

**Senate Substitute for HOUSE BILL No. 2010**

By Committee on Judiciary

3-23

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to trials; updating a statutory cross reference related to persons found  
3 not guilty by reason of mental disease or defect; pertaining to housing,  
4 jury instructions and annual hearings on continued commitment;  
5 relating to criminal discharge of a firearm; increasing the penalty for  
6 violations when a person was present in the dwelling, building,  
7 structure or motor vehicle at which the offender discharged a firearm;  
8 enacting the reduce armed violence act; increasing criminal penalties  
9 for certain violations of criminal possession of a weapon by a convicted  
10 felon that involve firearms; relating to sentencing; allowing certain  
11 nondrug offenders to participate in a certified drug abuse treatment  
12 program; relating to postrelease supervision; providing that such term  
13 does not toll except as provided by law; amending K.S.A. 12-736 and  
14 K.S.A. 2022 Supp. 21-6308, 21-6804, 21-6824, 22-3428, 22-3428a and  
15 22-3722 and repealing the existing sections.

16  
17 WHEREAS, The provisions of K.S.A. 2022 Supp. 21-6804(z), as  
18 amended by this act, shall be known as the reduce armed violence act.

19 Now, therefore:

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

21 Section 1. K.S.A. 12-736 is hereby amended to read as follows: 12-  
22 736. (a) It is hereby declared to be the policy of the state of Kansas that  
23 persons with a disability shall not be excluded from the benefits of single  
24 family residential surroundings by any municipal zoning ordinance,  
25 resolution or regulation.

26 (b) For the purpose of this act:

27 (1) "Group home" means any dwelling occupied by not more than 10  
28 persons, including eight or fewer persons with a disability who need not be  
29 related by blood or marriage and not to exceed two staff residents who  
30 need not be related by blood or marriage to each other or to the residents  
31 of the home, which dwelling is licensed by a regulatory agency of this  
32 state;

33 (2) "municipality" means any township, city or county located in  
34 Kansas;

35 (3) "disability" means, with respect to a person:

36 (A) A physical or mental impairment that substantially limits one or

1 more of such person's major life activities;

2 (B) a record of having such an impairment; or

3 (C) being regarded as having such an impairment. Such term does not  
4 include current, illegal use of or addiction to a controlled substance, as  
5 defined in section 102 of the controlled substance act, 21 U.S.C. § 802;  
6 *and*

7 (4) "licensed provider" means a person or agency who provides  
8 mental health services and is licensed by:

9 (A) The Kansas department for aging and disability services pursuant  
10 to K.S.A. 39-2001 *et seq.* or 65-425 *et seq.* ~~or K.S.A. 39-2001 *et seq.*~~, and  
11 amendments thereto; or

12 (B) the behavioral sciences regulatory board pursuant to K.S.A. 74-  
13 5301 *et seq.* or 75-5346 *et seq.* ~~or 74-5301 *et seq.*~~, and amendments  
14 thereto; or

15 (C) the state board of healing arts pursuant to K.S.A. 65-2801 *et seq.*,  
16 and amendments thereto.

17 (c) (1) No mentally ill person shall be eligible for placement in a  
18 group home unless such person has been evaluated by a licensed provider  
19 and such provider determines that the mentally ill person is not dangerous  
20 to others and is suitable for group-home placement. A group home shall  
21 not be a licensed provider for the purposes of evaluating or approving for  
22 placement a mentally ill person in a group home.

23 (2) No person shall be eligible for placement in a group home if such  
24 person is: (A) Assigned to a community corrections program or a diversion  
25 program; (B) on parole from a correctional institution or on probation for a  
26 felony offense; or (C) in a state mental institution following a finding of  
27 mental disease or defect excluding criminal responsibility, pursuant to  
28 K.S.A. ~~22-3220~~ and 22-3221, and amendments thereto, *and K.S.A. 2022*  
29 *Supp. 21-5209, and amendments thereto.*

30 (d) No person shall be placed in a group home under this act unless  
31 such dwelling is licensed as a group home by the Kansas department for  
32 aging and disability services or the department of health and environment.

33 (e) No municipality shall prohibit the location of a group home in any  
34 zone or area where single family dwellings are permitted. Any zoning  
35 ordinance, resolution or regulation that prohibits the location of a group  
36 home in such zone or area or that subjects group homes to regulations not  
37 applicable to other single family dwellings in the same zone or area is  
38 invalid. Notwithstanding the provisions of this act, group homes shall be  
39 subject to all other regulations applicable to other property and buildings  
40 located in the zone or area that are imposed by any municipality through  
41 zoning ordinance, resolution or regulation, its building regulatory codes,  
42 subdivision regulations or other nondiscriminatory regulations.

43 (f) No person or entity shall contract or enter into a contract,

1 restrictive covenant, equitable servitude or such similar restriction that  
 2 would restrict group homes or their location in a manner inconsistent with  
 3 the provisions of subsection (e).

4 Sec. 2. K.S.A. 2022 Supp. 21-6308 is hereby amended to read as  
 5 follows: 21-6308. (a) Criminal discharge of a firearm is the:

6 (1) Reckless and unauthorized discharge of any firearm *at*:

7 (A) ~~At~~ A dwelling, building or structure in which there is a human  
 8 being, *regardless of* whether the person discharging the firearm knows or  
 9 has reason to know that there is a human being present;

10 (B) ~~at~~ a motor vehicle; *in which there is a human being, regardless of*  
 11 *whether the person discharging the firearm knows or has reason to know*  
 12 *that there is a human being present; or*

13 (C) *an* aircraft, watercraft, train, locomotive, railroad car, caboose,  
 14 rail-mounted work equipment or rolling stock or other means of  
 15 conveyance of persons, *other than a motor vehicle*, or property in which  
 16 there is a human being, *regardless of* whether the person discharging the  
 17 firearm knows or has reason to know that there is a human being present;

18 (2) reckless and unauthorized discharge of any firearm at a dwelling  
 19 in which there is no human being; or

20 (3) discharge of any firearm:

21 (A) Upon any land or nonnavigable body of water of another, without  
 22 having obtained permission of the owner or person in possession of such  
 23 land; or

24 (B) upon or from any public road, public road right-of-way or  
 25 railroad right-of-way except as otherwise authorized by law.

26 (b) Criminal discharge of a firearm as defined in:

27 (1) Subsection (a)(1) is a:

28 (A) Severity level 7, person felony except as provided in subsection  
 29 (b)(1)(B) or (b)(1)(C);

30 (B) *severity level 5, person felony if such criminal discharge results*  
 31 *in bodily harm to a person during the commission thereof; and*

32 (C) *severity level 3, person felony if such criminal discharge results*  
 33 *in great bodily harm to a person during the commission thereof; ~~or~~*

34 ~~(C) severity level 5, person felony if such criminal discharge results~~  
 35 ~~in bodily harm to a person during the commission thereof;~~

36 (2) subsection (a)(2) is a severity level 8, person felony; and

37 (3) subsection (a)(3) is a class C *nonperson* misdemeanor.

38 (c) Subsection (a)(1) shall not apply if the act is a violation of K.S.A.  
 39 2022 Supp. 21-5412(d), and amendments thereto.

40 (d) Subsection (a)(3) shall not apply to any of the following:

41 (1) Law enforcement officers, or any person summoned by any such  
 42 officers to assist in making arrests or preserving the peace while actually  
 43 engaged in assisting such officer;

1 (2) wardens, superintendents, directors, security personnel and  
2 keepers of prisons, penitentiaries, jails and other institutions for the  
3 detention of persons accused or convicted of crime, while acting within the  
4 scope of their authority;

5 (3) members of the armed services or reserve forces of the United  
6 States or the national guard while in the performance of their official duty;

7 (4) watchmen, while actually engaged in the performance of the  
8 duties of their employment;

9 (5) private detectives licensed by the state to carry the firearm  
10 involved, while actually engaged in the duties of their employment;

11 (6) detectives or special agents regularly employed by railroad  
12 companies or other corporations to perform full-time security or  
13 investigative service, while actually engaged in the duties of their  
14 employment;

15 (7) the state fire marshal, the state fire marshal's deputies or any  
16 member of a fire department authorized to carry a firearm pursuant to  
17 K.S.A. 31-157, and amendments thereto, while engaged in an investigation  
18 in which such fire marshal, deputy or member is authorized to carry a  
19 firearm pursuant to K.S.A. 31-157, and amendments thereto; or

20 (8) the United States attorney for the district of Kansas, the attorney  
21 general, or any district attorney or county attorney, while actually engaged  
22 in the duties of their employment or any activities incidental to such  
23 duties; any assistant United States attorney if authorized by the United  
24 States attorney for the district of Kansas and while actually engaged in the  
25 duties of their employment or any activities incidental to such duties; any  
26 assistant attorney general if authorized by the attorney general and while  
27 actually engaged in the duties of their employment or any activities  
28 incidental to such duties; or any assistant district attorney or assistant  
29 county attorney if authorized by the district attorney or county attorney by  
30 whom such assistant is employed and while actually engaged in the duties  
31 of their employment or any activities incidental to such duties.

32 Sec. 3. K.S.A. 2022 Supp. 21-6804 is hereby amended to read as  
33 follows: 21-6804. (a) The provisions of this section shall be applicable to  
34 the sentencing guidelines grid for nondrug crimes. The following  
35 sentencing guidelines grid shall be applicable to nondrug felony crimes:

1

SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3 + Person Felonies	2 Person Felonies	1 Person & Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	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 35 33	34 32 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	7 6 5

<b>LEGEND</b>
Presumptive Probation
Public Safety
Presumptive Imprisonment

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

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

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

14 (e) (1) The sentencing court has discretion to sentence at any place  
15 within the sentencing range. In the usual case it is recommended that the  
16 sentencing judge select the center of the range and reserve the upper and  
17 lower limits for aggravating and mitigating factors insufficient to warrant a  
18 departure.

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

21 (A) Prison sentence;

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

24 (C) period of postrelease supervision at the sentencing hearing.  
25 Failure to pronounce the period of postrelease supervision shall not negate  
26 the existence of such period of postrelease supervision.

27 (3) In presumptive nonprison cases, the sentencing court shall  
28 pronounce the:

29 (A) Prison sentence; and

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

31 (f) Each grid block states the presumptive sentencing range for an  
32 offender whose crime of conviction and criminal history place such  
33 offender in that grid block. If an offense is classified in a grid block below  
34 the dispositional line, the presumptive disposition shall be  
35 nonimprisonment. If an offense is classified in a grid block above the  
36 dispositional line, the presumptive disposition shall be imprisonment. If an  
37 offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose  
38 an optional nonprison sentence as provided in subsection (q).

39 (g) The sentence for a violation of K.S.A. 21-3415, prior to its repeal,  
40 aggravated battery against a law enforcement officer committed prior to  
41 July 1, 2006, or a violation of K.S.A. 2022 Supp. 21-5412(d), and  
42 amendments thereto, aggravated assault against a law enforcement officer,  
43 which places the defendant's sentence in grid block 6-H or 6-I shall be

1 presumed imprisonment. The court may impose an optional nonprison  
2 sentence as provided in subsection (q).

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

6 (i) (1) The sentence for the violation of the felony provision of K.S.A.  
7 2022 Supp. 21-5414~~(b)(3)(c)(1)(C)~~, 21-5823(b)(3) and (b)(4), 21-6412 and  
8 21-6416, and amendments thereto, shall be as provided by the specific  
9 mandatory sentencing requirements of that section and shall not be subject  
10 to the provisions of this section or K.S.A. 2022 Supp. 21-6807, and  
11 amendments thereto.

12 (2) If because of the offender's criminal history classification the  
13 offender is subject to presumptive imprisonment or if the judge departs  
14 from a presumptive probation sentence and the offender is subject to  
15 imprisonment, the provisions of this section and K.S.A. 2022 Supp. 21-  
16 6807, and amendments thereto, shall apply and the offender shall not be  
17 subject to the mandatory sentence as provided in K.S.A. 2022 Supp. 21-  
18 5823, and amendments thereto.

19 (3) Notwithstanding the provisions of any other section, the term of  
20 imprisonment imposed for the violation of the felony provision of K.S.A.  
21 2022 Supp. 21-5414~~(b)(3)(c)(1)(C)~~, 21-5823(b)(3) and (b)(4), 21-6412 and  
22 21-6416, and amendments thereto, shall not be served in a state facility in  
23 the custody of the secretary of corrections. Prior to imposing any sentence  
24 pursuant to this subsection, the court may consider assigning the defendant  
25 to a house arrest program pursuant to K.S.A. 2022 Supp. 21-6609, and  
26 amendments thereto.

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

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

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

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

42 (B) (i) has been convicted of rape, as defined in K.S.A. 21-3502,  
43 prior to its repeal, or K.S.A. 2022 Supp. 21-5503, and amendments

1 thereto; and

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

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

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

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

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

19 (B) the commission of felony violations of article 57 of chapter 21 of  
20 the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010  
21 Supp. 21-36a01 through 21-36a17, prior to their transfer, or any felony  
22 violation of any provision of the uniform controlled substances act prior to  
23 July 1, 2009; and

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

26 (D) its members, individually or collectively, engage in or have  
27 engaged in the commission, attempted commission, conspiracy to commit  
28 or solicitation of two or more person felonies or felony violations of article  
29 57 of chapter 21 of the Kansas Statutes Annotated, and amendments  
30 thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their  
31 transfer, any felony violation of any provision of the uniform controlled  
32 substances act prior to July 1, 2009, or any substantially similar offense  
33 from another jurisdiction.

34 (l) Except as provided in subsection (o), the sentence for a violation  
35 of K.S.A. 2022 Supp. 21-5807(a)(1), and amendments thereto, or any  
36 attempt or conspiracy, as defined in K.S.A. 2022 Supp. 21-5301 and 21-  
37 5302, and amendments thereto, to commit such offense, when such person  
38 being sentenced has a prior conviction for a violation of K.S.A. 21-3715(a)  
39 or (b), prior to its repeal, 21-3716, prior to its repeal, K.S.A. 2022 Supp.  
40 21-5807(a)(1) or (a)(2) or 21-5807(b), and amendments thereto, or any  
41 attempt or conspiracy to commit such offense, shall be presumptive  
42 imprisonment.

43 (m) The sentence for a violation of K.S.A. 22-4903 or K.S.A. 2022



1 Supp. 21-5913(a)(2), and amendments thereto, shall be presumptive  
2 imprisonment. If an offense under such sections is classified in grid blocks  
3 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison  
4 sentence as provided in subsection (q).

5 (n) The sentence for a violation of criminal deprivation of property, as  
6 defined in K.S.A. 2022 Supp. 21-5803, and amendments thereto, when  
7 such property is a motor vehicle, and when such person being sentenced  
8 has any combination of two or more prior convictions of K.S.A. 21-  
9 3705(b), prior to its repeal, or of criminal deprivation of property, as  
10 defined in K.S.A. 2022 Supp. 21-5803, and amendments thereto, when  
11 such property is a motor vehicle, shall be presumptive imprisonment. Such  
12 sentence shall not be considered a departure and shall not be subject to  
13 appeal.

14 (o) (I) The sentence for a felony violation of theft of property as  
15 defined in K.S.A. 2022 Supp. 21-5801, and amendments thereto, or  
16 burglary as defined in K.S.A. 2022 Supp. 21-5807(a), and amendments  
17 thereto, when such person being sentenced has no prior convictions for a  
18 violation of K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of  
19 property as defined in K.S.A. 2022 Supp. 21-5801, and amendments  
20 thereto, or burglary as defined in K.S.A. 2022 Supp. 21-5807(a), and  
21 amendments thereto; or the sentence for a felony violation of theft of  
22 property as defined in K.S.A. 2022 Supp. 21-5801, and amendments  
23 thereto, when such person being sentenced has one or two prior felony  
24 convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior  
25 to their repeal, or theft of property as defined in K.S.A. 2022 Supp. 21-  
26 5801, and amendments thereto, or burglary or aggravated burglary as  
27 defined in K.S.A. 2022 Supp. 21-5807, and amendments thereto; or the  
28 sentence for a felony violation of burglary as defined in K.S.A. 2022 Supp.  
29 21-5807(a), and amendments thereto, when such person being sentenced  
30 has one prior felony conviction for a violation of K.S.A. 21-3701, 21-3715  
31 or 21-3716, prior to their repeal, or theft of property as defined in K.S.A.  
32 2022 Supp. 21-5801, and amendments thereto, or burglary or aggravated  
33 burglary as defined in K.S.A. 2022 Supp. 21-5807, and amendments  
34 thereto, shall be the sentence as provided by this section, except that the  
35 court may order an optional nonprison sentence for a defendant to  
36 participate in a drug treatment program, including, but not limited to, an  
37 approved aftercare plan, if the court makes the following findings on the  
38 record:

39 ~~(+)~~(A) Substance abuse was an underlying factor in the commission  
40 of the crime;

41 ~~(-)~~(B) substance abuse treatment in the community is likely to be  
42 more effective than a prison term in reducing the risk of offender  
43 recidivism; and

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

3       (2) A defendant sentenced to an optional nonprison sentence under  
4 this subsection shall be supervised by community correctional services.  
5 The provisions of K.S.A. 2022 Supp. 21-6824(f)(1), and amendments  
6 thereto, shall apply to a defendant sentenced under this subsection. The  
7 sentence under this subsection shall not be considered a departure and  
8 shall not be subject to appeal.

9       (p) (1) The sentence for a felony violation of theft of property as  
10 defined in K.S.A. 2022 Supp. 21-5801, and amendments thereto, when  
11 such person being sentenced has any combination of three or more prior  
12 felony convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716,  
13 prior to their repeal, or theft of property as defined in K.S.A. 2022 Supp.  
14 21-5801, and amendments thereto, or burglary or aggravated burglary as  
15 defined in K.S.A. 2022 Supp. 21-5807, and amendments thereto; or the  
16 sentence for a violation of burglary as defined in K.S.A. 2022 Supp. 21-  
17 5807(a), and amendments thereto, when such person being sentenced has  
18 any combination of two or more prior convictions for violations of K.S.A.  
19 21-3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as  
20 defined in K.S.A. 2022 Supp. 21-5801, and amendments thereto, or  
21 burglary or aggravated burglary as defined in K.S.A. 2022 Supp. 21-5807,  
22 and amendments thereto, shall be presumed imprisonment and the  
23 defendant shall be sentenced to prison as provided by this section, except  
24 that the court may recommend that an offender be placed in the custody of  
25 the secretary of corrections, in a facility designated by the secretary to  
26 participate in an intensive substance abuse treatment program, upon  
27 making the following findings on the record:

28       ~~(+)~~(A) Substance abuse was an underlying factor in the commission  
29 of the crime;

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

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

36       (2) The intensive substance abuse treatment program shall be  
37 determined by the secretary of corrections, but shall be for a period of at  
38 least four months. Upon the successful completion of such intensive  
39 treatment program, the offender shall be returned to the court and the court  
40 may modify the sentence by directing that a less severe penalty be  
41 imposed in lieu of that originally adjudged within statutory limits. If the  
42 offender's term of imprisonment expires, the offender shall be placed  
43 under the applicable period of postrelease supervision. The sentence under

1 this subsection shall not be considered a departure and shall not be subject  
2 to appeal.

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

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

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

12 (C) the nonprison sanction will serve community safety interests  
13 by promoting offender reformation.

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

17 (r) The sentence for a violation of K.S.A. 2022 Supp. 21-5413(c)(2),  
18 and amendments thereto, shall be presumptive imprisonment and shall be  
19 served consecutively to any other term or terms of imprisonment imposed.  
20 Such sentence shall not be considered a departure and shall not be subject  
21 to appeal.

22 (s) The sentence for a violation of K.S.A. 2022 Supp. 21-5512, and  
23 amendments thereto, shall be presumptive imprisonment. Such sentence  
24 shall not be considered a departure and shall not be subject to appeal.

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

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

34 (3) As used in this subsection, "ballistic resistant material" means  
35 any:

36 (A) ~~Any~~ Commercially produced material designed with the purpose  
37 of providing ballistic and trauma protection, including, but not limited to,  
38 bulletproof vests and kevlar vests; and

39 (B) ~~any~~ homemade or fabricated substance or item designed with the  
40 purpose of providing ballistic and trauma protection.

41 (u) The sentence for a violation of K.S.A. 2022 Supp. 21-6107, and  
42 amendments thereto, or any attempt or conspiracy, as defined in K.S.A.  
43 2022 Supp. 21-5301 and 21-5302, and amendments thereto, to commit

1 such offense, when such person being sentenced has a prior conviction for  
2 a violation of K.S.A. 21-4018, prior to its repeal, or K.S.A. 2022 Supp. 21-  
3 6107, and amendments thereto, or any attempt or conspiracy to commit  
4 such offense, shall be presumptive imprisonment. Such sentence shall not  
5 be considered a departure and shall not be subject to appeal.

6 (v) The sentence for a third or subsequent violation of K.S.A. 8-1568,  
7 and amendments thereto, shall be presumptive imprisonment and shall be  
8 served consecutively to any other term or terms of imprisonment imposed.  
9 Such sentence shall not be considered a departure and shall not be subject to  
10 appeal.

11 (w) The sentence for aggravated criminal damage to property as  
12 defined in K.S.A. 2022 Supp. 21-5813(b), and amendments thereto, when  
13 such person being sentenced has a prior conviction for any nonperson  
14 felony shall be presumptive imprisonment. Such sentence shall not be  
15 considered a departure and shall not be subject to appeal.

16 (x) The sentence for a violation of K.S.A. 2022 Supp. 21-5807(a)(1),  
17 and amendments thereto, shall be presumptive imprisonment if the offense  
18 under such paragraph is classified in grid blocks 7-C, 7-D or 7-E. Such  
19 sentence shall not be considered a departure and shall not be subject to  
20 appeal.

21 (y) (1) Except as provided in ~~subsection (y)(3) paragraph (3)~~, if the  
22 trier of fact makes a finding beyond a reasonable doubt that an offender  
23 committed a nondrug felony offense, or any attempt or conspiracy, as  
24 defined in K.S.A. 2022 Supp. 21-5301 and 21-5302, and amendments  
25 thereto, to commit a nondrug felony offense, against a law enforcement  
26 officer, as defined in K.S.A. 2022 Supp. 21-5111(p)(1) and (3), and  
27 amendments thereto, while such officer was engaged in the performance of  
28 such officer's duty, or in whole or in any part because of such officer's  
29 status as a law enforcement officer, the sentence for such offense shall be:

30 (A) If such offense is classified in severity level 2 through 10, one  
31 severity level above the appropriate level for such offense; and

32 (B) (i) if such offense is classified in severity level 1, except as  
33 otherwise provided in ~~subsection (y)(1)(B)(ii) clause (ii)~~, imprisonment for  
34 life, and such offender shall not be eligible for probation or suspension,  
35 modification or reduction of sentence. In addition, such offender shall not  
36 be eligible for parole prior to serving 25 years' imprisonment, and such 25  
37 years' imprisonment shall not be reduced by the application of good time  
38 credits. No other sentence shall be permitted.

39 (ii) The provisions of ~~subsection (y)(1)(B)(i) clause (i)~~ requiring the  
40 court to impose a mandatory minimum term of imprisonment of 25 years  
41 shall not apply if the court finds the offender, because of the offender's  
42 criminal history classification, is subject to presumptive imprisonment and  
43 the sentencing range exceeds 300 months. In such case, the offender is

1 required to serve a mandatory minimum term equal to the sentence  
2 established pursuant to the sentencing range.

3 (2) The sentence imposed pursuant to ~~subsection (y)(1) paragraph~~  
4 (1) shall not be considered a departure and shall not be subject to appeal.

5 (3) The provisions of this subsection shall not apply to an offense  
6 described in ~~subsection (y)(1) paragraph (1)~~ if the factual aspect  
7 concerning a law enforcement officer is a statutory element of such  
8 offense.

9 (z) (1) *Notwithstanding K.S.A. 2022 Supp. 21-5109(b)(2), and*  
10 *amendments thereto, or any other provision of law to the contrary, the*  
11 *sentence for a violation of criminal possession of a weapon by a convicted*  
12 *felon as defined in K.S.A. 2022 Supp. 21-6304, and amendments thereto,*  
13 *shall be presumptive imprisonment and shall be served consecutively to*  
14 *any other term or terms of imprisonment imposed if the trier of fact makes*  
15 *a finding beyond a reasonable doubt that:*

16 (A) *The weapon the offender possessed during such violation was a*  
17 *firearm; and*

18 (B) *such firearm was used by the offender during the commission of*  
19 *any violent felony.*

20 (2) *The sentence imposed pursuant to paragraph (1) shall not be*  
21 *considered a departure and shall not be subject to appeal. No other*  
22 *sentence shall be permitted.*

23 (3) *The provisions of this subsection shall not apply to an offender*  
24 *who is prohibited from possessing a weapon pursuant to K.S.A. 2022*  
25 *Supp. 21-6304, and amendments thereto, as a result of a juvenile*  
26 *adjudication.*

27 (4) *As used in this subsection, "violent felony" means any of the*  
28 *following:*

29 (A) *Capital murder, as defined in K.S.A. 2022 Supp. 21-5401, and*  
30 *amendments thereto;*

31 (B) *murder in the first degree, as defined in K.S.A. 2022 Supp. 21-*  
32 *5402, and amendments thereto;*

33 (C) *murder in the second degree, as defined in K.S.A. 2022 Supp. 21-*  
34 *5403, and amendments thereto;*

35 (D) *voluntary manslaughter, as defined in K.S.A. 2022 Supp. 21-*  
36 *5404, and amendments thereto;*

37 (E) *kidnapping, as defined in K.S.A. 2022 Supp. 21-5408(a)(1), and*  
38 *amendments thereto, or aggravated kidnapping, as defined in K.S.A. 2022*  
39 *Supp. 21-5408(b), and amendments thereto;*

40 (F) *aggravated assault, as defined in K.S.A. 2022 Supp. 21-5412(b)*  
41 *(1), and amendments thereto, and aggravated assault of a law enforcement*  
42 *officer, as defined in K.S.A. 2022 Supp. 21-5412(d)(1), and amendments*  
43 *thereto;*

1 (G) aggravated battery, as defined in K.S.A. 2022 Supp. 21-5413(b)  
2 (1)(A) or (b)(1)(B), and amendments thereto, and aggravated battery  
3 against a law enforcement officer, as defined in K.S.A. 2022 Supp. 21-  
4 5413(d)(1) or (d)(2), and amendments thereto;

5 (H) mistreatment of a dependent adult or mistreatment of an elder  
6 person, as defined in K.S.A. 2022 Supp. 21-5417(a)(1), and amendments  
7 thereto;

8 (I) rape, as defined in K.S.A. 2022 Supp. 21-5503, and amendments  
9 thereto;

10 (J) aggravated criminal sodomy, as defined in K.S.A. 2022 Supp. 21-  
11 5504(b), and amendments thereto;

12 (K) abuse of a child, as defined in K.S.A. 2022 Supp. 21-5602(a)(1)  
13 or (a)(3), and amendments thereto;

14 (L) any felony offense described in K.S.A. 2022 Supp. 21-5703 or 21-  
15 5705, and amendments thereto;

16 (M) treason, as defined in K.S.A. 2022 Supp. 21-5901, and  
17 amendments thereto;

18 (N) criminal discharge of a firearm, as defined in K.S.A. 2022 Supp.  
19 21-6308(a)(1), and amendments thereto;

20 (O) fleeing or attempting to elude a police officer, as defined in  
21 K.S.A. 8-1568(b), and amendments thereto;

22 (P) any felony that includes the domestic violence designation  
23 pursuant to K.S.A. 2022 Supp. 22-4616, and amendments thereto; or

24 (Q) any attempt, conspiracy or criminal solicitation, as defined in  
25 K.S.A. 2022 Supp. 21-5301, 21-5302 and 21-5303, and amendments  
26 thereto, of any felony offense defined in this subsection.

27 (aa) (1) The sentence for a violation of K.S.A. 2022 Supp. 21-6308(a)  
28 (1)(A) or (a)(1)(B), and amendments thereto, if the trier of fact makes a  
29 finding beyond a reasonable doubt that the offender discharged a firearm  
30 and that the offender knew or reasonably should have known that:

31 (A) A person was present in the dwelling, building, structure or motor  
32 vehicle at which the offender discharged a firearm, shall be presumptive  
33 imprisonment and, in addition to the sentence imposed pursuant to the  
34 Kansas sentencing guidelines act, the offender shall be sentenced to an  
35 additional 60 months of imprisonment; and

36 (B) a person less than 14 years of age was present in the dwelling,  
37 building, structure or motor vehicle at which the offender discharged a  
38 firearm, shall be presumptive imprisonment and, in addition to the  
39 sentence imposed pursuant to the Kansas sentencing guidelines act, the  
40 offender shall be sentenced to an additional 120 months of imprisonment.

41 (2) The sentence imposed pursuant to paragraph (1) shall be served  
42 consecutively to any other term or terms of imprisonment imposed. Such  
43 sentence shall not be considered a departure and shall not be subject to

1 *appeal.*

2 Sec. 4. K.S.A. 2022 Supp. 21-6824 is hereby amended to read as  
3 follows: 21-6824. (a) There is hereby established a nonprison sanction of  
4 certified drug abuse treatment programs for certain offenders who are  
5 sentenced on or after November 1, 2003. Placement of offenders in  
6 certified drug abuse treatment programs by the court shall be limited to  
7 placement of adult offenders; *who meet the requirements of this*  
8 *subsection.*

9 (1) *Offenders* convicted of a felony violation of K.S.A. 2022 Supp.  
10 21-5705 or 21-5706, and amendments thereto, whose offense is classified  
11 in grid blocks:

12 ~~(A)~~(A) 5-C, 5-D, 5-E, 5-F, 5-G, 5-H or 5-I of the sentencing  
13 guidelines grid for drug crimes and such offender has no felony conviction  
14 of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their  
15 repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their  
16 transfer, or K.S.A. 2022 Supp. 21-5703, 21-5705 or 21-5716, and  
17 amendments thereto, or any substantially similar offense from another  
18 jurisdiction; or

19 ~~(B)~~(B) 5-A, 5-B, 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing  
20 guidelines grid for drug crimes; *and:*

21 (i) Such offender has no felony conviction of K.S.A. 65-4142, 65-  
22 4159, 65-4161, 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010  
23 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A.  
24 2022 Supp. 21-5703, 21-5705 or 21-5716, and amendments thereto, or any  
25 substantially similar offense from another jurisdiction; ~~if;~~

26 (ii) the person felonies in the offender's criminal history were severity  
27 level 8, 9 or 10 or nongrid offenses of the sentencing guidelines grid for  
28 nondrug crimes; *and*

29 (iii) the court finds and sets forth with particularity the reasons for  
30 finding that the safety of the members of the public will not be jeopardized  
31 by such placement in a drug abuse treatment program.

32 (2) *Offenders convicted of a nonperson felony whose offense is*  
33 *classified in grid blocks:*

34 (A) 10-C, 10-D, 10-E, 10-F, 10-G, 10-H, 10-I, 9-C, 9-D, 9-E, 9-F, 9-  
35 G, 9-H, 9-I, 8-C, 8-D, 8-E, 8-F, 8-G, 8-H, 8-I, 7-C, 7-D, 7-E, 7-F, 7-G, 7-H  
36 or 7-I of the sentencing guidelines grid for nondrug crimes and such  
37 offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161,  
38 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-36a03,  
39 21-36a05 or 21-36a16, prior to their transfer; or K.S.A. 2022 Supp. 21-  
40 5703, 21-5705 or 21-5716, and amendments thereto, or any substantially  
41 similar offense from another jurisdiction; or

42 (B) 10-A, 10-B, 9-A, 9-B, 8-A, 8-B, 7-A or 7-B of the sentencing  
43 guidelines grid for nondrug crimes *and:*

1       (i) *Such offender has no felony conviction of K.S.A. 65-4142, 65-*  
2 *4159, 65-4161, 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010*  
3 *Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A.*  
4 *2022 Supp. 21-5703, 21-5705 or 21-5716, and amendments thereto, or*  
5 *any substantially similar offense from another jurisdiction;*

6       (ii) *the person felonies in the offender's criminal history were severity*  
7 *level 8, 9 or 10 or nongrid offenses of the sentencing guidelines grid for*  
8 *nondrug crimes; and*

9       (iii) *the court finds and sets forth with particularity the reasons for*  
10 *finding that the safety of the members of the public will not be jeopardized*  
11 *by such placement in a drug abuse treatment program.*

12       (b) As a part of the presentence investigation pursuant to K.S.A. 2022  
13 Supp. 21-6813, and amendments thereto, offenders who meet the  
14 requirements of subsection (a), unless otherwise specifically ordered by  
15 the court, shall be subject to:

16       (1) A drug abuse assessment—~~which~~ *that* shall include a clinical  
17 interview with a mental health professional and a recommendation  
18 concerning drug abuse treatment for the offender; and

19       (2) a criminal risk-need assessment. The criminal risk-need  
20 assessment shall assign a risk status to the offender.

21       (c) If the offender is assigned a risk status as determined by the drug  
22 abuse assessment performed pursuant to subsection (b)(1) and a risk status  
23 as determined by the criminal risk-need assessment performed pursuant to  
24 subsection (b)(2) that meets the criteria for participation in a drug abuse  
25 treatment program as determined by the Kansas sentencing commission,  
26 the sentencing court shall commit the offender to treatment in a drug abuse  
27 treatment program until the court determines the offender is suitable for  
28 discharge by the court. The term of treatment shall not exceed 18 months.  
29 The court may extend the term of probation; pursuant to K.S.A. 2022  
30 Supp. 21-6608(c)(3), and amendments thereto. The term of treatment may  
31 not exceed the term of probation.

32       (d) (1) Offenders who are committed to a drug abuse treatment  
33 program pursuant to subsection (c) shall be supervised by community  
34 correctional services.

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

39       (3) If the offender is permitted to go from the judicial district of the  
40 sentencing court, the court may, pursuant to K.S.A. 2022 Supp. 21-6610,  
41 and amendments thereto:

42       (A) Transfer supervision of the offender from that judicial district to  
43 another; and



1 (B) either transfer or retain jurisdiction of the offender.

2 (e) Placement of offenders under subsection ~~(a)(2)~~ (a)(1)(B) or (a)(2)  
3 (B) shall be subject to the departure sentencing statutes of the revised  
4 Kansas sentencing guidelines act.

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

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

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

11 (2) Offenders who are discharged from such program shall be subject  
12 to the revocation provisions of K.S.A. 2022 Supp. 21-6604(n), and  
13 amendments thereto.

14 (g) As used in this section, "mental health professional" includes  
15 licensed social workers, persons licensed to practice medicine and surgery,  
16 licensed psychologists, licensed professional counselors or registered  
17 alcohol and other drug abuse counselors licensed or certified as addiction  
18 counselors who have been certified by the Kansas sentencing commission  
19 to treat offenders pursuant to K.S.A. 75-52,144, and amendments thereto.

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

23 (A) Are residents of another state and are returning to such state  
24 pursuant to the interstate corrections compact or the interstate compact for  
25 adult offender supervision;

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

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

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

31 (i) The court may order an offender who otherwise does not meet the  
32 requirements of subsection (c) to undergo one additional drug abuse  
33 assessment while such offender is on probation. Such offender may be  
34 ordered to undergo drug abuse treatment pursuant to subsection (a) if such  
35 offender is determined to meet the requirements of subsection (c). The cost  
36 of such assessment shall be paid by such offender.

37 Sec. 5. K.S.A. 2022 Supp. 22-3428 is hereby amended to read as  
38 follows: 22-3428. (a) (1) When a defendant is acquitted and the jury  
39 answers in the affirmative to the special question asked pursuant to K.S.A.  
40 22-3221, and amendments thereto, the defendant shall be committed to the  
41 state security hospital or an appropriate secure facility for safekeeping and  
42 treatment and the prosecuting attorney shall provide victim notification. A  
43 finding of not guilty and the jury answering in the affirmative to the

1 special question asked pursuant to K.S.A. 22-3221, and amendments  
2 thereto, shall be prima facie evidence that the acquitted defendant is  
3 presently likely to cause harm to self or others.

4 (2) Within 90 days of the defendant's admission, the chief medical  
5 officer of the state security hospital or licensed psychologist at the  
6 appropriate secure facility shall send to the court a written evaluation  
7 report. Upon receipt of the report, the court shall set a hearing to determine  
8 whether or not the defendant is currently a mentally ill person. The hearing  
9 shall be held within 30 days after the receipt by the court of the chief  
10 medical officer's report unless the court finds that exceptional  
11 circumstances warrant delay of the hearing.

12 (3) The court shall give notice of the hearing to the chief medical  
13 officer of the state security hospital or licensed psychologist at the  
14 appropriate secure facility, the prosecuting attorney, the defendant and the  
15 defendant's attorney. The prosecuting attorney shall provide victim  
16 notification. The court shall inform the defendant that such defendant is  
17 entitled to counsel and that counsel will be appointed to represent the  
18 defendant if the defendant is not financially able to employ an attorney as  
19 provided in K.S.A. 22-4503 et seq., and amendments thereto. The  
20 defendant shall remain at the state security hospital pending the hearing.

21 (4) At the hearing, the defendant shall have the right to present  
22 evidence and cross-examine witnesses. At the conclusion of the hearing, if  
23 the court finds by clear and convincing evidence that the defendant is not  
24 currently a mentally ill person, the court shall dismiss the criminal  
25 proceeding and discharge the defendant, otherwise the court may commit  
26 the defendant to the state security hospital or an appropriate secure facility  
27 for treatment or may place the defendant on conditional release pursuant to  
28 subsection (d). The prosecuting attorney shall provide victim notification  
29 regarding the outcome of the hearing.

30 (b) Subject to the provisions of subsection (c):

31 (1) Whenever it appears to the chief medical officer of the state  
32 security hospital or a licensed psychologist at the appropriate secure  
33 facility that a person committed under subsection (a)(4) is not likely to  
34 cause harm to other persons in a less restrictive hospital environment, the  
35 officer may transfer the person to any state hospital, subject to the  
36 provisions of subsection (c). At any time subsequent thereto during which  
37 such person is still committed to a state hospital, if the chief medical  
38 officer of that hospital or the licensed psychologist at the appropriate  
39 secure facility finds that the person may be likely to cause harm or has  
40 caused harm, to others, such officer may transfer the person back to the  
41 state security hospital.

42 (2) Any person committed under subsection (a)(4) may be granted  
43 conditional release or discharge as an involuntary patient.

1 (c) Before transfer of a person from the state security hospital or  
2 appropriate secure facility pursuant to subsection (b)(1) or conditional  
3 release or discharge of a person pursuant to subsection (b)(2), the chief  
4 medical officer of the state security hospital or the state hospital where the  
5 patient is under commitment or the licensed psychologist at the  
6 appropriate secure facility shall give notice to the district court of the  
7 county from which the person was committed that transfer of the patient is  
8 proposed or that the patient is ready for proposed conditional release or  
9 discharge. Such notice shall include, but not be limited to: (1)  
10 Identification of the patient; (2) the course of treatment; (3) a current  
11 assessment of the defendant's mental illness; (4) recommendations for  
12 future treatment, if any; and (5) recommendations regarding conditional  
13 release or discharge, if any. Upon receiving notice, the district court shall  
14 order that a hearing be held on the proposed transfer, conditional release or  
15 discharge. The court shall give notice of the hearing to the appropriate  
16 secure facility, state hospital or state security hospital where the patient is  
17 under commitment, to the prosecuting attorney of the county from which  
18 the person was originally ordered committed. The prosecuting attorney  
19 shall provide victim notification regarding the hearing. The court shall  
20 order the involuntary patient to undergo a mental evaluation by a person  
21 designated by the court. A copy of all orders of the court shall be sent to  
22 the involuntary patient and the patient's attorney. The report of the court  
23 ordered mental evaluation shall be given to the prosecuting attorney, the  
24 involuntary patient and the patient's attorney at least seven days prior to  
25 the hearing. The hearing shall be held within 30 days after the receipt by  
26 the court of the chief medical officer's notice unless the court finds that  
27 exceptional circumstances warrant delay of the hearing. The involuntary  
28 patient shall remain in the appropriate secure facility, state hospital or state  
29 security hospital where the patient is under commitment until the hearing  
30 on the proposed transfer, conditional release or discharge is to be held. At  
31 the hearing, the court shall receive all relevant evidence, including the  
32 written findings and recommendations of the chief medical officer of the  
33 state security hospital or the state hospital or the licensed psychologist of  
34 the appropriate secure facility where the patient is under commitment, and  
35 shall determine whether the patient shall be transferred to a less restrictive  
36 hospital environment or whether the patient shall be conditionally released  
37 or discharged. The patient shall have the right to present evidence at such  
38 hearing and to cross-examine any witnesses called by the prosecuting  
39 attorney. At the conclusion of the hearing, if the court finds by clear and  
40 convincing evidence that the patient will not be likely to cause harm to self  
41 or others if transferred to a less restrictive hospital environment, the court  
42 shall order the patient transferred. If the court finds by clear and  
43 convincing evidence that the patient is not currently a mentally ill person,

1 the court shall order the patient discharged or conditionally released;  
2 otherwise, the court shall order the patient to remain in the state security  
3 hospital or state hospital where the patient is under commitment. If the  
4 court orders the conditional release of the patient in accordance with  
5 subsection (d), the court may order as an additional condition to the release  
6 that the patient continue to take prescribed medication and report as  
7 directed to a person licensed to practice medicine and surgery to determine  
8 whether or not the patient is taking the medication or that the patient  
9 continue to receive periodic psychiatric or psychological treatment. The  
10 prosecuting attorney shall notify any victims of the outcome of the  
11 hearing.

12 (d) In order to ensure the safety and welfare of a patient who is to be  
13 conditionally released and the citizenry of the state, the court may allow  
14 the patient to remain in custody at a facility under the supervision of the  
15 secretary for aging and disability services or the head of the appropriate  
16 secure facility for a period of time not to exceed 45 days in order to permit  
17 sufficient time for the secretary to prepare recommendations to the court  
18 for a suitable reentry program for the patient and allow adequate time for  
19 the prosecuting attorney to provide victim notification. The reentry  
20 program shall be specifically designed to facilitate the return of the patient  
21 to the community as a functioning, self-supporting citizen, and may  
22 include appropriate supportive provisions for assistance in establishing  
23 residency, securing gainful employment, undergoing needed vocational  
24 rehabilitation, receiving marital and family counseling, and such other  
25 outpatient services that appear beneficial. If a patient who is to be  
26 conditionally released will be residing in a county other than the county  
27 where the district court that ordered the conditional release is located, the  
28 court shall transfer venue of the case to the district court of the other  
29 county and send a copy of all of the court's records of the proceedings to  
30 the other court. In all cases of conditional release the court shall:

31 (1) Order that the patient be placed under the temporary supervision  
32 of district court probation and parole services, community treatment  
33 facility or any appropriate private agency; and

34 (2) require as a condition precedent to the release that the patient  
35 agree in writing to waive extradition in the event a warrant is issued  
36 pursuant to K.S.A. 22-3428b, and amendments thereto.

37 (e) At any time during the conditional release period, a conditionally  
38 released patient, through the patient's attorney, or the prosecuting attorney  
39 of the county where the district court having venue is located may file a  
40 motion for modification of the conditions of release, and the court shall  
41 hold an evidentiary hearing on the motion within 14 days of its filing. The  
42 court shall give notice of the time for the hearing to the patient and the  
43 prosecuting attorney. If the court finds from the evidence at the hearing

1 that the conditional provisions of release should be modified or vacated, it  
2 shall so order. If at any time during the transitional period the designated  
3 medical officer or supervisory personnel or the treatment facility informs  
4 the court that the patient is not satisfactorily complying with the provisions  
5 of the conditional release, the court, after a hearing for which notice has  
6 been given to the prosecuting attorney and the patient, may make orders:  
7 (1) For additional conditions of release designed to effect the ends of the  
8 reentry program; (2) requiring the prosecuting attorney to file a petition to  
9 determine whether the patient is a mentally ill person as provided in  
10 K.S.A. 59-2957, and amendments thereto; or (3) requiring that the patient  
11 be committed to the appropriate secure facility, state security hospital or  
12 any state hospital. In cases where a petition is ordered to be filed, the court  
13 shall proceed to hear and determine the petition pursuant to the care and  
14 treatment act for mentally ill persons and that act shall apply to all  
15 subsequent proceedings. If a patient is committed to any state hospital  
16 pursuant to this act the prosecuting attorney shall provide victim  
17 notification. The costs of all proceedings, the mental evaluation and the  
18 reentry program authorized by this section shall be paid by the county  
19 from which the person was committed.

20 (f) In any case in which the defense that the defendant lacked the  
21 required mental state pursuant to K.S.A. ~~22-3220~~ 2022 Supp. 21-5209, and  
22 amendments thereto, is relied on, the court shall instruct the jury on the  
23 substance of this section.

24 (g) As used in this section and K.S.A. 22-3428a, and amendments  
25 thereto:

26 (1) "Likely to cause harm to self or others" means that the person is  
27 likely, in the reasonably foreseeable future, to cause substantial physical  
28 injury or physical abuse to self or others or substantial damage to another's  
29 property, or evidenced by behavior causing, attempting or threatening such  
30 injury, abuse or neglect.

31 (2) "Mentally ill person" means any person who:

32 (A) Is suffering from a severe mental disorder to the extent that such  
33 person is in need of treatment; and

34 (B) is likely to cause harm to self or others.

35 (3) "Treatment facility" means any mental health center or clinic,  
36 psychiatric unit of a medical care facility, psychologist, physician or other  
37 institution or individual authorized or licensed by law to provide either  
38 inpatient or outpatient treatment to any patient.

39 Sec. 6. K.S.A. 2022 Supp. 22-3428a is hereby amended to read as  
40 follows: 22-3428a. ~~(+)~~ (a) Any person found not guilty, pursuant to K.S.A.  
41 ~~22-3220~~ and 22-3221, and amendments thereto, and K.S.A. 2022 Supp.  
42 21-5209, and amendments thereto, who remains in the state security  
43 hospital or a state hospital for over one year pursuant to a commitment

1 under K.S.A. 22-3428, and amendments thereto, shall be entitled annually  
2 to request a hearing to determine whether or not the person continues to be  
3 a mentally ill person. The request shall be made in writing to the district  
4 court of the county where the person is hospitalized and shall be signed by  
5 the committed person or the person's counsel. When the request is filed,  
6 the court shall give notice of the request to: ~~(a)~~ (1) The county or district  
7 attorney of the county in which the person was originally ordered  
8 committed; and ~~(b)~~ (2) the chief medical officer of the state security  
9 hospital or state hospital where the person is committed. The chief medical  
10 officer receiving the notice, or the officer's designee, shall conduct a  
11 mental examination of the person and shall send to the district court of the  
12 county where the person is hospitalized and to the county or district  
13 attorney of the county in which the person was originally ordered  
14 committed a report of the examination within 21 days from the date when  
15 notice from the court was received. Within 14 days after receiving the  
16 report of the examination, the county or district attorney receiving it may  
17 file a motion with the district court that gave the notice, requesting the  
18 court to change the venue of the hearing to the district court of the county  
19 in which the person was originally committed, or the court that gave the  
20 notice on its own motion may change the venue of the hearing to the  
21 district court of the county in which the person was originally committed.  
22 Upon receipt of that motion and the report of the mental examination or  
23 upon the court's own motion, the court shall transfer the hearing to the  
24 district court specified in the motion and send a copy of the court's records  
25 of the proceedings to that court.

26 ~~(2)~~(b) After the time in which a change of venue may be requested  
27 has elapsed, the court having venue shall set a date for the hearing, giving  
28 notice thereof to the county or district attorney of the county, the  
29 committed person and the person's counsel. The county or district attorney  
30 shall provide victim notification. If there is no counsel of record, the court  
31 shall appoint a counsel for the committed person. The committed person  
32 shall have the right to procure, at the person's own expense, a mental  
33 examination by a physician or licensed psychologist of the person's own  
34 choosing. If a committed person is financially unable to procure such an  
35 examination, the aid to indigent defendants provisions of article 45 of  
36 chapter 22 of the Kansas Statutes Annotated, and amendments thereto,  
37 shall be applicable to that person. A committed person requesting a mental  
38 examination pursuant to K.S.A. 22-4508, and amendments thereto, may  
39 request a physician or licensed psychologist of the person's own choosing  
40 and the court shall request the physician or licensed psychologist to  
41 provide an estimate of the cost of the examination. If the physician or  
42 licensed psychologist agrees to accept compensation in an amount in  
43 accordance with the compensation standards set by the board of

1 supervisors of panels to aid indigent defendants, the judge shall appoint  
2 the requested physician or licensed psychologist; otherwise, the court shall  
3 designate a physician or licensed psychologist to conduct the examination.  
4 Copies of each mental examination of the committed person shall be filed  
5 with the court at least seven days prior to the hearing and shall be supplied  
6 to the county or district attorney receiving notice pursuant to this section  
7 and the committed person's counsel.

8 ~~(3)(c)~~ At the hearing the committed person shall have the right to  
9 present evidence and cross-examine the witnesses. The court shall receive  
10 all relevant evidence, including the written findings and recommendations  
11 of the chief medical officer of the state security hospital or state hospital  
12 where the person is under commitment, and shall determine whether the  
13 committed person continues to be a mentally ill person. At the hearing the  
14 court may make any order that a court is empowered to make pursuant to  
15 ~~subsections (3), (4) and (5) of K.S.A. 22-3428(c), (d) and (e), and~~  
16 amendments thereto. If the court finds by clear and convincing evidence  
17 the committed person is not a mentally ill person, the court shall order the  
18 person discharged; otherwise, the person shall remain committed or be  
19 conditionally released. The county or district attorney shall provide victim  
20 notification regarding the outcome of the hearing.

21 ~~(4)(d)~~ Costs of a hearing held pursuant to this section shall be  
22 assessed against and paid by the county in which the person was originally  
23 ordered committed.

24 Sec. 7. K.S.A. 2022 Supp. 22-3722 is hereby amended to read as  
25 follows: 22-3722. (a) The period served on parole or conditional release  
26 shall be deemed service of the term of confinement, and, subject to the  
27 provisions contained in K.S.A. 75-5217, and amendments thereto, relating  
28 to an inmate who is a fugitive from or has fled from justice, the total time  
29 served may not exceed the maximum term or sentence. The period served  
30 on postrelease supervision shall vest in and be subject to the provisions  
31 contained in K.S.A. 75-5217, and amendments thereto, relating to an  
32 inmate who is a fugitive from or has fled from justice. *The service of the*  
33 *postrelease supervision period shall not toll except as provided by K.S.A.*  
34 *75-5217, and amendments thereto.* The total time served shall not exceed  
35 the postrelease supervision period established at sentencing.

36 (b) When an inmate on parole or conditional release has performed  
37 the obligations of the release for such time as shall satisfy the prisoner  
38 review board that final release is not incompatible with the best interest of  
39 society and the welfare of the individual, the board may make a final order  
40 of discharge and issue a certificate of discharge to the inmate but no such  
41 order of discharge shall be made in any case within a period of less than  
42 one year after the date of release except where the sentence expires earlier  
43 thereto. When an inmate has reached the end of the postrelease supervision

1 period, the board shall issue a certificate of discharge to the releasee. Such  
2 discharge, and the discharge of an inmate who has served the inmate's term  
3 of imprisonment, shall have the effect of restoring all civil rights lost by  
4 operation of law upon commitment, and the certification of discharge shall  
5 so state. Nothing herein contained shall be held to impair the power of the  
6 governor to grant a pardon or commutation of sentence in any case.

7 Sec. 8. K.S.A. 12-736 and K.S.A. 2022 Supp. 21-6308, 21-6804, 21-  
8 6824, 22-3428, 22-3428a and 22-3722 are hereby repealed.

9 Sec. 9. This act shall take effect and be in force from and after its  
10 publication in the statute book.