deferral. In such case, the board may defer subsequent parole hearings for up to 10 years, but any such deferral shall require the board to state the basis for its findings.

(2) Inmates sentenced for a class A or class B felony who have not had a board hearing in the five years prior to July 1, 2010, shall have such inmates' cases reviewed by the board on or before July 1, 2012. Such

1 review shall begin with the inmates with the oldest deferral date and
2 progress to the most recent. Such review shall be done utilizing existing
3 resources unless the board determines that such resources are insufficient.
4 If the board determines that such resources are insufficient, then the
5 provisions of this paragraph are subject to appropriations therefor.

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

9 (2) Parolees and persons on postrelease supervision are, and shall
10 agree in writing to be, subject to search or seizure by a parole officer or a
11 department of corrections enforcement, apprehension and investigation
12 officer, at any time of the day or night, with or without a search warrant
13 and with or without cause. Nothing in this subsection shall be construed to
14 authorize such officers to conduct arbitrary or capricious searches or
15 searches for the sole purpose of harassment.

16 (3) Parolees and persons on postrelease supervision are, and shall
17 agree in writing to be, subject to search or seizure by any law enforcement
18 officer based on reasonable suspicion of the person violating conditions of
19 parole or postrelease supervision or reasonable suspicion of criminal
20 activity. Any law enforcement officer who conducts such a search shall
21 submit a written report to the appropriate parole officer no later than the
22 close of the next business day after such search. The written report shall
23 include the facts leading to such search, the scope of such search and any
24 findings resulting from such search.

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

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

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

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

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

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

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

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

34 (7) shall order that the parolee or person on postrelease supervision
35 agree in writing to be subject to search or seizure by any law enforcement
36 officer based on reasonable suspicion of the person violating conditions of
37 parole or postrelease supervision or reasonable suspicion of criminal
38 activity.

39 (n) If the court which sentenced an inmate specified at the time of
40 sentencing the amount and the recipient of any restitution ordered as a
41 condition of parole or postrelease supervision, the prisoner review board
42 shall order as a condition of parole or postrelease supervision that the
43 inmate pay restitution in the amount and manner provided in the journal

1 entry unless the board finds compelling circumstances which would render
2 a plan of restitution unworkable.

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

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

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

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

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

24 (t) For offenders sentenced prior to July 1, 2013, who are eligible for
25 modification of their postrelease supervision obligation, the department of
26 corrections shall modify the period of postrelease supervision as provided
27 for by this section:

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

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

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

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

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

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

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

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

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

43 (A) Severity levels 1, 2, 3, 4 and 5 crimes on the sentencing

1 guidelines grid for nondrug crimes;

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

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

6 (u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
7 4643, prior to its repeal, or K.S.A. 2013 Supp. 21-6627, and amendments
8 thereto, for crimes committed on or after July 1, 2006, shall be placed on
9 parole for life and shall not be discharged from supervision by the prisoner
10 review board. When the board orders the parole of an inmate pursuant to
11 this subsection, the board shall order as a condition of parole that the
12 inmate be electronically monitored for the duration of the inmate's natural
13 life.

14 (v) Whenever the prisoner review board orders a person to be
15 electronically monitored pursuant to this section, or the court orders a
16 person to be electronically monitored pursuant to subsection (r) of K.S.A.
17 2013 Supp. 21-6604, and amendments thereto, the board shall order the
18 person to reimburse the state for all or part of the cost of such monitoring.
19 In determining the amount and method of payment of such sum, the board
20 shall take account of the financial resources of the person and the nature of
21 the burden that the payment of such sum will impose.

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

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

31 (B) As used in this subsection, all other terms have the meanings
32 provided by K.S.A. 2013 Supp. 21-5510, and amendments thereto.

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

38 Sec. 3. K.S.A. 2013 Supp. 21-6620 and 22-3717 are hereby repealed.

39 Sec. 4. This act shall take effect and be in force from and after its
40 publication in the statute book.