

STATE OF KANSAS

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CHANGES TO THE CRIMINAL RECORD CHECK STATUTES FOR HCBS, HOME HEALTH AGENCIES AND ADULT CARE HOMES

Senate Substitute for Senate Substitute for House Bill 2386 (originally HB 2427) passed this legislative session and will become effective 7/1/2018. The bill made changes to the criminal record check laws for **Adult Care Homes (K.S.A. 39-970)**, **Home Health Agencies (K.S.A. 65-5117)** and **HCBS (K.S.A. 39-2009)**.

WHAT WILL HAPPEN JULY 1, 2018

- **New Prohibited Offense List** which is now identical for Adult Care Homes, Home Health Agencies and HCBS Providers. There are some new offenses while some previously prohibited offenses have been removed. The revised list is posted on the HOC website at www.kdads.ks.gov/hoc
- HCBS Providers will see that **some prohibiting offenses are now only prohibited for six years**.
- **Waivers** may be requested for certain offenses after five years have passed since completion of all court imposed conditions.
- **Exceptions will no longer be granted for HCBS** because of the Waiver option above.
- **Adult Care Homes and Home Health Agencies will no longer receive criminal history record information** with clearance letters for those individuals who do not have prohibiting offenses. Instead, the **clearance letters** will be **available online** from the facility's employee listing by selecting 'View Results'. *Facilities will continue to sometimes see the message that information at the Central Repository requires KDADS review. Staff will review the information, then, if cleared, the clearance letter will be made available online. If prohibited, a letter will be mailed to the facility.*
- **Letters advising of employment prohibitions will continue to be mailed to Adult Care Homes, Home Health Agencies and HCBS Providers.**
- **Individuals** with pending arrests/charges/court hearings related to offenses that would be prohibited if convicted **will be responsible for providing the court documentation** regarding the outcomes. Facilities will be notified by letter and asked to share the letter with the candidate as KDADS may not have the individual's current mailing address.

LOOKING FORWARD

- **Rules and Regulations** are being drafted in the area of waivers for certain offenses and the implementation of the amendments, which may be completed over a period of time for different categories of employers. This allows for a staggered implementation.

- **National Finger-Print Based Criminal Record Checks** will be **implemented in phases**. There will be **no fee increase until the finger-print based checks are implemented**.
- The new background check system, called **KanCheck**, will be **implemented in phases**.

STAY TUNED

Please visit the Health Occupations Credentialing web page at www.kdads.ks.gov/hoc regularly for updates. As implementation goes forward updates will be posted to the webpage. KDADS looks forward to working with all provider types to assure a smooth transition.

Current and New Prohibited Offenses

Adult Care Homes & Home Health Agencies KSA 39-970, 65-5117	HCBS X = existing prohibition KSA 39-2009	OFFENSE <div style="border: 1px solid black; padding: 5px; background-color: #cccccc; text-align: center;">Note: Green shading denotes a new prohibition for this type of facility.</div>	PROHIBITED	
			Does Not Expire ↓	Expires 6 Yrs. * ↓
21-5301 21-3301	X	Attempt to commit a prohibited offense ¹	See Key	
21-5302 21-3302	X	Conspiracy to commit a prohibited offense ²	See Key	
21-5303 21-3303	New	Criminal solicitation to commit a prohibited offense ³	See Key	
21-5401 21-3439	X	Capitol Murder (Felony)	Yes	
21-5402 21-3401	X	First degree murder (Felony)	Yes	
21-5403 21-3402a 21-3302	X	Second degree murder (Felony)	Yes	
21-5404 21-3403	X	Voluntary manslaughter (Felony)	Yes	
21-5405 21-3404	X	Involuntary manslaughter (Felony)		6 Years*
21-5407 21-3406	X	Assisting suicide (Felony)	Yes	
21-5412(b) 21-3410	X	Aggravated assault (Felony)		6 Years*
21-5412(d) 21-3411	X	Aggravated assault on a law enforcement officer (Felony)		6 Years*
21-5414 21-3412a	X	Domestic Battery (Felony)		6 Years*
21-5413(c) 21-3413	X	Battery against a law enforcement officer (Felony)		6 Years*
21-5413(b) 21-3416	X	Aggravated battery (Felony)		6 Years*
21-5413(d) 21-3415	X	Aggravated battery against a law enforcement officer (Felony)		6 Years*
21-5415(a) 21-3419	X	Criminal threat (Felony)		6 Years*
21-5415(b) 21-3419(a)	X	Aggravated criminal threat (Felony)		6 Years*
21-5408(a) 21-3420	X	Kidnapping (Felony)		6 Years*
21-5408(b) 21-3421	X	Aggravated kidnapping (Felony)		6 Years*

21-5409(a) 21-3422	X	Interference with parental custody (Felony)	6 Years*
21-5409(b) 21-3422(a)	X	Aggravated interference with parental custody (Felony)	6 Years*
21-5420(a) 21-3426	X	Robbery (Felony)	6 Years*
21-5420(b) 21-3427	x	Aggravated robbery (Felony)	6 Years*
21-5428 21-3428	X	Blackmail (Felony)	6 Years*
21-5424 21-3435	X	Exposing another to a life threatening communicable disease (Felony)	6 Years*
21-5417 21-3437	X	Mistreatment of a dependent adult or Mistreatment of an elder person. (Misdemeanor or Felony)	Yes
21-5427 21-3438	X	Stalking (Felony)	6 Years*
21-5405(a)(3) 21-3442	X	Involuntary manslaughter while driving under the influence (Felony)	6 Years*
21-5426(a) 21-3446	X	Human Trafficking (Felony)	Yes
21-5426(b) 21-3447	X	Aggravated Human Trafficking (Felony)	Yes
21-5413(f) 21-3448	X	Battery against a mental health employee (Felony)	6 Years*
21-5421 21-3449	X	Terrorism (Felony)	6 Years*
21-5422 21-3450	X	Illegal use of weapons of mass destruction (Felony)	6 Years*
21-5423 21-3451	x	Furtherance of Terrorism or Illegal Use of Weapons of Mass Destruction (Felony)	6 Years*
21-5503 21-3502	X	Rape (Felony)	Yes
21-5506(a) 21-3503	X	Indecent liberties with a child (Felony)	Yes
21-5506(b) 21-3504	X	Aggravated indecent liberties with a child (Felony)	Yes
21-5504(a) 21-3505	X	Criminal sodomy (felony)	6 Years*
21-5504(b) 21-3506	X	Aggravated criminal sodomy (Felony)	Yes
21-5513 21-3508	X	Lewd and lascivious behavior (Felony)	6 Years*
21-5508(a) 21-3510	X	Indecent solicitation of a child (Felony)	Yes
21-5508(b) 21-3511	x	Aggravated indecent solicitation of a child (Felony)	Yes
21-6420 21-3513	X	Promoting prostitution (Felony)	6 Years*
21-5510 21-3516	X	Sexual exploitation of a child (Felony)	Yes

21-5505(a) 21-3517	X	Sexual battery (Felony)	Yes
21-5505(b) 21-3518	X	Aggravated sexual battery (Felony)	Yes
21-5512 21-3520	X	Unlawful sexual relation (Felony)	6 Years*
21-5507 21-3522	X	Unlawful voluntary sexual relations (Felony)	6 Years*
21-5509 21-3523	x	Electronic solicitation (Felony)	6 Years*
21-5604(a) 21-3602	X	Incest (Felony)	6 Years*
21-5604(b) 21-3603	X	Aggravated incest (Felony)	6 Years*
21-5605(a) 21-3604	X	Abandonment of a child (Felony)	6 Years*
21-5605(b) 21-3604(a)	X	Aggravated abandonment of a child (Felony)	6 Years*
21-5601(b) 21-3608(a)	X	Aggravated endangering a child (Felony)	6 Years*
21-5602 21-3609	X	Abuse of a child (Felony)	6 Years*
21-5607(b) 21-3610(b)	X	Furnishing alcoholic beverages to a minor for illicit purpose (Felony)	6 Years*
21-5603 21-3612	x	Contributing to a child's misconduct or deprivation (Felony)	6 Years*
21-5801 21-3701	New	Theft (Felony)***	6 Years*
21-5430	X	Distribution of a controlled substance causing great bodily harm (Felony)	6 Years*
21-5606 21-3605	X	Criminal nonsupport (Felony)	6 Years*
21-5410 21-3423	X	Interference with custody of a committed person ** (Misdemeanor and Felony)	6 Years*
21-5416 21-3425	X	Mistreatment of a confined person ** (Misdemeanor and Felony)	6 Years*
21-5425 21-3445	X	Unlawful administration of a substance ** (Misdemeanor and Felony)	6 Years*
21-5708 21-36a08 21-4214	X	Unlawful obtainment or sale of a prescription-only drug ** (Felony)	6 Years*
21-5823 21-3710	New	Forgery** (Felony)	6 Years*
21-5828 21-3729	New	Criminal Use of a Financial Card** (Felony)	6 Years*
21-5925 21-3844	New	Any violation of Kansas Medicaid Fraud Control Act** (Felony)	6 Years*
21-5927 21-3846	New	Making false claim, statement or representation to the Medicaid program ** (Felony)	6 Years*

21-5928 21-3847	New	Unlawful acts relating to the Medicaid program ** (Felony)	6 Years*
21-5929 21-3856	New	Obstruction of a Medicaid fraud investigation** (Felony)	6 Years*
21-5924 21-3843	New	Violation of a protective order; extended protective orders, penalties ** (Felony)	6 Years*
21-6107 21-4018	New	Identity theft: identity fraud **(Felony)	6 Years*
21-6412 21-3727 21-4310 21-4311	New	Cruelty to animals ** (Misdemeanor or Felony)	6 Years*
21-6422	New	Commercial sexual exploitation of a child (Felony)	Yes
39-0720	New	Social welfare fraud ** (Misdemeanor or Felony)	6 Years*
21-4301 21-4301a 21-6401	New	Promoting obscenity or promoting obscenity to minors ** (Misdemeanor or Felony)	6_Years*
21-5703 65-4159 21-36a03	X	Unlawful manufacturing of controlled substances ** (Felony)	6 Years*
21-5705 65-4161 21-36a05 65-4163	X	Unlawful cultivation or distribution of controlled substances ** (Felony)	6 Years*
21-5707 21-36a07	X	Unlawful manufacture, distribution, cultivation or possession of controlled substances using a communication facility** (Felony)	6 Years*
21-5710 21-36a10	X	Unlawful distribution of drug precursors and drug paraphernalia ** (Felony)	6 Years*
21-5713 21-36a13 65-4152	X	Unlawful distribution or possession of a simulated controlled substance ** (Felony)	6 Years*
21-5406	New	Vehicular Homicide (Felony)	6 Years*
NOTE:		Similar Statutes of Other States & Federal Government.	

KEY

6 Years* For this type of conviction the individual is prohibited until six or more years have elapsed since completion of the sentence imposed or the applicant was discharged from probation, a community correctional services program, parole, post release supervision, conditional release or a suspended sentence; or if the applicant has been granted a waiver of such six-year disqualification.

***Waivers** An individual who has been disqualified for employment due to conviction or adjudication of the offenses marked by a single asterisk * may apply to the secretary for aging and disability services for a waiver of such disqualifications if five years have elapsed since *completion* of the sentence for such conviction.

Yes The individual is prohibited. The prohibition does not expire and waivers are not available.

****** Note: A prohibition for these offenses became effective on July 1, 2018. An individual shall not be prohibited due to a conviction of these offenses who is employed by a center, facility, hospital or provider of services on or before July 1, 2018, and is *continuously* employed by the same center, facility, hospital or provider of services or to any person during or upon successful completion of a diversion agreement.

******* Note: A prohibition for this offense became effective on July 1, 2010. Further, an individual shall not be prohibited due to a conviction of Felony Theft if the individual is employed by an adult care home or home health agency on July 1, 2010, and *continuously* employed by the same adult care home or home health agency.

1,2,3. Convictions for attempt to commit, conspiracy to commit, or criminal solicitation to commit any offense listed above which carries a prohibition that does not expire will result in a prohibition that does not expire. Convictions for attempt to commit, conspiracy to commit, or criminal solicitation to commit any offense listed above which carries a six-year prohibition will result in a six-year prohibition.