

HOUSE BILL No. 2815

By Committee on Corrections and Juvenile Justice

2-11

9 AN ACT concerning crimes, punishment and criminal procedure;
10 amending K.S.A. 21-3511 and K.S.A. 2003 Supp. 21-4603d, 21-4704
11 and 22-3303 and repealing the existing sections.
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) Absconding from parole is intentionally failing to
15 appear for any appointment, meeting, treatment or other lawful commit-
16 ment with an offender's parole officer, or with a person designated by
17 the parole officer, by an offender who has been released from the de-
18 partment of corrections on parole, conditional release or postrelease
19 supervision.

20 (b) For the purposes of this section, an appointment, meeting, treat-
21 ment, or other lawful commitment means any date set for a personal
22 appearance by the parole officer communicated orally or in writing to the
23 offender under supervision.

24 (c) A parole officer upon a violation of this section, may immediately
25 seek or cause an arrest warrant to be issued pursuant to K.S.A. 75-5217,
26 and amendments thereto.

27 (d) Absconding from parole is a severity level 7, nonperson felony if
28 the offender was on release for the conviction of a nonperson felony.
29 Absconding from parole is a severity level 6, person felony if the offender
30 was on release for the conviction of a person felony.

31 (e) This section shall be part of and supplemental to the Kansas crim-
32 inal code.

33 Sec. 2. K.S.A. 21-3511 is hereby amended to read as follows: 21-
34 3511. Aggravated indecent solicitation of a child is:

35 (a) Enticing or soliciting a child under the age of 14 years to commit
36 or to submit to an unlawful sexual act; or

37 (b) inviting, persuading or attempting to persuade a child under the
38 age of 14 years to enter any vehicle, building, room or secluded place
39 with intent to commit an unlawful sexual act upon or with the child.

40 Aggravated indecent solicitation of a child is a severity level 6 3, person
41 felony.

42 Sec. 3. K.S.A. 2003 Supp. 21-4603d is hereby amended to read as
43 follows: 21-4603d. (a) Whenever any person has been found guilty of a

- 1 crime, the court may adjudge any of the following:
- 2 (1) Commit the defendant to the custody of the secretary of correc-
- 3 tions if the current crime of conviction is a felony and the sentence pre-
- 4 sumes imprisonment, or the sentence imposed is a dispositional departure
- 5 to imprisonment; or, if confinement is for a misdemeanor, to jail for the
- 6 term provided by law;
- 7 (2) impose the fine applicable to the offense;
- 8 (3) release the defendant on probation if the current crime of con-
- 9 viction and criminal history fall within a presumptive nonprison category
- 10 or through a departure for substantial and compelling reasons subject to
- 11 such conditions as the court may deem appropriate. In felony cases except
- 12 for violations of K.S.A. 8-1567 and amendments thereto, the court may
- 13 include confinement in a county jail not to exceed 60 days, which need
- 14 not be served consecutively, as a condition of an original probation sen-
- 15 tence and up to 60 days in a county jail upon each revocation of the
- 16 probation sentence, or community corrections placement;
- 17 (4) assign the defendant to a community correctional services pro-
- 18 gram as provided in K.S.A. 75-5291, and amendments thereto, or through
- 19 a departure for substantial and compelling reasons subject to such con-
- 20 ditions as the court may deem appropriate, including orders requiring full
- 21 or partial restitution;
- 22 (5) assign the defendant to a conservation camp for a period not to
- 23 exceed six months as a condition of probation followed by a six-month
- 24 period of follow-up through adult intensive supervision by a community
- 25 correctional services program, if the offender successfully completes the
- 26 conservation camp program;
- 27 (6) assign the defendant to a house arrest program pursuant to K.S.A.
- 28 21-4603b and amendments thereto;
- 29 (7) order the defendant to attend and satisfactorily complete an al-
- 30 cohol or drug education or training program as provided by subsection
- 31 (3) of K.S.A. 21-4502 and amendments thereto;
- 32 (8) order the defendant to repay the amount of any reward paid by
- 33 any crime stoppers chapter, individual, corporation or public entity which
- 34 materially aided in the apprehension or conviction of the defendant; repay
- 35 the amount of any costs and expenses incurred by any law enforcement
- 36 agency in the apprehension of the defendant, if one of the current crimes
- 37 of conviction of the defendant includes escape, as defined in K.S.A. 21-
- 38 3809 and amendments thereto or aggravated escape, as defined in K.S.A.
- 39 21-3810 and amendments thereto; repay expenses incurred by a fire dis-
- 40 trict, fire department or fire company responding to a fire which has been
- 41 determined to be arson under K.S.A. 21-3718 or 21-3719, and amend-
- 42 ments thereto, if the defendant is convicted of such crime; or repay the
- 43 amount of any public funds utilized by a law enforcement agency to pur-

1 chase controlled substances from the defendant during the investigation
2 which leads to the defendant's conviction. Such repayment of the amount
3 of any such costs and expenses incurred by a law enforcement agency,
4 fire district, fire department or fire company or any public funds utilized
5 by a law enforcement agency shall be deposited and credited to the same
6 fund from which the public funds were credited to prior to use by the
7 law enforcement agency, fire district, fire department or fire company;
8 (9) order the defendant to pay the administrative fee authorized by
9 K.S.A. 2003 Supp. 22-4529 and amendments thereto, unless waived by
10 the court;
11 (10) order the defendant to pay a domestic violence special program
12 fee authorized by K.S.A. 2003 Supp. 20-369, and amendments thereto;
13 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6),
14 (7), (8), (9) and (10); or
15 (12) suspend imposition of sentence in misdemeanor cases.
16 (b) (1) In addition to or in lieu of any of the above, the court shall
17 order the defendant to pay restitution, which shall include, but not be
18 limited to, damage or loss caused by the defendant's crime, unless the
19 court finds compelling circumstances which would render a plan of res-
20 titution unworkable. If the court finds a plan of restitution unworkable,
21 the court shall state on the record in detail the reasons therefor.
22 (2) If the court orders restitution, the restitution shall be a judgment
23 against the defendant which may be collected by the court by garnishment
24 or other execution as on judgments in civil cases. If, after 60 days from
25 the date restitution is ordered by the court, a defendant is found to be in
26 noncompliance with the plan established by the court for payment of
27 restitution, and the victim to whom restitution is ordered paid has not
28 initiated proceedings in accordance with K.S.A. 2003 Supp. 60-4301 *et*
29 *seq.* and amendments thereto, the court shall assign an agent procured
30 by the attorney general pursuant to K.S.A. 75-719 and amendments
31 thereto to collect the restitution on behalf of the victim. The administra-
32 tive judge of each judicial district may assign such cases to an appropriate
33 division of the court for the conduct of civil collection proceedings.
34 (c) In addition to or in lieu of any of the above, the court shall order
35 the defendant to submit to and complete an alcohol and drug evaluation,
36 and pay a fee therefor, when required by subsection (4) of K.S.A. 21-
37 4502 and amendments thereto.
38 (d) In addition to any of the above, the court shall order the defend-
39 ant to reimburse the county general fund for all or a part of the expend-
40 itures by the county to provide counsel and other defense services to the
41 defendant. Any such reimbursement to the county shall be paid only after
42 any order for restitution has been paid in full. In determining the amount
43 and method of payment of such sum, the court shall take account of the

1 financial resources of the defendant and the nature of the burden that
2 payment of such sum will impose. A defendant who has been required
3 to pay such sum and who is not willfully in default in the payment thereof
4 may at any time petition the court which sentenced the defendant to
5 waive payment of such sum or any unpaid portion thereof. If it appears
6 to the satisfaction of the court that payment of the amount due will im-
7 pose manifest hardship on the defendant or the defendant's immediate
8 family, the court may waive payment of all or part of the amount due or
9 modify the method of payment.

10 (e) In imposing a fine the court may authorize the payment thereof
11 in installments. In releasing a defendant on probation, the court shall
12 direct that the defendant be under the supervision of a court services
13 officer. If the court commits the defendant to the custody of the secretary
14 of corrections or to jail, the court may specify in its order the amount of
15 restitution to be paid and the person to whom it shall be paid if restitution
16 is later ordered as a condition of parole, conditional release or postrelease
17 supervision.

18 (f) When a new felony is committed while the offender is incarcer-
19 ated and serving a sentence for a felony or while the offender is on pro-
20 bation, assignment to a community correctional services program, parole,
21 conditional release, or postrelease supervision for a felony, a new sentence
22 shall be imposed pursuant to the consecutive sentencing requirements of
23 K.S.A. 21-4608, and amendments thereto, and the court ~~may~~ shall sen-
24 tence the offender to imprisonment for the new conviction, even when
25 the new crime of conviction otherwise presumes a nonprison sentence.
26 In this event, imposition of a prison sentence for the new crime does not
27 constitute a departure. When a new felony is committed while the of-
28 fender is on release for a felony pursuant to the provisions of article 28
29 of chapter 22 of the Kansas Statutes Annotated, a new sentence may be
30 imposed pursuant to the consecutive sentencing requirements of K.S.A.
31 21-4608 and amendments thereto, and the court may sentence the of-
32 fender to imprisonment for the new conviction, even when the new crime
33 of conviction otherwise presumes a nonprison sentence. In this event,
34 imposition of a prison sentence for the new crime does not constitute a
35 departure.

36 (g) Prior to imposing a dispositional departure for a defendant whose
37 offense is classified in the presumptive nonprison grid block of either
38 sentencing guideline grid, prior to sentencing a defendant to incarceration
39 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing
40 guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H
41 or 3-I of the sentencing guidelines grid for drug crimes, prior to sen-
42 tencing a defendant to incarceration whose offense is classified in grid
43 blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and

1 whose offense does not meet the requirements of K.S.A. 2003 Supp. 21-
2 4729, and amendments thereto, prior to revocation of a nonprison sanc-
3 tion of a defendant whose offense is classified in grid blocks 4-E or 4-F
4 of the sentencing guideline grid for drug crimes and whose offense does
5 not meet the requirements of K.S.A. 2003 Supp. 21-4729, and amend-
6 ments thereto, or prior to revocation of a nonprison sanction of a de-
7 fendant whose offense is classified in the presumptive nonprison grid
8 block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G
9 of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-
10 E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes,
11 the court shall consider placement of the defendant in the Labette cor-
12 rectional conservation camp, conservation camps established by the sec-
13 retary of corrections pursuant to K.S.A. 75-52,127, and amendment
14 thereto or a community intermediate sanction center. Pursuant to this
15 paragraph the defendant shall not be sentenced to imprisonment if space
16 is available in a conservation camp or a community intermediate sanction
17 center and the defendant meets all of the conservation camp's or a com-
18 munity intermediate sanction center's placement criteria unless the court
19 states on the record the reasons for not placing the defendant in a con-
20 servation camp or a community intermediate sanction center.

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

26 (i) In addition to any of the above, the court shall order the defendant
27 to reimburse the state general fund for all or a part of the expenditures
28 by the state board of indigents' defense services to provide counsel and
29 other defense services to the defendant. In determining the amount and
30 method of payment of such sum, the court shall take account of the
31 financial resources of the defendant and the nature of the burden that
32 payment of such sum will impose. A defendant who has been required
33 to pay such sum and who is not willfully in default in the payment thereof
34 may at any time petition the court which sentenced the defendant to
35 waive payment of such sum or any unpaid portion thereof. If it appears
36 to the satisfaction of the court that payment of the amount due will im-
37 pose manifest hardship on the defendant or the defendant's immediate
38 family, the court may waive payment of all or part of the amount due or
39 modify the method of payment. The amount of attorney fees to be in-
40 cluded in the court order for reimbursement shall be the amount claimed
41 by appointed counsel on the payment voucher for indigents' defense serv-
42 ices or the amount prescribed by the board of indigents' defense services
43 reimbursement tables as provided in K.S.A. 22-4522, and amendments

1 thereto, whichever is less.

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

6 (k) An application for or acceptance of probation or assignment to a
7 community correctional services program shall not constitute an acqui-
8 escence in the judgment for purpose of appeal, and any convicted person
9 may appeal from such conviction, as provided by law, without regard to
10 whether such person has applied for probation, suspended sentence or
11 assignment to a community correctional services program.

12 (l) The secretary of corrections is authorized to make direct place-
13 ment to the Labette correctional conservation camp or a conservation
14 camp established by the secretary pursuant to K.S.A. 75-52,127, and
15 amendments thereto, of an inmate sentenced to the secretary's custody
16 if the inmate: (1) Has been sentenced to the secretary for a probation
17 revocation, as a departure from the presumptive nonimprisonment grid
18 block of either sentencing grid, for an offense which is classified in grid
19 blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug
20 crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing
21 guidelines grid for drug crimes, or for an offense which is classified in
22 grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes
23 and such offense does not meet the requirements of K.S.A. 2003 Supp.
24 21-4729, and amendments thereto, and (2) otherwise meets admission
25 criteria of the camp. If the inmate successfully completes a conservation
26 camp program, the secretary of corrections shall report such completion
27 to the sentencing court and the county or district attorney. The inmate
28 shall then be assigned by the court to six months of follow-up supervision
29 conducted by the appropriate community corrections services program.
30 The court may also order that supervision continue thereafter for the
31 length of time authorized by K.S.A. 21-4611 and amendments thereto.

32 (m) When it is provided by law that a person shall be sentenced pur-
33 suant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of
34 this section shall not apply.

35 (n) Except as provided by subsection (f) of K.S.A. 21-4705, and
36 amendments thereto, in addition to any of the above, for felony violations
37 of K.S.A. 65-4160 or 65-4162, and amendments thereto, the court shall
38 require the defendant who meets the requirements established in K.S.A.
39 2003 Supp. 21-4729, and amendments thereto, to participate in a certified
40 drug abuse treatment program, as provided in K.S.A. 2003 Supp. 75-
41 52,144, and amendments thereto, including but not limited to, an ap-
42 proved after-care plan. If the defendant fails to participate in or has a
43 pattern of intentional conduct that demonstrates the offender's refusal to

1 comply with or participate in the treatment program, as established by
2 judicial finding, the defendant shall be subject to revocation of probation
3 and the defendant shall serve the underlying prison sentence as estab-
4 lished in K.S.A. 21-4705, and amendments thereto. For those offenders
5 who are convicted on or after the effective date of this act, upon com-
6 pletion of the underlying prison sentence, the defendant shall not be
7 subject to a period of postrelease supervision. The amount of time spent
8 participating in such program shall not be credited as service on the un-
9 derlying prison sentence.

10 Sec. 4. K.S.A. 2003 Supp. 21-4704 is hereby amended to read as
11 follows: 21-4704. (a) For purposes of sentencing, the following sentencing
12 guidelines grid for nondrug crimes shall be applied in felony cases for
13 crimes committed on or after July 1, 1993:

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SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3 + Person Felonies	2 Person Felonies	1 Person & 1 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	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	35 34 32
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

LEARNER
Presumptive Probation
Presumptive Imprisonment

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

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

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

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

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

26 (3) In presumptive nonprison cases, the sentencing court shall pro-
27 nounce the prison sentence as well as the duration of the nonprison sanc-
28 tion at the sentencing hearing.

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

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

40 (2) the recommended treatment program is available and the of-
41 fender can be admitted to such program within a reasonable period of
42 time; or

43 (3) the nonprison sanction will serve community safety interests by

1 promoting offender reformation.

2 Any decision made by the court regarding the imposition of an optional
3 nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or
4 6-G shall not be considered a departure and shall not be subject to appeal.

5 (g) The sentence for the violation of K.S.A. 21-3411, and amend-
6 ments thereto, aggravated assault against a law enforcement officer or
7 K.S.A. 21-3415, and amendments thereto, aggravated battery against a
8 law enforcement officer and amendments thereto which places the de-
9 fendant's sentence in grid block 6-H or 6-I shall be presumed impris-
10 onment. The court may impose an optional nonprison sentence upon
11 making a finding on the record that the nonprison sanction will serve
12 community safety interests by promoting offender reformation. Any de-
13 cision made by the court regarding the imposition of the optional non-
14 prison sentence, if the offense is classified in grid block 6-H or 6-I, shall
15 not be considered departure and shall not be subject to appeal.

16 (h) When a firearm is used to commit any person felony, the of-
17 fender's sentence shall be presumed imprisonment. The court may im-
18 pose an optional nonprison sentence upon making a finding on the record
19 that the nonprison sanction will serve community safety interests by pro-
20 moting offender reformation. Any decision made by the court regarding
21 the imposition of the optional nonprison sentence shall not be considered
22 a departure and shall not be subject to appeal.

23 (i) The sentence for the violation of the felony provision of K.S.A. 8-
24 1567 and, subsection (b)(3) of K.S.A. 21-3412a, and subsections (b)(3)
25 and (b)(4) of K.S.A. 21-3710, and amendments thereto, shall be as pro-
26 vided by the specific mandatory sentencing requirements of that section
27 and shall not be subject to the provisions of this section or K.S.A. 21-4707
28 and amendments thereto. If because of the offender's criminal history
29 classification the offender is subject to presumptive imprisonment or if
30 the judge departs from a presumptive probation sentence and the of-
31 fender is subject to imprisonment, the provisions of this section and
32 K.S.A. 21-4707, and amendments thereto, shall apply and the offender
33 shall not be subject to the mandatory sentence as provided in K.S.A. 21-
34 3710, and amendments thereto. Notwithstanding the provisions of any
35 other section, the term of imprisonment imposed for the violation of the
36 felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a
37 and subsections (b)(3) and (b)(4) of K.S.A. 21-3710, and amendments
38 thereto shall not be served in a state facility in the custody of the secretary
39 of corrections.

40 (j) The sentence for any persistent sex offender whose current con-
41 victed crime carries a presumptive term of imprisonment shall be double
42 the maximum duration of the presumptive imprisonment term. The sen-
43 tence for any persistent sex offender whose current conviction carries a

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

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

30 (l) The sentence for a violation of subsection (a) of K.S.A. 21-3715
31 and amendments thereto when such person being sentenced has a prior
32 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-
33 3716 and amendments thereto shall be presumed imprisonment.

34 (m) *The sentence for a violation of section 1, and amendments thereto,*
35 *shall be presumed imprisonment.*

36 Sec. 5. K.S.A. 2003 Supp. 22-3303 is hereby amended to read as
37 follows: 22-3303. (1) A defendant who is charged with a felony and is
38 found to be incompetent to stand trial shall be committed for evaluation
39 and treatment to the state security hospital or any appropriate county or
40 private institution. A defendant who is charged with a misdemeanor and
41 is found to be incompetent to stand trial shall be committed for evaluation
42 and treatment to any appropriate state, county or private institution. Any
43 such commitment shall be for a period of not to exceed 90 days. Within

1 90 days after the defendant's commitment to such institution, the chief
2 medical officer of such institution shall certify to the court whether the
3 defendant has a substantial probability of attaining competency to stand
4 trial in the foreseeable future. If such probability does exist, the court
5 shall order the defendant to remain in an appropriate state, county or
6 private institution until the defendant attains competency to stand trial
7 or for a period of six months from the date of the original commitment,
8 whichever occurs first. If such probability does not exist, the court shall
9 order the secretary of social and rehabilitation services to commence in-
10 voluntary commitment proceedings pursuant to article 29 of chapter 59
11 of the Kansas Statutes Annotated, and any amendments thereto. When a
12 defendant is charged with any off-grid felony, any nondrug severity level
13 1 through 3 felony, or a violation of K.S.A. 21-3504, ~~21-3511~~, 21-3518,
14 21-3603 or 21-3719, and amendments thereto, and commitment pro-
15 ceedings have commenced, for such proceeding, "mentally ill person sub-
16 ject to involuntary commitment for care and treatment" means a mentally
17 ill person, as defined in subsection (e) of K.S.A. 2003 Supp. 59-2946, and
18 amendments thereto, who is likely to cause harm to self and others, as
19 defined in subsection (f)(3) of K.S.A. 2003 Supp. 59-2946, and amend-
20 ments thereto. The other provisions of subsection (f) of K.S.A. 2003 Supp.
21 59-2946, and amendments thereto, shall not apply.

22 (2) If a defendant who was found to have had a substantial probability
23 of attaining competency to stand trial, as provided in subsection (1), has
24 not attained competency to stand trial within six months from the date
25 of the original commitment, the court shall order the secretary of social
26 and rehabilitation services to commence involuntary commitment pro-
27 ceedings pursuant to article 29 of chapter 59 of the Kansas Statutes An-
28 notated, and any amendments thereto. When a defendant is charged with
29 any off-grid felony, any nondrug severity level 1 through 3 felony, or a
30 violation of K.S.A. 21-3504, ~~21-3511~~, 21-3518, 21-3603 or 21-3719, and
31 amendments thereto, and commitment proceedings have commenced,
32 for such proceeding, "mentally ill person subject to involuntary commit-
33 ment for care and treatment" means a mentally ill person, as defined in
34 subsection (e) of K.S.A. 2003 Supp. 59-2946, and amendments thereto,
35 who is likely to cause harm to self and others, as defined in subsection
36 (f)(3) of K.S.A. 2003 Supp. 59-2946, and amendments thereto. The other
37 provisions of subsection (f) of K.S.A. 2003 Supp. 59-2946, and amend-
38 ments thereto, shall not apply.

39 (3) When reasonable grounds exist to believe that a defendant who
40 has been adjudged incompetent to stand trial is competent, the court in
41 which the criminal case is pending shall conduct a hearing in accordance
42 with K.S.A. 22-3302 and amendments thereto to determine the person's
43 present mental condition. Reasonable notice of such hearings shall be

1 given to the prosecuting attorney, the defendant and the defendant's at-
2 torney of record, if any. If the court, following such hearing, finds the
3 defendant to be competent, the proceedings pending against the defend-
4 ant shall be resumed.

5 (4) A defendant committed to a public institution under the provi-
6 sions of this section who is thereafter sentenced for the crime charged at
7 the time of commitment may be credited with all or any part of the time
8 during which the defendant was committed and confined in such public
9 institution.

10 Sec. 6. K.S.A. 21-3511 and K.S.A. 2003 Supp. 21-4603d, 21-4704 and
11 22-3303 are hereby repealed.

12 Sec. 7. This act shall take effect and be in force from and after its
13 publication in the statute book.