

HOUSE BILL No. 2831

By Representative Owens

2-11

9 AN ACT concerning crimes, punishment and criminal procedure; relat-
10 ing to a prison sanction of drug and alcohol abuse treatment program
11 for certain offenders; amending K.S.A. 75-5202 and K.S.A. 2003 Supp.
12 8-1567, 21-4602, 21-4704, 38-1602, 72-978, 75-3765 and 76-3201 and
13 repealing the existing sections; also repealing K.S.A. 2003 Supp. 76-
14 3205.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 New Section 1. On and after January 1, 2005: (a) There is hereby
18 established a prison sanction of a drug and alcohol abuse treatment pro-
19 gram for certain offenders. Placement of offenders in the drug abuse and
20 alcohol treatment program by the court shall be limited to placement of
21 adult offenders:

22 (1) For the first conviction of a felony violation of K.S.A. 65-4160 or
23 65-4162, and amendments thereto:

24 (A) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or
25 4-I of the sentencing guidelines grid for drug crimes and such offender
26 has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163
27 or 65-4164, and amendments thereto, or any substantially similar offense
28 from another jurisdiction; or

29 (B) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of
30 the sentencing guidelines grid for drug crimes and such offender has no
31 felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-
32 4164, and amendments thereto, or any substantially similar offense from
33 another jurisdiction, if such person felonies committed by the offender
34 were severity level 8, 9 or 10 or nongrid offenses of the sentencing guide-
35 lines grid for nondrug crimes; or

36 (2) for a third violation of K.S.A. 8-1567, and amendments thereto,
37 and such offender has no felony conviction of K.S.A. 65-4142, 65-4159,
38 65-4161, 65-4163 or 65-4164, and amendments thereto, or any substan-
39 tially similar offense from another jurisdiction.

40 (b) (1) As a part of the presentence investigation pursuant to K.S.A.
41 21-4714, and amendments thereto, offenders who meet the requirements
42 of subsection (a) (1) shall be subject to a drug abuse assessment and
43 offenders who meet the requirements of subsection (a) (2) shall be subject

1 to an alcohol abuse assessment.

2 (2) The drug abuse assessment shall be the assessment provided in
3 K.S.A. 21-4729, and amendments thereto.

4 (c) The drug and alcohol abuse treatment program established in this
5 section shall be at the correctional treatment facility at Topeka. The sen-
6 tencing court shall commit the offender to treatment at the correctional
7 treatment facility at Topeka until determined suitable for discharge by
8 the court but the term of treatment shall not be less than 180 days and
9 not exceed 18 months.

10 (d) Any offender who meets the requirements of this section shall be
11 eligible only once during the offender's lifetime for placement in the
12 correctional treatment facility at Topeka.

13 New Sec. 2. (a) The Kansas juvenile correctional complex shall be
14 and is hereby transferred from the juvenile justice authority to the de-
15 partment of corrections. The facility shall be known as the correctional
16 treatment facility at Topeka. The correctional treatment facility at Topeka
17 shall meet all applicable licensure requirements under law and there shall
18 be:

19 (A) Total separation of the Topeka juvenile correctional facility and
20 the correctional treatment facility at Topeka spatial areas such that there
21 could be no haphazard or accidental contact between juvenile and adult
22 residents in the respective facilities;

23 (B) total separation in all juvenile and adult program activities within
24 the facilities, including recreation, education, counseling, health care, din-
25 ing, sleeping and general living activities; and

26 (C) separate juvenile and adult staff, including management, security
27 staff and direct care staff such as recreational, educational and counseling.

28 (b) The correctional treatment facility at Topeka shall be a drug and
29 alcohol abuse treatment facility for offenders sentenced pursuant to sec-
30 tion 1, and amendments thereto. The secretary shall establish the criteria
31 and outcomes for the drug and alcohol abuse treatment program in
32 adopted rules and regulations.

33 (c) The secretary of corrections shall have the management and con-
34 trol of the correctional treatment facility at Topeka.

35 Sec. 3. K.S.A. 2003 Supp. 8-1567 is hereby amended to read as fol-
36 lows: 8-1567. (a) No person shall operate or attempt to operate any vehicle
37 within this state while:

38 (1) The alcohol concentration in the person's blood or breath as
39 shown by any competent evidence, including other competent evidence,
40 as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amend-
41 ments thereto, is .08 or more;

42 (2) the alcohol concentration in the person's blood or breath, as meas-
43 ured within two hours of the time of operating or attempting to operate

1 a vehicle, is .08 or more;

2 (3) under the influence of alcohol to a degree that renders the person
3 incapable of safely driving a vehicle;

4 (4) under the influence of any drug or combination of drugs to a
5 degree that renders the person incapable of safely driving a vehicle; or

6 (5) under the influence of a combination of alcohol and any drug or
7 drugs to a degree that renders the person incapable of safely driving a
8 vehicle.

9 (b) No person shall operate or attempt to operate any vehicle within
10 this state if the person is a habitual user of any narcotic, hypnotic, som-
11 nifacient or stimulating drug.

12 (c) If a person is charged with a violation of this section involving
13 drugs, the fact that the person is or has been entitled to use the drug
14 under the laws of this state shall not constitute a defense against the
15 charge.

16 (d) Upon a first conviction of a violation of this section, a person shall
17 be guilty of a class B, nonperson misdemeanor and sentenced to not less
18 than 48 consecutive hours nor more than six months' imprisonment, or
19 in the court's discretion 100 hours of public service, and fined not less
20 than \$500 nor more than \$1,000. The person convicted must serve at
21 least 48 consecutive hours' imprisonment or 100 hours of public service
22 either before or as a condition of any grant of probation or suspension,
23 reduction of sentence or parole. In addition, the court shall enter an order
24 which requires that the person enroll in and successfully complete an
25 alcohol and drug safety action education program or treatment program
26 as provided in K.S.A. 8-1008, and amendments thereto, or both the ed-
27 ucation and treatment programs.

28 (e) On a second conviction of a violation of this section, a person shall
29 be guilty of a class A, nonperson misdemeanor and sentenced to not less
30 than 90 days nor more than one year's imprisonment and fined not less
31 than \$1,000 nor more than \$1,500. The person convicted must serve at
32 least five consecutive days' imprisonment before the person is granted
33 probation, suspension or reduction of sentence or parole or is otherwise
34 released. The five days' imprisonment mandated by this subsection may
35 be served in a work release program only after such person has served
36 48 consecutive hours' imprisonment, provided such work release program
37 requires such person to return to confinement at the end of each day in
38 the work release program. The court may place the person convicted
39 under a house arrest program pursuant to K.S.A. 21-4603b, and amend-
40 ments thereto, to serve the remainder of the minimum sentence only
41 after such person has served 48 consecutive hours' imprisonment. As a
42 condition of any grant of probation, suspension of sentence or parole or
43 of any other release, the person shall be required to enter into and com-

1 plete a treatment program for alcohol and drug abuse as provided in
2 K.S.A. 8-1008, and amendments thereto.

3 (f) On the third conviction of a violation of this section, a person shall
4 be guilty of a nonperson felony ~~and sentenced~~. *The court may sentence*
5 *the person pursuant to section 1, and amendments thereto. If the court*
6 *does not sentence the person pursuant to section 1, and amendments*
7 *thereto, the court shall sentence the person* to not less than 90 days nor
8 more than one year's imprisonment and fined not less than \$1,500 nor
9 more than \$2,500. The person convicted shall not be eligible for release
10 on probation, suspension or reduction of sentence or parole until the
11 person has served at least 90 days' imprisonment. The court may also
12 require as a condition of parole that such person enter into and complete
13 a treatment program for alcohol and drug abuse as provided by K.S.A. 8-
14 1008, and amendments thereto. The 90 days' imprisonment mandated by
15 this subsection may be served in a work release program only after such
16 person has served 48 consecutive hours' imprisonment, provided such
17 work release program requires such person to return to confinement at
18 the end of each day in the work release program. The court may place
19 the person convicted under a house arrest program pursuant to K.S.A.
20 21-4603b, and amendments thereto, to serve the remainder of the min-
21 imum sentence only after such person has served 48 consecutive hours'
22 imprisonment.

23 (g) On the fourth or subsequent conviction of a violation of this sec-
24 tion, a person shall be guilty of a nonperson felony and sentenced to not
25 less than 90 days nor more than one year's imprisonment and fined
26 \$2,500. The person convicted shall not be eligible for release on proba-
27 tion, suspension or reduction of sentence or parole until the person has
28 served at least 90 days' imprisonment. The 90 days' imprisonment man-
29 dated by this subsection may be served in a work release program only
30 after such person has served 72 consecutive hours' imprisonment, pro-
31 vided such work release program requires such person to return to con-
32 finement at the end of each day in the work release program. At the time
33 of the filing of the judgment form or journal entry as required by K.S.A.
34 21-4620 or 22-3426, and amendments thereto, the court shall cause a
35 certified copy to be sent to the officer having the offender in charge. The
36 law enforcement agency maintaining custody and control of a defendant
37 for imprisonment shall cause a certified copy of the judgment form or
38 journal entry to be sent to the secretary of corrections within three busi-
39 ness days of receipt of the judgment form or journal entry from the court
40 and notify the secretary of corrections when the term of imprisonment
41 expires and upon expiration of the term of imprisonment shall deliver the
42 defendant to a location designated by the secretary. After the term of
43 imprisonment imposed by the court, the person shall be placed in the

1 custody of the secretary of corrections for a mandatory one-year period
2 of postrelease supervision, which such period of postrelease supervision
3 shall not be reduced. During such postrelease supervision, the person
4 shall be required to participate in an inpatient or outpatient program for
5 alcohol and drug abuse, including, but not limited to, an approved after-
6 care plan or mental health counseling, as determined by the secretary
7 and satisfy conditions imposed by the Kansas parole board as provided
8 by K.S.A. 22-3717, and amendments thereto. Any violation of the con-
9 ditions of such postrelease supervision may subject such person to revo-
10 cation of postrelease supervision pursuant to K.S.A. 75-5217 *et seq.*, and
11 amendments thereto and as otherwise provided by law.

12 (h) Any person convicted of violating this section or an ordinance
13 which prohibits the acts that this section prohibits who had a child under
14 the age of 14 years in the vehicle at the time of the offense shall have
15 such person's punishment enhanced by one month of imprisonment. This
16 imprisonment must be served consecutively to any other penalty imposed
17 for a violation of this section or an ordinance which prohibits the acts that
18 this section prohibits. During the service of the one month enhanced
19 penalty, the judge may order the person on house arrest, work release or
20 other conditional release.

21 (i) The court may establish the terms and time for payment of any
22 fines, fees, assessments and costs imposed pursuant to this section. Any
23 assessment and costs shall be required to be paid not later than 90 days
24 after imposed, and any remainder of the fine shall be paid prior to the
25 final release of the defendant by the court.

26 (j) In lieu of payment of a fine imposed pursuant to this section, the
27 court may order that the person perform community service specified by
28 the court. The person shall receive a credit on the fine imposed in an
29 amount equal to \$5 for each full hour spent by the person in the specified
30 community service. The community service ordered by the court shall be
31 required to be performed not later than one year after the fine is imposed
32 or by an earlier date specified by the court. If by the required date the
33 person performs an insufficient amount of community service to reduce
34 to zero the portion of the fine required to be paid by the person, the
35 remaining balance of the fine shall become due on that date.

36 (k) (1) Except as provided in paragraph (5), in addition to any other
37 penalty which may be imposed upon a person convicted of a violation of
38 this section, the court may order that the convicted person's motor vehicle
39 or vehicles be impounded or immobilized for a period not to exceed one
40 year and that the convicted person pay all towing, impoundment and
41 storage fees or other immobilization costs.

42 (2) The court shall not order the impoundment or immobilization of
43 a motor vehicle driven by a person convicted of a violation of this section

1 if the motor vehicle had been stolen or converted at the time it was driven
2 in violation of this section.

3 (3) Prior to ordering the impoundment or immobilization of a motor
4 vehicle or vehicles owned by a person convicted of a violation of this
5 section, the court shall consider, but not be limited to, the following:

6 (A) Whether the impoundment or immobilization of the motor ve-
7 hicle would result in the loss of employment by the convicted person or
8 a member of such person's family; and

9 (B) whether the ability of the convicted person or a member of such
10 person's family to attend school or obtain medical care would be impaired.

11 (4) Any personal property in a vehicle impounded or immobilized
12 pursuant to this subsection may be retrieved prior to or during the period
13 of such impoundment or immobilization.

14 (5) As used in this subsection, the convicted person's motor vehicle
15 or vehicles shall include any vehicle leased by such person. If the lease
16 on the convicted person's motor vehicle subject to impoundment or im-
17 mobilization expires in less than one year from the date of the impound-
18 ment or immobilization, the time of impoundment or immobilization of
19 such vehicle shall be the amount of time remaining on the lease.

20 (l) The court shall report every conviction of a violation of this section
21 and every diversion agreement entered into in lieu of further criminal
22 proceedings or a complaint alleging a violation of this section to the di-
23 vision. Prior to sentencing under the provisions of this section, the court
24 shall request and shall receive from the division a record of all prior
25 convictions obtained against such person for any violations of any of the
26 motor vehicle laws of this state.

27 (m) For the purpose of determining whether a conviction is a first,
28 second, third, fourth or subsequent conviction in sentencing under this
29 section:

30 (1) "Conviction" includes being convicted of a violation of this section
31 or entering into a diversion agreement in lieu of further criminal pro-
32 ceedings on a complaint alleging a violation of this section;

33 (2) "conviction" includes being convicted of a violation of a law of
34 another state or an ordinance of any city, or resolution of any county,
35 which prohibits the acts that this section prohibits or entering into a di-
36 version agreement in lieu of further criminal proceedings in a case alleg-
37 ing a violation of such law, ordinance or resolution;

38 (3) any convictions occurring during a person's lifetime shall be taken
39 into account when determining the sentence to be imposed for a first,
40 second, third, fourth or subsequent offender;

41 (4) it is irrelevant whether an offense occurred before or after con-
42 viction for a previous offense; and

43 (5) a person may enter into a diversion agreement in lieu of further

1 criminal proceedings for a violation of this section, and amendments
2 thereto, or an ordinance which prohibits the acts of this section, and
3 amendments thereto, only once during the person's lifetime.

4 (n) Upon conviction of a person of a violation of this section or a
5 violation of a city ordinance or county resolution prohibiting the acts
6 prohibited by this section, the division, upon receiving a report of con-
7 viction, shall suspend, restrict or suspend and restrict the person's driving
8 privileges as provided by K.S.A. 8-1014, and amendments thereto.

9 (o) (1) Nothing contained in this section shall be construed as pre-
10 venting any city from enacting ordinances, or any county from adopting
11 resolutions, declaring acts prohibited or made unlawful by this act as
12 unlawful or prohibited in such city or county and prescribing penalties
13 for violation thereof. Except as specifically provided by this subsection,
14 the minimum penalty prescribed by any such ordinance or resolution shall
15 not be less than the minimum penalty prescribed by this act for the same
16 violation, and the maximum penalty in any such ordinance or resolution
17 shall not exceed the maximum penalty prescribed for the same violation.

18 Any such ordinance or resolution shall authorize the court to order that
19 the convicted person pay restitution to any victim who suffered loss due
20 to the violation for which the person was convicted. Except as provided
21 in paragraph (5), any such ordinance or resolution may require or au-
22 thorize the court to order that the convicted person's motor vehicle or
23 vehicles be impounded or immobilized for a period not to exceed one
24 year and that the convicted person pay all towing, impoundment and
25 storage fees or other immobilization costs.

26 (2) The court shall not order the impoundment or immobilization of
27 a motor vehicle driven by a person convicted of a violation of this section
28 if the motor vehicle had been stolen or converted at the time it was driven
29 in violation of this section.

30 (3) Prior to ordering the impoundment or immobilization of a motor
31 vehicle or vehicles owned by a person convicted of a violation of this
32 section, the court shall consider, but not be limited to, the following:

33 (A) Whether the impoundment or immobilization of the motor ve-
34 hicle would result in the loss of employment by the convicted person or
35 a member of such person's family; and

36 (B) whether the ability of the convicted person or a member of such
37 person's family to attend school or obtain medical care would be impaired.

38 (4) Any personal property in a vehicle impounded or immobilized
39 pursuant to this subsection may be retrieved prior to or during the period
40 of such impoundment or immobilization.

41 (5) As used in this subsection, the convicted person's motor vehicle
42 or vehicles shall include any vehicle leased by such person. If the lease
43 on the convicted person's motor vehicle subject to impoundment or im-

1 mobilization expires in less than one year from the date of the impound-
2 ment or immobilization, the time of impoundment or immobilization of
3 such vehicle shall be the amount of time remaining on the lease.

4 (p) No plea bargaining agreement shall be entered into nor shall any
5 judge approve a plea bargaining agreement entered into for the purpose
6 of permitting a person charged with a violation of this section, or a vio-
7 lation of any ordinance of a city or resolution of any county in this state
8 which prohibits the acts prohibited by this section, to avoid the mandatory
9 penalties established by this section or by the ordinance. For the purpose
10 of this subsection, entering into a diversion agreement pursuant to K.S.A.
11 12-4413 *et seq.* or 22-2906 *et seq.*, and amendments thereto, shall not
12 constitute plea bargaining.

13 (q) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may
14 be pleaded in the alternative, and the state, city or county, but shall not
15 be required to, may elect one or two of the three prior to submission of
16 the case to the fact finder.

17 (r) Upon a fourth or subsequent conviction, the judge of any court in
18 which any person is convicted of violating this section, may revoke the
19 person's license plate or temporary registration certificate of the motor
20 vehicle driven during the violation of this section for a period of one year.
21 Upon revoking any license plate or temporary registration certificate pur-
22 suant to this subsection, the court shall require that such license plate or
23 temporary registration certificate be surrendered to the court.

24 (s) For the purpose of this section: (1) "Alcohol concentration" means
25 the number of grams of alcohol per 100 milliliters of blood or per 210
26 liters of breath.

27 (2) "Imprisonment" shall include any restrained environment in
28 which the court and law enforcement agency intend to retain custody and
29 control of a defendant and such environment has been approved by the
30 board of county commissioners or the governing body of a city.

31 (3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-
32 4165, and amendments thereto.

33 (t) The amount of the increase in fines as specified in this section
34 shall be remitted by the clerk of the district court to the state treasurer
35 in accordance with the provisions of K.S.A. 75-4215, and amendments
36 thereto. Upon receipt of remittance of the increase provided in this act,
37 the state treasurer shall deposit the entire amount in the state treasury
38 and the state treasurer shall credit 50% to the community alcoholism and
39 intoxication programs fund and 50% to the department of corrections
40 alcohol and drug abuse treatment fund, which is hereby created in the
41 state treasury.

42 Sec. 4. K.S.A. 2003 Supp. 21-4602 is hereby amended to read as
43 follows: 21-4602. As used in K.S.A. 21-4601 through 21-4621, and amend-

1 ments thereto:

2 (a) "Court" means any court having jurisdiction and power to sen-
3 tence offenders for violations of the laws of this state.

4 (b) "Suspension of sentence" means a procedure under which a de-
5 fendant, found guilty of a crime, upon verdict or plea, is released by the
6 court without imposition of sentence. The release may be with or without
7 supervision in the discretion of the court. In felony cases, the court may
8 include confinement in a county jail not to exceed 60 days, which need
9 not be served consecutively, as a condition of suspension of sentence
10 pursuant to subsection (b)(4) of K.S.A. 21-4603 and amendments thereto.

11 (c) "Probation" means a procedure under which a defendant, found
12 guilty of a crime upon verdict or plea, is released by the court after im-
13 position of sentence, without imprisonment except as provided in felony
14 cases, subject to conditions imposed by the court and subject to the su-
15 pervision of the probation service of the court or community corrections.
16 In felony cases, the court may include confinement in a county jail not
17 to exceed 60 days, which need not be served consecutively, as a condition
18 of an original probation sentence and up to 60 days in a county jail upon
19 each revocation of the probation sentence pursuant to subsection (b)(3)
20 of K.S.A. 21-4603 and amendments thereto.

21 (d) "Parole" means the release of a prisoner to the community by the
22 Kansas parole board prior to the expiration of such prisoner's term, sub-
23 ject to conditions imposed by the board and to the secretary of correc-
24 tion's supervision. Parole also means the release by a court of competent
25 jurisdiction of a person confined in the county jail or other local place of
26 detention after conviction and prior to expiration of such person's term,
27 subject to conditions imposed by the court and its supervision. Where a
28 court or other authority has filed a warrant against the prisoner, the Kan-
29 sas parole board or paroling court may release the prisoner on parole to
30 answer the warrant of such court or authority.

31 (e) "Correctional institution" means the Lansing correctional facility,
32 Hutchinson correctional facility, Topeka correctional facility, Norton cor-
33 rectional facility, Ellsworth correctional facility, Winfield correctional fa-
34 cility, Osawatomie correctional facility, Larned correctional mental health
35 facility, Toronto correctional work facility, Stockton correctional facility,
36 Wichita work release facility, El Dorado correctional facility, *correctional*
37 *treatment facility at Topeka*, and any other correctional institution estab-
38 lished by the state for the confinement of offenders, and under control
39 of the secretary of corrections.

40 (f) "Community correctional services program" means a program
41 which operates under the community corrections act and to which a de-
42 fendant is assigned for supervision, confinement, detention, care or treat-
43 ment, subject to conditions imposed by the court. A defendant assigned

1 to a community correctional services program shall be subject to the con-
2 tinuing jurisdiction of the court and in no event shall be considered to be
3 in the custody of or under the supervision of the secretary of corrections.

4 (g) "Postrelease supervision," for crimes committed on or after July
5 1, 1993, means the same as provided in K.S.A. 21-4703 and amendments
6 thereto.

7 Sec. 5. K.S.A. 2003 Supp. 21-4704 is hereby amended to read as
8 follows: 21-4704. (a) For purposes of sentencing, the following sentencing
9 guidelines grid for nondrug crimes shall be applied in felony cases for
10 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	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 31 29
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

Legend
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. *Except as provided in section 1, and*
35 *amendments thereto, and notwithstanding the provisions of any other sec-*
36 *tion, the term of imprisonment imposed for the violation of the felony*
37 *provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a and sub-*
38 *sections (b)(3) and (b)(4) of K.S.A. 21-3710, and amendments thereto*
39 *shall not be served in a state facility in the custody of the secretary of*
40 *corrections.*

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

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

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

31 (l) The sentence for a violation of subsection (a) of K.S.A. 21-3715
32 and amendments thereto when such person being sentenced has a prior
33 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-
34 3716 and amendments thereto shall be presumed imprisonment.

35 Sec. 6. K.S.A. 2003 Supp. 38-1602 is hereby amended to read as
36 follows: 38-1602. As used in this code, unless the context otherwise
37 requires:

38 (a) “Juvenile” means a person 10 or more years of age but less than
39 18 years of age.

40 (b) “Juvenile offender” means a person who commits an offense
41 while a juvenile which if committed by an adult would constitute the
42 commission of a felony or misdemeanor as defined by K.S.A. 21-3105,
43 and amendments thereto, or who violates the provisions of K.S.A. 21-

1 4204a or K.S.A. 41-727 or subsection (j) of K.S.A. 74-8810, and amend-
2 ments thereto, but does not include:

3 (1) A person 14 or more years of age who commits a traffic offense,
4 as defined in subsection (d) of K.S.A. 8-2117, and amendments thereto;

5 (2) a person 16 years of age or over who commits an offense defined
6 in chapter 32 of the Kansas Statutes Annotated;

7 (3) a person under 18 years of age who previously has been:

8 (A) Convicted as an adult under the Kansas code of criminal
9 procedure;

10 (B) sentenced as an adult under the Kansas code of criminal proce-
11 dure following termination of status as an extended jurisdiction juvenile
12 pursuant to K.S.A. 38-16,126, and amendments thereto; or

13 (C) convicted or sentenced as an adult in another state or foreign
14 jurisdiction under substantially similar procedures described in K.S.A. 38-
15 1636, and amendments thereto, or because of attaining the age of majority
16 designated in that state or jurisdiction.

17 (c) “Parent,” when used in relation to a juvenile or a juvenile of-
18 fender, includes a guardian, conservator and every person who is by law
19 liable to maintain, care for or support the juvenile.

20 (d) “Law enforcement officer” means any person who by virtue of
21 that person’s office or public employment is vested by law with a duty to
22 maintain public order or to make arrests for crimes, whether that duty
23 extends to all crimes or is limited to specific crimes.

24 (e) “Youth residential facility” means any home, foster home or struc-
25 ture which provides twenty-four-hour-a-day care for juveniles and which
26 is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes
27 Annotated.

28 (f) “Juvenile detention facility” means any secure public or private
29 facility which is used for the lawful custody of accused or adjudicated
30 juvenile offenders and which shall not be a jail.

31 (g) “Juvenile correctional facility” means a facility operated by the
32 commissioner for juvenile offenders.

33 (h) “Warrant” means a written order by a judge of the court directed
34 to any law enforcement officer commanding the officer to take into cus-
35 tody the juvenile named or described therein.

36 (i) “Commissioner” means the commissioner of juvenile justice.

37 (j) “Jail” means:

38 (1) An adult jail or lockup; or

39 (2) a facility in the same building as an adult jail or lockup, unless the
40 facility meets all applicable licensure requirements under law and there
41 is (A) total separation of the juvenile and adult facility spatial areas such
42 that there could be no haphazard or accidental contact between juvenile
43 and adult residents in the respective facilities; (B) total separation in all

1 juvenile and adult program activities within the facilities, including rec-
2 reation, education, counseling, health care, dining, sleeping, and general
3 living activities; and (C) separate juvenile and adult staff, including man-
4 agement, security staff and direct care staff such as recreational, educa-
5 tional and counseling.

6 (k) “Court-appointed special advocate” means a responsible adult,
7 other than an attorney appointed pursuant to K.S.A. 38-1606 and amend-
8 ments thereto, who is appointed by the court to represent the best inter-
9 ests of a child, as provided in K.S.A. 38-1606a, and amendments thereto,
10 in a proceeding pursuant to this code.

11 (l) “Juvenile intake and assessment worker” means a responsible
12 adult authorized to perform intake and assessment services as part of the
13 intake and assessment system established pursuant to K.S.A. 75-7023, and
14 amendments thereto.

15 (m) “Institution” means the following institutions: ~~The Kansas juve-~~
16 ~~nile correctional complex, the~~ Atchison juvenile correctional facility, the
17 Beloit juvenile correctional facility, the Larned juvenile correctional fa-
18 cility and the Topeka juvenile correctional facility.

19 (n) “Sanctions house” means a facility which is operated or structured
20 so as to ensure that all entrances and exits from the facility are under the
21 exclusive control of the staff of the facility, whether or not the person
22 being detained has freedom of movement within the perimeters of the
23 facility, or which relies on locked rooms and buildings, fences, or physical
24 restraint in order to control the behavior of its residents. Upon an order
25 from the court, a licensed juvenile detention facility may serve as a sanc-
26 tions house.

27 (o) “Sentencing risk assessment tool” means an instrument adminis-
28 tered to juvenile offenders which delivers a score, or group of scores,
29 describing, but not limited to describing, the juvenile’s potential risk to
30 the community.

31 (p) “Educational institution” means all schools at the elementary and
32 secondary levels.

33 (q) “Educator” means any administrator, teacher or other profes-
34 sional or paraprofessional employee of an educational institution who has
35 exposure to a pupil specified in subsection (a)(1) through (5) of K.S.A.
36 72-89b03, and amendments thereto.

37 (r) “Juvenile corrections officer” means a certified employee of the
38 juvenile justice authority working at a juvenile correctional facility as-
39 signed by the commissioner with responsibility for maintaining custody,
40 security and control of juveniles in the custody of the commissioner at a
41 juvenile correctional facility.

42 (s) “Investigator” means an employee of the juvenile justice authority
43 assigned by the commissioner with the responsibility for investigations

1 concerning employees at the juvenile correctional facilities and juveniles
2 in the custody of the commissioner at a juvenile correctional facility.

3 Sec. 7. K.S.A. 2003 Supp. 72-978 is hereby amended to read as fol-
4 lows: 72-978. (a) (1) In each school year, in accordance with appropria-
5 tions for special education and related services provided under this act,
6 each school district which has provided special education and related
7 services in compliance with the provisions of this act shall be entitled to
8 receive:

9 (A) Reimbursement for actual travel allowances paid to special teach-
10 ers at not to exceed the rate specified under K.S.A. 75-3203, and amend-
11 ments thereto, for each mile actually traveled during the school year in
12 connection with duties in providing special education or related services
13 for exceptional children; such reimbursement shall be computed by the
14 state board by ascertaining the actual travel allowances paid to special
15 teachers by the school district for the school year and shall be in an
16 amount equal to 80% of such actual travel allowances;

17 (B) reimbursement in an amount equal to 80% of the actual travel
18 expenses incurred for providing transportation for exceptional children to
19 special education or related services; such reimbursement shall not be
20 paid if such child has been counted in determining the transportation
21 weighting of the district under the provisions of the school district finance
22 and quality performance act;

23 (C) reimbursement in an amount equal to 80% of the actual expenses
24 incurred for the maintenance of an exceptional child at some place other
25 than the residence of such child for the purpose of providing special
26 education or related services; such reimbursement shall not exceed \$600
27 per exceptional child per school year; and

28 (D) except for those school districts entitled to receive reimburse-
29 ment under subsection (b) or (c), after subtracting the amounts of re-
30 imbursement under paragraphs (A), (B) and (C) of this subsection (a)
31 from the total amount appropriated for special education and related
32 services under this act, an amount which bears the same proportion to
33 the remaining amount appropriated as the number of full-time equivalent
34 special teachers who are qualified to provide special education or related
35 services to exceptional children and are employed by the school district
36 for approved special education or related services bears to the total num-
37 ber of such qualified full-time equivalent special teachers employed by
38 all school districts for approved special education or related services.

39 (2) Each special teacher who is qualified to assist in the provision of
40 special education or related services to exceptional children shall be
41 counted as $\frac{2}{3}$ full-time equivalent special teacher who is qualified to pro-
42 vide special education or related services to exceptional children.

43 (b) Each school district which has paid amounts for the provision of

1 special education and related services under an interlocal agreement shall
2 be entitled to receive reimbursement under subsection (a)(1)(D). The
3 amount of such reimbursement for the district shall be the amount which
4 bears the same relation to the aggregate amount available for reimburse-
5 ment for the provision of special education and related services under the
6 interlocal agreement, as the amount paid by such district in the current
7 school year for provision of such special education and related services
8 bears to the aggregate of all amounts paid by all school districts in the
9 current school year who have entered into such interlocal agreement for
10 provision of such special education and related services.

11 (c) Each contracting school district which has paid amounts for the
12 provision of special education and related services as a member of a co-
13 operative shall be entitled to receive reimbursement under subsection
14 (a)(1)(D). The amount of such reimbursement for the district shall be the
15 amount which bears the same relation to the aggregate amount available
16 for reimbursement for the provision of special education and related serv-
17 ices by the cooperative, as the amount paid by such district in the current
18 school year for provision of such special education and related services
19 bears to the aggregate of all amounts paid by all contracting school dist-
20 ricts in the current school year by such cooperative for provision of such
21 special education and related services.

22 (d) No time spent by a special teacher in connection with duties
23 performed under a contract entered into by ~~the Kansas juvenile correc-~~
24 ~~tional complex~~, the Atchison juvenile correctional facility, the Beloit ju-
25 venile correctional facility, the Larned juvenile correctional facility, or the
26 Topeka juvenile correctional facility and a school district for the provision
27 of special education services by such state institution shall be counted in
28 making computations under this section.

29 Sec. 8. K.S.A. 2003 Supp. 75-3765 is hereby amended to read as
30 follows: 75-3765. (a) (1) The secretary of administration shall assign space
31 and facilities in all state-owned or operated property or buildings in Shaw-
32 nee county, Kansas, except the state capitol, Topeka correctional facility,
33 the Kansas neurological institute, the Topeka juvenile correctional facility,
34 ~~the Kansas juvenile correctional complex~~ *treatment facility at Topeka*, the
35 employment security administrative office building, 401 Topeka avenue,
36 Kansas state employment service building, 1309 Topeka avenue, state
37 highway shops and laboratory and property of the Kansas national guard
38 for the use of the various state agencies. The secretary may determine,
39 fix and establish a system of rental charges by the square foot and collect
40 the same monthly for space and facilities occupied by each state agency
41 whenever any appropriation for rental for space and facilities is made
42 therefor, in an amount not to exceed the amount appropriated.

43 (2) The secretary of administration may assign space and facilities,

1 establish a system of rental charges and collect rents for property and
2 buildings owned or controlled by the department of administration in
3 other parts of the state.

4 (3) The amounts collected under paragraphs (1) and (2) shall be re-
5 mitted by the secretary of administration to the state treasurer in accord-
6 ance with the provisions of K.S.A. 75-4215, and amendments thereto.
7 Upon receipt of each such remittance, the state treasurer shall deposit
8 the entire amount in the state treasury to the credit of the state buildings
9 operating fund or other funds of the department of administration as
10 prescribed by the secretary of administration.

11 (4) On or before December 31 of each year, the secretary of admin-
12 istration shall present a report to the joint committee on state building
13 construction concerning any actions taken by the secretary pursuant to
14 authority granted to the secretary under this subsection. The report shall
15 describe the action taken and the statutory authority authorizing such
16 action.

17 (b) The secretary of administration shall require five-year building
18 space utilization plans from all state agencies and develop a database of
19 all state-owned or leased building and storage space. This database shall
20 serve as the central repository of state-owned or leased building and stor-
21 age space information. All changes made in the ownership or leasing
22 status of all building space utilized by state agencies shall be reported to
23 the secretary of administration and entered into this database. The da-
24 tabase shall include the actual and budgeted amount of money paid by
25 state agencies for building and storage space. The database may include
26 any other information related to the building space needs of the state as
27 determined to be necessary by the secretary of administration.

28 All state agencies shall cooperate with requests for information con-
29 cerning building space and storage space made by the secretary of ad-
30 ministration or the secretary of administration's designee.

31 On or before December 31 of each year, the secretary of administration
32 shall present a report of state-owned or leased building and storage space
33 information to the joint committee on state building construction and
34 shall provide notice at the same time to the secretary of the senate and
35 to the chief clerk of the house of representatives that such report is avail-
36 able to members of the legislature.

37 (c) As used in this section, "state agencies" also shall include any
38 quasi-state agency.

39 Sec. 9. K.S.A. 75-5202 is hereby amended to read as follows: 75-
40 5202. As used in K.S.A. 75-5201 et seq. and amendments thereto, unless
41 the context clearly requires otherwise:

42 (a) "Secretary" means the secretary of corrections.

43 (b) "Parole board" means the Kansas parole board established by

1 K.S.A. 22-3707 and amendments thereto.

2 (c) "Inmate" means any person incarcerated in any correctional in-
3 stitution of the state of Kansas.

4 (d) "Correctional institution" means the Lansing correctional facility,
5 Hutchinson correctional facility, Topeka correctional facility, Norton cor-
6 rectional facility, Ellsworth correctional facility, Winfield correctional fa-
7 cility, Osawatomie correctional facility, Larned correctional mental health
8 facility, Toronto correctional work facility, Stockton correctional facility,
9 Wichita work release facility, El Dorado correctional facility, *correctional*
10 *treatment facility at Topeka*, and any other correctional institution estab-
11 lished by the state for the confinement of offenders under control of the
12 secretary of corrections.

13 (e) "Warden" means the person in charge of the operation and su-
14 pervision of a correctional institution.

15 (f) "Corrections officer" means a full-time, salaried officer or em-
16 ployee under the jurisdiction of the secretary, whose duties include the
17 receipt, custody, control, maintenance, discipline, security and apprehen-
18 sion of persons convicted of criminal offense in this state and sentenced
19 to a term of imprisonment under the custody of the secretary.

20 (g) "Parole officer" means a full-time salaried officer or employee
21 under the jurisdiction of the secretary whose duties include:

22 (1) Investigation, supervision, arrest and control of persons on parole
23 or postrelease supervision and the enforcement of the conditions of parole
24 or postrelease supervision; and

25 (2) services which relate to probationers, parolees or persons on post-
26 release supervision and are required by the uniform act for out-of-state
27 parolee supervision.

28 Sec. 10. K.S.A. 2003 Supp. 76-3201 is hereby amended to read as
29 follows: 76-3201. On and after July 1, 1997, the commissioner shall ap-
30 point the superintendents of the Atchison juvenile correctional facility,
31 the Beloit juvenile correctional facility, the Topeka juvenile correctional
32 facility and the Larned juvenile correctional facility. ~~On and after July 1,~~
33 ~~2003, the commissioner shall appoint the superintendent of the Kansas~~
34 ~~juvenile correctional complex.~~ Superintendents shall be in the unclassified
35 service under the Kansas civil service act. A superintendent may be re-
36 moved at any time by the commissioner. Each superintendent shall re-
37 ceive an annual salary fixed by the commissioner, with the approval of
38 the governor. The commissioner may appoint an acting superintendent
39 for any institution which has a superintendent to serve temporarily until
40 a vacancy is filled. Acting superintendents shall have the same powers,
41 duties and functions as superintendents.

42 Sec. 11. K.S.A. 75-5202 and K.S.A. 2003 Supp. 8-1567, 21-4602, 21-
43 4704, 38-1602, 72-978, 75-3765, 76-3201 and 76-3205 are hereby

1 repealed.

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