

SENATE BILL No. 205

AN ACT concerning crimes, criminal procedure and punishment; relating to appearance bonds; conditions; concerning protection from abuse orders; domestic battery; assessment of certain fees; amending K.S.A. 21-3440, 22-2802 and 60-3108 and K.S.A. 2000 Supp. 12-4301, 21-3412, 21-4603d, 21-4704, 60-3107, 72-1397, 72-5445 and 74-5602 and repealing the existing sections.

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

Section 1. K.S.A. 2000 Supp. 12-4301 is hereby amended to read as follows: 12-4301. A person having the right to post bond for appearance shall, in order to do so, execute in writing a promise to appear at the municipal court at a stated time and place. Such appearance bond shall be in an amount as determined by the municipal judge, ~~and~~. *Unless the judge makes a specific finding otherwise, every bond for a person charged with an offense that would be a person offense pursuant to state law shall have a condition of release prohibiting the person from having contact with the alleged victim of such offense for a period of at least 72 hours. Such bond* may be secured by any one of the following methods, and when so secured, such person shall be released from custody.

The methods of securing the appearance of an accused person are as follows:

(a) Payment of cash, except that the municipal judge may permit negotiable securities or a personal check in lieu of cash.

(b) The execution of an appearance bond by a responsible individual residing within the state of Kansas, as surety with the approval of the municipal judge.

(c) A guaranteed arrest bond certificate issued by either a surety company authorized to transact such business within the state of Kansas, or an automobile club authorized to transact business in this state by the commissioner of insurance, except that such "guaranteed arrest bond certificate" must be signed by the person to whom it is issued and must contain a printed statement that the surety guarantees the appearance of such person and, in the event of failure of such person to appear in court at the time of trial, will pay any fine or forfeiture imposed upon such person not to exceed an amount to be stated on such certificate.

(d) In lieu of giving security in the manner provided by subsections (a), (b) and (c) above, if the arrest is for the violation of a city ordinance relating to the operation of a motor vehicle the accused person may deposit with the arresting law enforcement officer or the clerk of the municipal court a valid Kansas driver's license in exchange for a receipt therefor issued by the law enforcement officer or the clerk of the municipal court, the form of which shall be approved by the division of vehicles of the state department of revenue. Such receipt shall be recognized as a valid temporary Kansas driver's license authorizing the operation of a motor vehicle by the accused person to the date of the hearing stated on the receipt. Such driver's license and written copy of the notice to appear shall be delivered by the law enforcement officer to the municipal court as soon as reasonably possible. If the hearing on any such charge is continued for any reason, the municipal judge may note on the receipt the date to which such hearing has been continued, and such receipt shall be recognized as a valid temporary Kansas driver's license until such date, but in no event shall such receipt be recognized as a valid Kansas driver's license for a period longer than 30 days from the date for the original hearing. Any person who deposited a driver's license to secure such person's appearance, in lieu of giving a bond as provided in subsections (a), (b) and (c) above, shall have such driver's license returned upon the giving of the required bond pursuant to (a), (b) and (c) above or upon final determination of the charge.

In the event the accused person deposits a valid Kansas driver's license with the municipal court and fails to appear in court on the date set for appearance, or any continuance thereof, and in any event within 30 days from the date set for the original hearing, the municipal judge shall forward the driver's license of such person to the division of vehicles with an appropriate explanation attached thereto. Upon receipt of the driver's license of such person the division of vehicles shall suspend such person's privilege to operate a motor vehicle in this state until such person appears before the municipal court, or the municipal court makes a final disposition thereof, and notice of such disposition is given by the municipal court to the division, or for a period not exceeding six months from the

date such person's driver's license is received by the division, whichever is earlier.

Any person who applies for a replacement or new driver's license prior to the return of such person's original license, when such license has been deposited in lieu of the giving of a bond as provided in this section, shall be guilty of a misdemeanor punishable as set forth in K.S.A. 8-2116, and amendments thereto.

Sec. 2. K.S.A. 22-2802 is hereby amended to read as follows: 22-2802. (1) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to assure the public safety. If the person is being bound over for a felony, the bond shall also be conditioned on the person's appearance in the district court or by way of a two-way electronic audio-video communication as provided in subsection (11) at the time required by the court to answer the charge against such person and at any time thereafter that the court requires. *Unless the magistrate makes a specific finding otherwise, if the person is being bonded out for a person felony or a person misdemeanor, the bond shall be conditioned on the person being prohibited from having any contact with the alleged victim of such offense for a period of at least 72 hours.* The magistrate may impose such of the following additional conditions of release as will reasonably assure the appearance of the person for preliminary examination or trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise such person;

(b) place restrictions on the travel, association or place of abode of the person during the period of release;

(c) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody during specified hours; ~~or~~

(d) place the person under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto; *or*

(e) *place the person under the supervision of a court services officer responsible for monitoring the person's compliance with any conditions of release ordered by the magistrate.*

(2) In addition to any conditions of release provided in subsection (1), for any person charged with a felony, the magistrate may order such person to submit to a drug abuse examination and evaluation in a public or private treatment facility or state institution and, if determined by the head of such facility or institution that such person is a drug abuser or incapacitated by drugs, to submit to treatment for such drug abuse, as a condition of release.

(3) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.

(4) A deposit of cash in the amount of the bond may be made in lieu of the execution of the bond by sureties.

(5) In determining which conditions of release will reasonably assure appearance and the public safety, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the crime charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, record of convictions, record of appearance or failure to appear at court proceedings or of flight to avoid prosecution; the likelihood or propensity of the defendant to commit crimes while on release, including whether the defendant will be likely to threaten, harass or cause injury to the victim of the crime or any witnesses thereto; and whether the defendant is on probation or parole from a previous offense at the time of the alleged commission of the subsequent offense.

(6) The appearance bond shall set forth all of the conditions of release.

(7) A person for whom conditions of release are imposed and who continues to be detained as a result of the person's inability to meet the conditions of release shall be entitled, upon application, to have the conditions reviewed without unnecessary delay by the magistrate who imposed them. If the magistrate who imposed conditions of release is not available, any other magistrate in the county may review such conditions.

(8) A magistrate ordering the release of a person on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release. If the imposition of additional or different conditions results in the detention of the person, the provisions of subsection (7) shall apply.

(9) Statements or information offered in determining the conditions of release need not conform to the rules of evidence. No statement or admission of the defendant made at such a proceeding shall be received as evidence in any subsequent proceeding against the defendant.

(10) The appearance bond and any security required as a condition of the defendant's release shall be deposited in the office of the magistrate or the clerk of the court where the release is ordered. If the defendant is bound to appear before a magistrate or court other than the one ordering the release, the order of release, together with the bond and security shall be transmitted to the magistrate or clerk of the court before whom the defendant is bound to appear.

(11) Proceedings before a magistrate as provided in this section to determine the release conditions of a person charged with a crime including release upon execution of an appearance bond may be conducted by two-way electronic audio-video communication between the defendant and the judge in lieu of personal presence of the defendant or defendant's counsel in the courtroom in the discretion of the court. The defendant may be accompanied by the defendant's counsel. The defendant shall be informed of the defendant's right to be personally present in the courtroom during such proceeding if the defendant so requests. Exercising the right to be present shall in no way prejudice the defendant.

(12) *The magistrate may order the person to pay for any costs associated with the supervision of the conditions of release of the appearance bond in an amount not to exceed \$5 per week of such supervision.*

New Sec. 3. (a) All protection from abuse orders, orders amending an existing protective order, and such related orders issued based on the laws of another jurisdiction which are entitled to full faith and credit in Kansas pursuant to the provisions of 18 U.S.C. 2265, and amendments thereto, shall be entered into the national criminal information center protection order file. All emergency protection from abuse orders, temporary protection from abuse orders, other orders issued pursuant to article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, and such emergency, temporary and other related orders issued based on the laws of another jurisdiction which are entitled to full faith and credit in Kansas pursuant to the provisions of 18 U.S.C. 2265, and amendments thereto, may be entered into the national criminal information center protection order file. A copy of these orders shall be delivered by the clerk of the court to the sheriff of the county where the order is issued or registered. The sheriff's office shall immediately enter the order into the national criminal information center and other appropriate databases after all mandatory identifiers are available. If the order is a foreign protective order, the sheriff's office shall contact the issuing jurisdiction to verify the order and request that such jurisdiction enter the order into the national criminal information center and other appropriate databases. Any modification of an order shall be forwarded immediately by the clerk of the court to the sheriff's office with jurisdiction to enforce the modified order. The sheriff's office shall ensure the accuracy of the entries and the court shall ensure the validity of the orders.

(b) All orders which have been entered into the national criminal information center protection order file shall be cleared as an active record from the computer system when:

- (1) The order expires according to the terms of such order;
- (2) a Kansas court notifies the law enforcement agency which has jurisdiction over the entry of the order that such order has been dismissed; or

(3) a foreign protective order has been invalidated by either a Kansas court or a foreign court with jurisdiction over such order.

(c) This section shall be part of and supplemental to the protection from abuse act.

Sec. 4. K.S.A. 60-3108 is hereby amended to read as follows: 60-3108. A copy of any order under this act shall be issued to the plaintiff, the defendant and the police department of the city where the plaintiff resides. If the plaintiff does not reside in a city or resides in a city with no police department, a copy of the order shall be issued to the sheriff of the county where the ~~plaintiff resides~~ *order is issued or registered*.

New Sec. 5. (a) Domestic battery is:

(1) intentionally or recklessly causing bodily harm by a family or household member against a family or household member; or

(2) intentionally causing physical contact with a family or household member by a family or household member when done in a rude, insulting or angry manner.

(b) (1) Upon a first conviction of a violation of domestic battery, a person shall be guilty of a class B person misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment and fined not less than \$200, nor more than \$500 or in the court's discretion the court may enter an order which requires the person enroll in and successfully complete a domestic violence prevention program.

(2) If, within five years immediately preceding commission of the crime, a person is convicted of a violation of domestic battery a second time, such person shall be guilty of a class A person misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for domestic violence prevention.

(3) If, within five years immediately preceding commission of the crime, a person is convicted of a violation of domestic battery a third or subsequent time, such person shall be guilty of a person felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court may also require as a condition of parole that such person enter into and complete a treatment program for domestic violence. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.

(c) As used in this section:

(1) Family or household member means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and

(2) for the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

(A) "Conviction" includes being convicted of a violation of this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(B) “conviction” includes being convicted of a violation of a law of another state, or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(C) only convictions occurring in the immediately preceding five years including prior to the effective date of this act shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and

(D) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

Sec. 6. K.S.A. 2000 Supp. 21-3412 is hereby amended to read as follows: 21-3412. (a) Battery is:

(1) Intentionally or recklessly causing bodily harm to another person; or

(2) intentionally causing physical contact with another person when done in a rude, insulting or angry manner.

(b) ~~Except as provided in subsection (c),~~ Battery is a class B person misdemeanor.

~~(c) (1) Upon a first conviction of a violation of this section under circumstances which constitute a domestic battery, a person shall be guilty of a class B person misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment and fined not less than \$200, nor more than \$500 or in the court's discretion the court may enter an order which requires the person enroll in and successfully complete a domestic violence prevention program.~~

~~(2) If, within five years immediately preceding commission of the crime, a person is convicted of a violation of this section a second time under circumstances which constitute a domestic battery, such person shall be guilty of a class A person misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for domestic violence prevention.~~

~~(3) If, within five years immediately preceding commission of the crime, a person is convicted of a violation of this crime a third or subsequent time under circumstances which constitute a domestic battery, such person shall be guilty of a person felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court may also require as a condition of parole that such person enter into and complete a treatment program for domestic violence. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.~~

~~(4) As used in this section: (A) Domestic battery means a battery against a family or household member by a family or household member;~~

~~(B) family or household member means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the~~

~~father, regardless of whether they have been married or have lived together at any time; and~~

~~(C) for the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:~~

~~(i) “Conviction” includes being convicted of a violation of this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;~~

~~(ii) “conviction” includes being convicted of a violation of a law of another state, or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;~~

~~(iii) only convictions occurring in the immediately preceding five years including prior to the effective date of this act shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and~~

~~(iv) it is irrelevant whether an offense occurred before or after conviction for a previous offense.~~

Sec. 7. K.S.A. 21-3440 is hereby amended to read as follows: 21-3440. (a) Injury to a pregnant woman is injury to a pregnant woman by a person other than the pregnant woman in the commission of a felony or misdemeanor causing the pregnant woman to suffer a miscarriage as a result of that injury.

(b) As used in this section, “miscarriage” means the interruption of the normal development of the fetus, other than by a live birth, resulting in the complete expulsion or extraction from a pregnant woman of a product of human conception.

(c) Injury to a pregnant woman in the commission of a felony is a severity level 4, person felony. Injury to a pregnant woman in the commission of a violation of K.S.A. 21-3412, subsection (a)(1) of K.S.A. 21-3413, *subsections (b)(1) and (b)(2) of section 5* or K.S.A. 21-3517, and amendments thereto, is a severity level 5, person felony. Injury to a pregnant woman in the commission of a misdemeanor other than a violation of K.S.A. 21-3412, subsection (a)(1) of K.S.A. 21-3413, *subsections (b)(1) and (b)(2) of section 5* or K.S.A. 21-3517, and amendments thereto, is a class A person misdemeanor.

(d) The provisions of this section shall be part of and supplemental to the Kansas criminal code.

Sec. 8. K.S.A. 2000 Supp. 21-4603d is hereby amended to read as follows: 21-4603d. (a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;

(2) impose the fine applicable to the offense;

(3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases except for violations of K.S.A. 8-1567 and amendments thereto, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence and up to 60 days in a county jail upon each revocation of the probation sentence, or community corrections placement;

(4) assign the defendant to a community correctional services program as provided in K.S.A. 75-5291, and amendments thereto, or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(5) assign the defendant to a conservation camp for a period not to exceed six months as a condition of probation followed by a six-month period of follow-up through adult intensive supervision by a community

correctional services program, if the offender successfully completes the conservation camp program;

(6) assign the defendant to a house arrest program pursuant to K.S.A. 21-4603b and amendments thereto;

(7) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (3) of K.S.A. 21-4502 and amendments thereto;

(8) order the defendant to repay the amount of any reward paid by any crime stoppers chapter, individual, corporation or public entity which materially aided in the apprehension or conviction of the defendant; repay the amount of any costs and expenses incurred by any law enforcement agency in the apprehension of the defendant, if one of the current crimes of conviction of the defendant includes escape, as defined in K.S.A. 21-3809 and amendments thereto or aggravated escape, as defined in K.S.A. 21-3810 and amendments thereto; or repay the amount of any public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation which leads to the defendant's conviction. Such repayment of the amount of any such costs and expenses incurred by a law enforcement agency or any public funds utilized by a law enforcement agency shall be deposited and credited to the same fund from which the public funds were credited to prior to use by the law enforcement agency;

(9) order the defendant to pay the administrative fee authorized by K.S.A. 2000 Supp. 22-4529 and amendments thereto, unless waived by the court;

(10) *order the defendant to pay a domestic violence special program fee authorized by section 14, and amendments thereto;*

(11) impose any appropriate combination of (1), (2), (3), (4), (5), (6), (7), (8) ~~and~~, (9) *and* (10); or

~~(11)~~ (12) suspend imposition of sentence in misdemeanor cases.

(b) (1) In addition to or in lieu of any of the above, the court shall order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime, unless the court finds compelling circumstances which would render a plan of restitution unworkable. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefor.

(2) If the court orders restitution, the restitution shall be a judgment against the defendant which may be collected by the court by garnishment or other execution as on judgments in civil cases. If, after 60 days from the date restitution is ordered by the court, a defendant is found to be in noncompliance with the plan established by the court for payment of restitution, and the victim to whom restitution is ordered paid has not initiated proceedings in accordance with K.S.A. 2000 Supp. 60-4301 *et seq.* and amendments thereto, the court shall assign an agent procured by the attorney general pursuant to K.S.A. 75-719 and amendments thereto to collect the restitution on behalf of the victim. The administrative judge of each judicial district may assign such cases to an appropriate division of the court for the conduct of civil collection proceedings.

(c) In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (4) of K.S.A. 21-4502 and amendments thereto.

(d) In addition to any of the above, the court shall order the defendant to reimburse the county general fund for all or a part of the expenditures by the county to provide counsel and other defense services to the defendant. Any such reimbursement to the county shall be paid only after any order for restitution has been paid in full. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment.

(e) In imposing a fine the court may authorize the payment thereof

in installments. In releasing a defendant on probation, the court shall direct that the defendant be under the supervision of a court services officer. If the court commits the defendant to the custody of the secretary of corrections or to jail, the court may specify in its order the amount of restitution to be paid and the person to whom it shall be paid if restitution is later ordered as a condition of parole or conditional release.

(f) When a new felony is committed while the offender is incarcerated and serving a sentence for a felony or while the offender is on probation, assignment to a community correctional services program, parole, conditional release, or postrelease supervision for a felony, a new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure. When a new felony is committed while the offender is on release for a felony pursuant to the provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, a new sentence may be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608 and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(g) Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or 4-F of the sentencing guidelines grid for drug crimes, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or 4-F of the sentencing guidelines grid for drug crimes, the court shall consider placement of the defendant in the Labette correctional conservation camp, conservation camps established by the secretary of corrections pursuant to K.S.A. 75-52,127, and amendment thereto or a community intermediate sanction center. Pursuant to this paragraph the defendant shall not be sentenced to imprisonment if space is available in a conservation camp or a community intermediate sanction center and the defendant meets all of the conservation camp's or a community intermediate sanction center's placement criteria unless the court states on the record the reasons for not placing the defendant in a conservation camp or a community intermediate sanction center.

(h) The court in committing a defendant to the custody of the secretary of corrections shall fix a term of confinement within the limits provided by law. In those cases where the law does not fix a term of confinement for the crime for which the defendant was convicted, the court shall fix the term of such confinement.

(i) In addition to any of the above, the court shall order the defendant to reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. The amount of attorney fees to be included in the court order for reimbursement shall be the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services



reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less.

~~(b)~~ (j) Dispositions which do not involve commitment to the custody of the secretary of corrections shall not entail the loss by the defendant of any civil rights. Placement of offenders in a conservation camp established by the secretary of corrections pursuant to K.S.A. 75-52,127, and amendments thereto, as a nonimprisonment disposition shall not entail the loss by the defendant of any civil rights.

~~(c)~~ (k) This section shall not deprive the court of any authority conferred by any other Kansas statute to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty as a result of conviction of crime.

~~(d)~~ (l) An application for or acceptance of probation or assignment to a community correctional services program shall not constitute an acquiescence in the judgment for purpose of appeal, and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has applied for probation, suspended sentence or assignment to a community correctional services program.

~~(e)~~ (m) The secretary of corrections is authorized to make direct placement to the Labette correctional conservation camp or a conservation camp established by the secretary pursuant to K.S.A. 75-52,127, and amendments thereto, of an inmate sentenced to the secretary's custody if the inmate: (1) Has been sentenced to the secretary for a probation revocation, as a departure from the presumptive nonimprisonment grid block of either sentencing grid, or for an offense which is classified in grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E, or 4-F of the sentencing guidelines grid for drug crimes; and (2) otherwise meets admission criteria of the camp. If the inmate successfully completes a conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district attorney. The inmate shall then be assigned by the court to six months of follow-up supervision conducted by the appropriate community corrections services program. The court may also order that supervision continue thereafter for the length of time authorized by K.S.A. 21-4611 and amendments thereto.

~~(f)~~ (n) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of this section shall not apply.

Sec. 9. K.S.A. 2000 Supp. 21-4704 is hereby amended to read as follows: 21-4704. (a) For purposes of sentencing, the following sentencing guidelines grid for nondrug crimes shall be applied in felony cases for crimes committed on or after July 1, 1993:



(b) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. Sentences expressed in such grid represent months of imprisonment.

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

(d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions, subject to judicial discretion to deviate for substantial and compelling reasons and impose a different sentence in recognition of aggravating and mitigating factors as provided in this act. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to all other crimes and the offender's criminal history.

(e) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the prison sentence, the maximum potential reduction to such sentence as a result of good time and the period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence upon making the following findings on the record:

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

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

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

Any decision made by the court regarding the imposition of an optional nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or 6-G shall not be considered a departure and shall not be subject to appeal.

(g) The sentence for the violation of K.S.A. 21-3411, *and amendments thereto*, aggravated assault against a law enforcement officer or K.S.A. 21-3415, *and amendments thereto*, aggravated battery against a law enforcement officer and amendments thereto which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence, if the offense is classified in grid block 6-H or 6-I, shall not be considered departure and shall not be subject to appeal.

(h) When a firearm is used to commit any person felony, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal.

(i) The sentence for the violation of the felony provision of K.S.A. 8-1567 and subsection ~~(e)(3) of K.S.A. 21-3412~~ *(b)(3) of section 5* and amendments thereto shall be as provided by the specific mandatory sen-

tencing requirements of that section and shall not be subject to the provisions of this section or K.S.A. 21-4707 and amendments thereto. Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of K.S.A. 8-1567 and subsection ~~(c)(3) of K.S.A. 21-3412~~ (b)(3) of section 5 and amendments thereto shall not be served in a state facility in the custody of the secretary of corrections.

(j) The sentence for any persistent sex offender whose current convicted crime carries a presumptive term of imprisonment shall be double the maximum duration of the presumptive imprisonment term. The sentence for any persistent sex offender whose current conviction carries a presumptive nonprison term shall be presumed imprisonment and shall be double the maximum duration of the presumptive imprisonment term. Except as otherwise provided in this subsection, as used in this subsection, “persistent sex offender” means a person who: (1) Has been convicted in this state of a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto; and (2) at the time of the conviction under subsection (1) has at least one conviction for a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto in this state or comparable felony under the laws of another state, the federal government or a foreign government. The provisions of this subsection shall not apply to any person whose current convicted crime is a severity level 1 or 2 felony.

(k) If it is shown at sentencing that the offender committed any felony violation for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members, the offender’s sentence shall be presumed imprisonment. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal. As used in this subsection, “criminal street gang” means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and amendments thereto, which has a common name or common identifying sign or symbol, whose members, individually or collectively engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and amendments thereto, or any substantially similar offense from another jurisdiction.

(l) The sentence for a violation of subsection (a) of K.S.A. 21-3715 and amendments thereto when such person being sentenced has a prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-3716 and amendments thereto shall be presumed imprisonment.

Sec. 10. K.S.A. 2000 Supp. 60-3107 is hereby amended to read as follows: 60-3107. (a) The court shall be empowered to approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children or grant any of the following orders:

(1) Restraining the parties from abusing, molesting or interfering with the privacy or rights of each other or of any minor children of the parties. Such order shall contain a statement that if such order is violated, such violation may constitute assault as provided in K.S.A. 21-3408, and amendments thereto, battery as provided in K.S.A. 21-3412, and amendments thereto, *domestic battery as provided in section 5, and amendments thereto* and violation of a protective order as provided in K.S.A. 2000 Supp. 21-3843, and amendments thereto.

(2) Granting possession of the residence or household to a party to the exclusion of the other party, and further restraining the party not granted possession from entering or remaining upon or in such residence or household, subject to the limitation of subsection (c). Such order shall contain a statement that if such order is violated, such violation shall constitute criminal trespass as provided in subsection (c) of K.S.A. 21-3721, and amendments thereto, and violation of a protective order as provided in K.S.A. 2000 Supp. 21-3843, and amendments thereto. The court may grant an order, which shall expire 60 days following the date of issuance, restraining the party not granted possession from cancelling utility service to the residence or household.

(3) Requiring a party to provide suitable, alternate housing for such party's spouse and any minor children of the parties.

(4) Awarding temporary custody and residency and establishing temporary parenting time with regard to minor children.

(5) Ordering a law enforcement officer to evict a party from the residence or household.

(6) Ordering support payments by a party for the support of a party's minor child or a party's spouse. Such support orders shall remain in effect until modified or dismissed by the court or until expiration and shall be for a fixed period of time not to exceed one year. On the motion of the plaintiff, the court may extend the effect of such order for 12 months.

(7) Awarding costs and attorney fees to either party.

(8) Making provision for the possession of personal property of the parties and ordering a law enforcement officer to assist in securing possession of that property, if necessary.

(9) Requiring the person against whom the order is issued to seek counseling to aid in the cessation of abuse.

(b) Any order entered under the protection from abuse act shall not be subject to modification on ex parte application or on motion for temporary orders in any action filed pursuant to K.S.A. 60-1601 *et seq.*, or K.S.A. 38-1101 *et seq.*, and amendments thereto. Orders previously issued in an action filed pursuant to K.S.A. 60-1601 *et seq.*, or K.S.A. 38-1101 *et seq.*, and amendments thereto, shall be subject to modification under the protection from abuse act only as to those matters subject to modification by the terms of K.S.A. 60-1610 *et seq.*, and amendments thereto, and on sworn testimony to support a showing of good cause. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause. If an action is filed pursuant to K.S.A. 60-1610 *et seq.*, or K.S.A. 38-1101 *et seq.*, and amendments thereto, during the pendency of a proceeding filed under the protection from abuse act or while an order issued under the protection from abuse act is in effect, the court, on final hearing or on agreement of the parties, may issue final orders authorized by K.S.A. 60-1610 and amendments thereto, that are inconsistent with orders entered under the protection from abuse act. Any inconsistent order entered pursuant to this subsection shall be specific in its terms, reference the protection from abuse order and parts thereof being modified and a copy thereof shall be filed in both actions. The court shall consider whether the actions should be consolidated in accordance with K.S.A. 60-242 and amendments thereto.

(c) If the parties to an action under the protection from abuse act are not married to each other and one party owns the residence or household, the court shall not have the authority to grant possession of the residence or household under subsection (a)(2) to the exclusion of the party who owns it.

(d) Subject to the provisions of subsections (b) and (c), a protective order or approved consent agreement shall remain in effect until modified or dismissed by the court and shall be for a fixed period of time not to exceed one year, except that, on motion of the plaintiff, such period may be extended for one additional year.

(e) The court may amend its order or agreement at any time upon motion filed by either party.

(f) No order or agreement under the protection from abuse act shall in any manner affect title to any real property.

(g) If a person enters or remains on premises or property violating an order issued pursuant to subsection (a)(2), such violation shall constitute criminal trespass as provided in subsection (c) of K.S.A. 21-3721, and amendments thereto, and violation of a protective order as provided in K.S.A. 2000 Supp. 21-3843, and amendments thereto. If a person abuses, molests or interferes with the privacy or rights of another violating an order issued pursuant to subsection (a)(1), such violation may constitute assault as provided in K.S.A. 21-3408, and amendments thereto, battery as provided in K.S.A. 21-3412, and amendments thereto, *domestic battery as provided in section 5, and amendments thereto*, and violation of a protective order as provided in K.S.A. 2000 Supp. 21-3843, and amendments thereto.

Sec. 11. K.S.A. 2000 Supp. 72-1397 is hereby amended to read as follows: 72-1397. (a) The state board of education shall not knowingly

issue a certificate to or renew the certificate of any person who has been convicted of any offense or attempt to commit any offense specified in subsection (c) of K.S.A. 21-4619 and amendments thereto.

(b) Except as provided in subsection (c), the state board of education shall not knowingly issue a certificate to or renew the certificate of any person who:

(1) Has been convicted of a felony under the uniform controlled substances act; (2) has been convicted of a felony described in any section of article 34 of chapter 21 of the Kansas Statutes Annotated or an act described in K.S.A. 21-3412 or *section 5*, and amendments thereto, if the victim is a minor or student; (3) has been convicted of a felony described in any section of article 35 of chapter 21 of the Kansas Statutes Annotated, other than an act specified in subsection (c) of K.S.A. 21-4619 and amendments thereto, or has been convicted of an act described in K.S.A. 21-3517 and amendments thereto, if the victim is a minor or student; (4) has been convicted of any act described in any section of article 36 of chapter 21 of the Kansas Statutes Annotated, other than an act specified in subsection (c) of K.S.A. 21-4619 and amendments thereto; (5) has been convicted of a felony described in article 37 of chapter 21 of the Kansas Statutes Annotated; (6) has been convicted of an attempt under K.S.A. 21-3301, and amendments thereto, to commit any act specified in this subsection; (7) has been convicted of any act which is described in K.S.A. 21-4301, 21-4301a or 21-4301c, and amendments thereto; (8) has been convicted in another state or by the federal government of an act similar to any act described in this subsection; or (9) has entered into a criminal diversion agreement after having been charged with any offense described in this subsection.

(c) The state board of education may issue a certificate to or renew the certificate of a person who has been convicted of committing an offense or act described in subsection (b) or who has entered into a criminal diversion agreement after having been charged with an offense or act described in subsection (b) if the state board determines, following a hearing, that the person has been rehabilitated for a period of at least five years from the date of conviction of the offense or commission of the act or, in the case of a person who has entered into a criminal diversion agreement, that the person has satisfied the terms and conditions of the agreement. The state board of education may consider factors including, but not limited to, the following in determining whether to grant a certificate:

(1) The nature and seriousness of the offense or act;  
(2) the conduct of the person subsequent to commission of the offense or act;  
(3) the time elapsed since the commission of the offense or act;  
(4) the age of the person at the time of the offense or act;  
(5) whether the offense or act was an isolated or recurring incident;  
and  
(6) discharge from probation, pardon or expungement.

(d) Before any certificate is denied by the state board of education for any of the offenses or acts specified in subsections (a) and (b), the person shall be given notice and an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act.

(e) The county or district attorney shall file a report with the state board of education indicating the name, address and social security number of any person who has been determined to have committed any offense or act specified in subsection (a) or (b) or to have entered into a criminal diversion agreement after having been charged with any offense or act specified in subsection (b). Such report shall be filed within 30 days of the date of the determination that the person has committed any such act or entered into any such diversion agreement.

(f) The state board of education shall not be liable for civil damages to any person refused issuance or renewal of a certificate by reason of the state board's compliance, in good faith, with the provisions of this section.

Sec. 12. K.S.A. 2000 Supp. 72-5445 is hereby amended to read as follows: 72-5445. (a) (1) Subject to the provisions of subsection (b), the provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto, apply only to: (A) Teachers who have completed not less than three consecutive years of employment, and been offered a fourth contract, in the

school district, area vocational-technical school or community college by which any such teacher is currently employed; and (B) teachers who have completed not less than two consecutive years of employment, and been offered a third contract, in the school district, area vocational-technical school or community college by which any such teacher is currently employed if at any time prior to the current employment the teacher has completed the years of employment requirement of subpart (A) in any school district, area vocational-technical school or community college in this state.

(2) Any board may waive, at any time, the years of employment requirements of provision (1) for any teachers employed by it.

(3) The provisions of this subsection are subject to the provisions of K.S.A. 72-5446, and amendments thereto.

(b) The provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto, do not apply to any teacher whose certificate has been nonrenewed or revoked by the state board of education for the reason that the teacher: (1) Has been convicted of a felony under the uniform controlled substances act; (2) has been convicted of a felony described in any section of article 34 of chapter 21 of the Kansas Statutes Annotated or an act described in K.S.A. 21-3412 *or section 5*, and amendments thereto, if the victim is a minor or student; (3) has been convicted of a felony described in any section of article 35 of chapter 21 of the Kansas Statutes Annotated, or has been convicted of an act described in K.S.A. 21-3517 and amendments thereto, if the victim is a minor or student; (4) has been convicted of any act described in any section of article 36 of chapter 21 of the Kansas Statutes Annotated; (5) has been convicted of a felony described in article 37 of chapter 21 of the Kansas Statutes Annotated; (6) has been convicted of an attempt under K.S.A. 21-3301, and amendments thereto, to commit any act specified in this subsection; (7) has been convicted of any act which is described in K.S.A. 21-4301, 21-4301a or 21-4301c, and amendments thereto; (8) has been convicted in another state or by the federal government of an act similar to any act described in this subsection; or (9) has entered into a criminal diversion agreement after having been charged with any offense described in this subsection.

Sec. 13. K.S.A. 2000 Supp. 74-5602 is hereby amended to read as follows: 74-5602. As used in the Kansas law enforcement training act:

(a) "Training center" means the law enforcement training center within the division of continuing education of the university of Kansas, created by K.S.A. 74-5603 and amendments thereto.

(b) "Commission" means the Kansas law enforcement training commission, created by K.S.A. 74-5606 and amendments thereto.

(c) "Dean" means the dean of the division of continuing education of the university of Kansas.

(d) "Director," as created in K.S.A. 74-5603 and amendments thereto, means the director of police training at the law enforcement training center.

(e) "Police officer" or "law enforcement officer" means a full-time or part-time salaried officer or employee of the state, a county or a city, whose duties include the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof. Such terms shall include, but not be limited to, the sheriff, undersheriff and full-time or part-time salaried deputies in the sheriff's office in each county; deputy sheriffs deputized pursuant to K.S.A. 19-2858 and amendments thereto; conservation officers of the Kansas department of wildlife and parks; campus police officers at all state educational institutions or a municipal university; law enforcement agents of the director of alcoholic beverage control; law enforcement agents of the Kansas lottery; law enforcement agents of the Kansas racing commission; deputies and assistants of the state fire marshal having law enforcement authority; capitol area security guards, existing under the authority of K.S.A. 75-4503 and amendments thereto. Such terms shall also include railroad policemen appointed pursuant to K.S.A. 66-524 and amendments thereto; and school security officers designated as school law enforcement officers pursuant to K.S.A. 72-8222 and amendments thereto. Such terms shall not include any elected official, other than a sheriff, serving in the capacity of a law enforcement or police officer solely by virtue of such

official's elected position; any attorney-at-law having responsibility for law enforcement and discharging such responsibility solely in the capacity of an attorney; any employee of the secretary of corrections or the secretary of social and rehabilitation services; any deputy conservation officer of the Kansas department of wildlife and parks; or any employee of a city or county who is employed solely to perform correctional duties related to jail inmates and the administration and operation of a jail; or any full-time or part-time salaried officer or employee whose duties include the issuance of a citation or notice to appear provided such officer or employee is not vested by law with the authority to make an arrest for violation of the laws of this state or any municipality thereof, and is not authorized to carry firearms when discharging the duties of such person's office or employment. Such term shall include any officer appointed or elected on a provisional basis.

(f) "Full-time" means employment requiring at least 1,000 hours of work per year.

(g) "Part-time" means employment on a regular schedule or employment which requires a minimum number of hours each payroll period, but in any case requiring less than 1,000 hours of work per year.

(h) "Misdemeanor crime of domestic violence" means a violation of domestic battery as defined by ~~subsection (c)(4) of K.S.A. 21-3412~~ provided by section 5 and amendments thereto, or any other misdemeanor under federal, municipal or state law that has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim.

(i) "Auxiliary personnel" means members of organized nonsalaried groups which operate as an adjunct to a police or sheriff's department, including reserve officers, posses and search and rescue groups.

New Sec. 14. (a) If a judicial district creates a local fund under this act, the court may impose a fee as provided in this section against any defendant for crimes involving a family or household member as provided in section 5, and amendments thereto. The chief judge of each judicial district where such fee is imposed shall set the amount of such fee by rules adopted in such judicial district in an amount not to exceed \$100 per case.

(b) Such fees shall be deposited into the local fund and disbursed pursuant to recommendations of the chief judge under this act. All moneys collected by this section shall be paid into the domestic violence special programs fund in the county where the fee is collected, as established by the judicial district and as authorized by this act.

(c) Expenditures made in each judicial district shall be determined by the chief judge and shall be paid to domestic violence programs administered by the court and to local programs within the judicial district that enhance a coordinated community justice response to the issue of domestic violence.

Sec. 15. K.S.A. 21-3440, 22-2802 and 60-3108 and K.S.A. 2000 Supp. 12-4301, 21-3412, 21-4603d, 21-4704, 60-3107, 72-1397, 72-5445 and 74-5602 are hereby repealed.



Sec. 16. This act shall take effect and be in force from and after its publication in the statute book.

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

\_\_\_\_\_

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

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

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

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

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

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

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

APPROVED \_\_\_\_\_

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