

HOUSE BILL No. 2605

By Representative Owens

1-12

9 AN ACT concerning crimes, punishment and criminal procedure; relat-
10 ing to a drug and alcohol treatment program and facility; amending
11 K.S.A. 2005 Supp. 8-1567, 21-4603d, 21-4704 and 21-4705 and re-
12 pealing the existing sections.
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Be it enacted by the Legislature of the State of Kansas:

15 New Section 1. (a) There is hereby established a prison sanction of
16 drug and alcohol treatment programs for certain offenders.

17 (b) Except as provided in subsection (g), placement of offenders in
18 drug and alcohol treatment programs by the court shall be limited to
19 placement of adult offenders:

20 (1) Convicted of a violation of K.S.A. 8-1567, and amendments
21 thereto, if within 10 years immediately preceding commission of the vi-
22 olation of K.S.A. 8-1567, and amendments thereto, the offender has been
23 convicted of K.S.A. 8-1567, and amendments thereto, two or more times;

24 (2) convicted of a third felony violation of K.S.A. 65-4160 or 65-4162,
25 and amendments thereto:

26 (A) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or
27 4-I of the sentencing guidelines grid for drug crimes and except as pro-
28 vided in paragraph (3), such offender has no felony conviction of K.S.A.
29 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, and amendments
30 thereto, or any substantially similar offense from another jurisdiction; or

31 (B) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of
32 the sentencing guidelines grid for drug crimes and except as provided in
33 paragraph (3), such offender has no felony conviction of K.S.A. 65-4142,
34 65-4159, 65-4161, 65-4163 or 65-4164, and amendments thereto, or any
35 substantially similar offense from another jurisdiction, if such person fel-
36 onies committed by the offender were severity level 8, 9 or 10 or nongrid
37 offenses of the sentencing guidelines grid for nondrug crimes; or

38 (3) convicted of a felony violation of 65-4160 or 65-4162, and amend-
39 ments thereto, and such offender has two felony convictions of K.S.A. 65-
40 4142, 65-4159, 65-4161, 65-4163 or 65-4164, and amendments thereto,
41 or any substantially similar offense from another jurisdiction; or

42 (4) who are subject to the revocation of probation pursuant to sub-
43 section (n) of K.S.A. 21-4603d, and amendments thereto.

1 (c) Except as provided in subsection (g), placement of offenders in
2 drug and alcohol treatment programs by the secretary of corrections shall
3 be limited to placement of adult offenders convicted of any felony crime
4 who, following a reception and diagnostic unit evaluation, the secretary
5 determines are willing and able to participate and are capable of bene-
6 fitting from such program.

7 (d) The sentencing court shall commit the offender to treatment in
8 a drug and alcohol treatment facility for 18 months.

9 (e) If the crime of conviction is K.S.A. 65-4160 or 65-4162, and
10 amendments thereto, and the conviction is not part of a multiple convic-
11 tion case and such crime did not physically harm another person, the
12 offender shall be eligible for release upon certification by the secretary,
13 following a consultation with the program providers, that the offender has
14 successfully completed the drug and alcohol treatment program.

15 (f) Placement of offenders under subsection (b)(2)(B) shall be subject
16 to the departure sentencing statutes of the Kansas sentencing guidelines
17 act.

18 (g) No offender shall be eligible for the drug and alcohol treatment
19 program if the offender has been convicted of an inherently dangerous
20 felony, as described in subsections (a)(1) through (a)(13), (a)(15) through
21 (a)(17) and (b) of K.S.A. 21-3436, and amendments thereto, or a sexually
22 violent crime, as defined in K.S.A. 22-3717, and amendments thereto.

23 New Sec. 2. The secretary of corrections shall establish a drug and
24 alcohol treatment facility or facilities to provide inmates with a highly
25 structured, secure drug and alcohol treatment program. Such drug and
26 alcohol treatment facility shall be a state correctional institution or facility
27 for confinement under the supervision of the secretary. A drug and al-
28cohol treatment facility shall accept defendants assigned to such facility
29 as provided in section 1, and amendments thereto.

30 Sec. 3. K.S.A. 2005 Supp. 8-1567 is hereby amended to read as fol-
31 lows: 8-1567. (a) No person shall operate or attempt to operate any vehicle
32 within this state while:

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

37 (2) the alcohol concentration in the person's blood or breath, as meas-
38 ured within two hours of the time of operating or attempting to operate
39 a vehicle, is .08 or more;

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

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

- 1 (5) under the influence of a combination of alcohol and any drug or
2 drugs to a degree that renders the person incapable of safely driving a
3 vehicle.
- 4 (b) No person shall operate or attempt to operate any vehicle within
5 this state if the person is a habitual user of any narcotic, hypnotic, som-
6 nifacient or stimulating drug.
- 7 (c) If a person is charged with a violation of this section involving
8 drugs, the fact that the person is or has been entitled to use the drug
9 under the laws of this state shall not constitute a defense against the
10 charge.
- 11 (d) Upon a first conviction of a violation of this section, a person shall
12 be guilty of a class B, nonperson misdemeanor and sentenced to not less
13 than 48 consecutive hours nor more than six months' imprisonment, or
14 in the court's discretion 100 hours of public service, and fined not less
15 than \$500 nor more than \$1,000. The person convicted must serve at
16 least 48 consecutive hours' imprisonment or 100 hours of public service
17 either before or as a condition of any grant of probation or suspension,
18 reduction of sentence or parole. In addition, the court shall enter an order
19 which requires that the person enroll in and successfully complete an
20 alcohol and drug safety action education program or treatment program
21 as provided in K.S.A. 8-1008, and amendments thereto, or both the ed-
22 ucation and treatment programs.
- 23 (e) On a second conviction of a violation of this section, a person shall
24 be guilty of a class A, nonperson misdemeanor and sentenced to not less
25 than 90 days nor more than one year's imprisonment and fined not less
26 than \$1,000 nor more than \$1,500. The person convicted must serve at
27 least five consecutive days' imprisonment before the person is granted
28 probation, suspension or reduction of sentence or parole or is otherwise
29 released. The five days' imprisonment mandated by this subsection may
30 be served in a work release program only after such person has served
31 48 consecutive hours' imprisonment, provided such work release program
32 requires such person to return to confinement at the end of each day in
33 the work release program. The court may place the person convicted
34 under a house arrest program pursuant to K.S.A. 21-4603b, and amend-
35 ments thereto, to serve the remainder of the minimum sentence only
36 after such person has served 48 consecutive hours' imprisonment. As a
37 condition of any grant of probation, suspension of sentence or parole or
38 of any other release, the person shall be required to enter into and com-
39 plete a treatment program for alcohol and drug abuse as provided in
40 K.S.A. 8-1008, and amendments thereto.
- 41 (f) (1) On the third conviction of a violation of this section, a person
42 shall be guilty of a nonperson felony and sentenced to not less than 90
43 days nor more than one year's imprisonment and fined not less than

1 \$1,500 nor more than \$2,500. The person convicted shall not be eligible
2 for release on probation, suspension or reduction of sentence or parole
3 until the person has served at least 90 days' imprisonment. The court may
4 also require as a condition of parole that such person enter into and
5 complete a treatment program for alcohol and drug abuse as provided by
6 K.S.A. 8-1008, and amendments thereto. The 90 days' imprisonment
7 mandated by this subsection may be served in a work release program
8 only after such person has served 48 consecutive hours' imprisonment,
9 provided such work release program requires such person to return to
10 confinement at the end of each day in the work release program. The
11 court may place the person convicted under a house arrest program pur-
12 suant to K.S.A. 21-4603b, and amendments thereto, to serve the remain-
13 der of the minimum sentence only after such person has served 48 con-
14 secutive hours' imprisonment.

15 (2) *On the third or subsequent conviction of a violation of this section,*
16 *if within 10 years immediately preceding commission of the violation of*
17 *K.S.A. 8-1567, and amendments thereto, the person has been convicted*
18 *of K.S.A. 8-1567, and amendments thereto, two or more times, a person*
19 *shall be guilty of a nonperson felony and sentenced to treatment pursuant*
20 *to section 1, and amendments thereto, in a drug and alcohol treatment*
21 *facility established in section 2, and amendments thereto.*

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

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

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

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

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

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

41 (2) The court shall not order the impoundment or immobilization of
42 a motor vehicle driven by a person convicted of a violation of this section
43 if the motor vehicle had been stolen or converted at the time it was driven

1 in violation of this section.

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

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

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

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

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

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

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

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

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

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

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

42 (5) a person may enter into a diversion agreement in lieu of further
43 criminal proceedings for a violation of this section, and amendments

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

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

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

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

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

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

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

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

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

40 (5) As used in this subsection, the convicted person's motor vehicle
41 or vehicles shall include any vehicle leased by such person. If the lease
42 on the convicted person's motor vehicle subject to impoundment or im-
43 mobilization expires in less than one year from the date of the impound-

1 ment or immobilization, the time of impoundment or immobilization of
2 such vehicle shall be the amount of time remaining on the lease.

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

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

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

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

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

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

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

41 Sec. 4. K.S.A. 2005 Supp. 21-4603d is hereby amended to read as
42 follows: 21-4603d. (a) Whenever any person has been found guilty of a
43 crime, the court may adjudge any of the following:

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

1 which leads to the defendant's conviction; or repay the amount of any
2 medical costs and expenses incurred by any law enforcement agency or
3 county. Such repayment of the amount of any such costs and expenses
4 incurred by a county, law enforcement agency, fire district, fire depart-
5 ment or fire company or any public funds utilized by a law enforcement
6 agency shall be deposited and credited to the same fund from which the
7 public funds were credited to prior to use by the county, law enforcement
8 agency, fire district, fire department or fire company;

9 (9) order the defendant to pay the administrative fee authorized by
10 K.S.A. 2005 Supp. 22-4529, and amendments thereto, unless waived by
11 the court;

12 (10) order the defendant to pay a domestic violence special program
13 fee authorized by K.S.A. 2005 Supp. 20-369, and amendments thereto;

14 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6),
15 (7), (8), (9) and (10); or

16 (12) suspend imposition of sentence in misdemeanor cases.

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

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

35 (c) In addition to or in lieu of any of the above, the court shall order
36 the defendant to submit to and complete an alcohol and drug evaluation,
37 and pay a fee therefor, when required by subsection (4) of K.S.A. 21-
38 4502, and amendments thereto.

39 (d) In addition to any of the above, the court shall order the defend-
40 ant to reimburse the county general fund for all or a part of the expend-
41 itures by the county to provide counsel and other defense services to the
42 defendant. Any such reimbursement to the county shall be paid only after
43 any order for restitution has been paid in full. In determining the amount

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

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

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

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

1 blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and
2 whose offense does not meet the requirements of K.S.A. 2005 Supp. 21-
3 4729, and amendments thereto, prior to revocation of a nonprison sanc-
4 tion of a defendant whose offense is classified in grid blocks 4-E or 4-F
5 of the sentencing guideline grid for drug crimes and whose offense does
6 not meet the requirements of K.S.A. 2005 Supp. 21-4729, and amend-
7 ments thereto, or prior to revocation of a nonprison sanction of a de-
8 fendant whose offense is classified in the presumptive nonprison grid
9 block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G
10 of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-
11 E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes,
12 the court shall consider placement of the defendant in the Labette cor-
13 rectional conservation camp, conservation camps established by the sec-
14 retary of corrections pursuant to K.S.A. 75-52,127, and amendment
15 thereto or a community intermediate sanction center. Pursuant to this
16 paragraph the defendant shall not be sentenced to imprisonment if space
17 is available in a conservation camp or a community intermediate sanction
18 center and the defendant meets all of the conservation camp's or a com-
19 munity intermediate sanction center's placement criteria unless the court
20 states on the record the reasons for not placing the defendant in a con-
21 servation camp or a community intermediate sanction center.

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

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

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

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

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

13 (l) The secretary of corrections is authorized to make direct place-
14 ment to the Labette correctional conservation camp or a conservation
15 camp established by the secretary pursuant to K.S.A. 75-52,127, and
16 amendments thereto, of an inmate sentenced to the secretary's custody
17 if the inmate: (1) Has been sentenced to the secretary for a probation
18 revocation, as a departure from the presumptive nonimprisonment grid
19 block of either sentencing grid, for an offense which is classified in grid
20 blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug
21 crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing
22 guidelines grid for drug crimes, or for an offense which is classified in
23 gridblocks 4-E or 4-F of the sentencing guidelines grid for drug crimes
24 and such offense does not meet the requirements of K.S.A. 2005 Supp.
25 21-4729, and amendments thereto, and (2) otherwise meets admission
26 criteria of the camp. If the inmate successfully completes a conservation
27 camp program, the secretary of corrections shall report such completion
28 to the sentencing court and the county or district attorney. The inmate
29 shall then be assigned by the court to six months of follow-up supervision
30 conducted by the appropriate community corrections services program.
31 The court may also order that supervision continue thereafter for the
32 length of time authorized by K.S.A. 21-4611 and amendments thereto.

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

36 (n) Except as provided by subsection (f) of K.S.A. 21-4705, and
37 amendments thereto, in addition to any of the above, for felony violations
38 of K.S.A. 65-4160 or 65-4162, and amendments thereto, the court shall
39 require the defendant who meets the requirements established in K.S.A.
40 2005 Supp. 21-4729, and amendments thereto, to participate in a certified
41 drug abuse treatment program, as provided in K.S.A. 2005 Supp. 75-
42 52,144, and amendments thereto, including but not limited to, an ap-
43 proved after-care plan. If the defendant fails to participate in or has a

1 pattern of intentional conduct that demonstrates the offender's refusal to
2 comply with or participate in the treatment program, as established by
3 judicial finding, the defendant shall be subject to revocation of probation
4 and, *the defendant shall be placed in treatment in a drug and alcohol*
5 *treatment facility established in section 2, and amendments thereto. Upon*
6 *the third failure*, the defendant shall serve the underlying prison sentence
7 as established in K.S.A. 21-4705, and amendments thereto. For those
8 offenders who are convicted on or after the effective date of this act, upon
9 completion of the underlying prison sentence, the defendant shall not be
10 subject to a period of postrelease supervision. The amount of time spent
11 participating in ~~such~~ *the certified drug abuse treatment* program, as pro-
12 *vided in K.S.A. 2005 Supp. 75-52,144, and amendments thereto*, shall not
13 be credited as service on the underlying prison sentence. *The amount of*
14 *time spent in placement in a drug and alcohol treatment facility estab-*
15 *lished in section 2, and amendments thereto, shall be credited as service*
16 *on the underlying prison sentence.*

17 Sec. 5. K.S.A. 2005 Supp. 21-4704 is hereby amended to read as
18 follows: 21-4704. (a) For purposes of sentencing, the following sentencing
19 guidelines grid for nondrug crimes shall be applied in felony cases for
20 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 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

LEGEND
Presumptive Probation
Presumptive Jail
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~~ *Except as provided in section 1, and amendments thereto,*
36 the term of imprisonment imposed for the violation of the felony provi-
37 sion of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a and subsec-
38 tions (b)(3) and (b)(4) of K.S.A. 21-3710, and amendments thereto shall
39 not be served in a state facility in the custody of the secretary of
40 corrections.

41 (j) (1) The sentence for any persistent sex offender whose current
42 convicted crime carries a presumptive term of imprisonment shall be
43 double the maximum duration of the presumptive imprisonment term.

1 The sentence for any persistent sex offender whose current conviction
2 carries a presumptive nonprison term shall be presumed imprisonment
3 and shall be double the maximum duration of the presumptive impris-
4 onment term.

5 (2) Except as otherwise provided in this subsection, as used in this
6 subsection, “persistent sex offender” means a person who: (A) (i) Has
7 been convicted in this state of a sexually violent crime, as defined in K.S.A.
8 22-3717 and amendments thereto; and (ii) at the time of the conviction
9 under paragraph (A) (i) has at least one conviction for a sexually violent
10 crime, as defined in K.S.A. 22-3717 and amendments thereto in this state
11 or comparable felony under the laws of another state, the federal gov-
12 ernment or a foreign government; or (B) (i) has been convicted of rape,
13 K.S.A. 21-3502, and amendments thereto; and (ii) at the time of the
14 conviction under paragraph (B) (i) has at least one conviction for rape in
15 this state or comparable felony under the laws of another state, the federal
16 government or a foreign government.

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

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

38 (l) The sentence for a violation of subsection (a) of K.S.A. 21-3715
39 and amendments thereto when such person being sentenced has a prior
40 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-
41 3716 and amendments thereto shall be presumed imprisonment.

42 Sec. 6. K.S.A. 2005 Supp. 21-4705 is hereby amended to read as
43 follows: 21-4705. (a) For the purpose of sentencing, the following sen-

1 tencing guidelines grid for drug crimes shall be applied in felony cases
2 under the uniform controlled substances act for crimes committed on or
3 after July 1, 1993:

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SENTENCING RANGE - DRUG 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 Felonies	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felonies	2+ Misdemeanors	1 Misdemeanor No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
III	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	30 28 26	28 26 24	26 24 22	24 22 20
IV	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
Boilerplate
Presumptive Imprisonment

1 (b) The provisions of subsection (a) will apply for the purpose of
2 sentencing violations of the uniform controlled substances act except as
3 otherwise provided by law. Sentences expressed in the sentencing guide-
4 lines grid for drug crimes in subsection (a) represent months of
5 imprisonment.

6 (c) (1) The sentencing court has discretion to sentence at any place
7 within the sentencing range. The sentencing judge shall select the center
8 of the range in the usual case and reserve the upper and lower limits for
9 aggravating and mitigating factors insufficient to warrant a departure. The
10 sentencing court shall not distinguish between the controlled substances
11 cocaine base (9041L000) and cocaine hydrochloride (9041L005) when
12 sentencing within the sentencing range of the grid block.

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

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

22 (d) Each grid block states the presumptive sentencing range for an
23 offender whose crime of conviction and criminal history place such of-
24 fender in that grid block. If an offense is classified in a grid block below
25 the dispositional line, the presumptive disposition shall be nonimprison-
26 ment. If an offense is classified in a grid block above the dispositional
27 line, the presumptive disposition shall be imprisonment. If an offense is
28 classified in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I, the court may impose
29 an optional nonprison sentence upon making the following findings on
30 the record:

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

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

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

39 Any decision made by the court regarding the imposition of an optional
40 nonprison sentence if the offense is classified in grid blocks 3-E, 3-F, 3-
41 G, 3-H or 3-I shall not be considered a departure and shall not be subject
42 to appeal.

43 (e) The sentence for a second or subsequent conviction of K.S.A. 65-

1 4159 and amendments thereto, manufacture of any controlled substance
2 or controlled substance analog shall be a presumptive term of imprison-
3 ment of two times the maximum duration of the presumptive term of
4 imprisonment. The court may impose an optional reduction in such sen-
5 tence of not to exceed 50% of the mandatory increase provided by this
6 subsection upon making a finding on the record that one or more of the
7 mitigating factors as specified in K.S.A. 21-4716 and amendments thereto
8 justify such a reduction in sentence. Any decision made by the court
9 regarding the reduction in such sentence shall not be considered a de-
10 parture and shall not be subject to appeal.

11 ~~(f) The sentence for a third or subsequent felony conviction of K.S.A.~~
12 ~~65-4160 or 65-4162, and amendments thereto, shall be a presumptive~~
13 ~~term of imprisonment and the defendant shall be sentenced to prison as~~
14 ~~provided by this section.~~ If the defendant has previously completed a
15 certified drug abuse treatment program, as provided in K.S.A. 2005 Supp.
16 75-52,144, and amendments thereto, or has been discharged or refused
17 to participate in a certified drug abuse treatment program, as provided
18 in K.S.A. 2005 Supp. 75-52,144, and amendments thereto:

19 *(1) The sentence for a third felony conviction of K.S.A. 65-4160 or*
20 *65-4162, and amendments thereto, shall be to treatment, pursuant to sec-*
21 *tion 1, and amendments thereto, in a drug and alcohol treatment facility*
22 *established in section 2, and amendments thereto; or*

23 *(2) the sentence for a fourth or subsequent felony conviction of K.S.A.*
24 *65-4160 or 65-4162, and amendments thereto, shall be a presumptive term*
25 *of imprisonment and the defendant shall be sentenced to prison as pro-*
26 *vided by this section.* Such sentence shall not be considered a departure
27 and shall not be subject to appeal.

28 Sec. 7. K.S.A. 2005 Supp. 8-1567, 21-4603d, 21-4704 and 21-4705
29 are hereby repealed.

30 Sec. 8. This act shall take effect and be in force from and after its
31 publication in the statute book.