

Substitute for SENATE BILL No. 409

By Committee on Judiciary

3-12

10 AN ACT relating to crimes, punishment and criminal procedure; provid-
11 ing for substance abuse treatment for certain offenders; amending
12 K.S.A. 21-4704, 21-4705, 21-4714 and 22-3716 and K.S.A. 2007 Supp.
13 8-1567, 75-5206, 75-5210 and 75-5220 and repealing the existing sec-
14 tions; also repealing K.S.A. 21-4704b and K.S.A. 2007 Supp. 8-1567b.
15

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

17 Section 1. K.S.A. 2007 Supp. 8-1567 is hereby amended to read as
18 follows: 8-1567. (a) No person shall operate or attempt to operate any
19 vehicle within this state while:

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

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

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

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

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

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

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

41 (d) Upon a first conviction of a violation of this section, a person shall
42 be guilty of a class B, nonperson misdemeanor and sentenced to not less
43 than 48 consecutive hours nor more than six months' imprisonment, or

1 in the court's discretion 100 hours of public service, and fined not less
2 than \$500 nor more than \$1,000. The person convicted must serve at
3 least 48 consecutive hours' imprisonment or 100 hours of public service
4 either before or as a condition of any grant of probation or suspension,
5 reduction of sentence or parole.

6 In addition, the court shall enter an order which requires that the
7 person enroll in and successfully complete an alcohol and drug safety
8 action education program or treatment program as provided in K.S.A. 8-
9 1008, and amendments thereto, or both the education and treatment
10 programs.

11 (e) On a second conviction of a violation of this section, a person shall
12 be guilty of a class A, nonperson misdemeanor and sentenced to not less
13 than 90 days nor more than one year's imprisonment and fined not less
14 than \$1,000 nor more than \$1,500. The person convicted must serve at
15 least five consecutive days' imprisonment before the person is granted
16 probation, suspension or reduction of sentence or parole or is otherwise
17 released. The five days' imprisonment mandated by this subsection may
18 be served in a work release program only after such person has served
19 48 consecutive hours' imprisonment, provided such work release program
20 requires such person to return to confinement at the end of each day in
21 the work release program. The court may place the person convicted
22 under a house arrest program pursuant to K.S.A. 21-4603b, and amend-
23 ments thereto, to serve the remainder of the minimum sentence only
24 after such person has served 48 consecutive hours' imprisonment.

25 As a condition of any grant of probation, suspension of sentence or
26 parole or of any other release, the person shall be required to enter into
27 and complete a treatment program for alcohol and drug abuse as provided
28 in K.S.A. 8-1008, and amendments thereto.

29 (f) ~~(4)~~ On the third conviction of a violation of this section, a person
30 shall be guilty of a nonperson felony and sentenced to not less than 90
31 days nor more than one year's imprisonment and fined not less than
32 \$1,500 nor more than \$2,500. The person convicted shall not be eligible
33 for release on probation, suspension or reduction of sentence or parole
34 until the person has served at least 90 days' imprisonment. The 90 days'
35 imprisonment mandated by this paragraph may be served in a work re-
36 lease program only after such person has served 48 consecutive hours'
37 imprisonment, provided such work release program requires such person
38 to return to confinement at the end of each day in the work release
39 program. The court may place the person convicted under a house arrest
40 program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve
41 the remainder of the minimum sentence only after such person has served
42 48 consecutive hours' imprisonment. ***[The court shall retain jurisdic-***
43 ***tion and may modify the sentence by directing that a less severe***

1 ***penalty be imposed in lieu of that originally adjudged within stat-***
2 ***utory limits.]***

3 ~~(2) The court may order that the term of imprisonment imposed pur-~~
4 ~~suant to paragraph (1) be served in a state facility in the custody of the~~
5 ~~secretary of corrections in a facility designated by the secretary for the~~
6 ~~provision of substance abuse treatment pursuant to the provisions of~~
7 ~~K.S.A. 21-4704, and amendments thereto. The person shall remain im-~~
8 ~~prisoned at the state facility only while participating in the substance~~
9 ~~abuse treatment program designated by the secretary and shall be re-~~
10 ~~tained to the custody of the sheriff for execution of the balance of the~~
11 ~~term of imprisonment upon completion of or the person's discharge from~~
12 ~~the substance abuse treatment program. Custody of the person shall be~~
13 ~~returned to the sheriff for execution of the sentence imposed in the event~~
14 ~~the secretary of corrections determines: (A) That substance abuse treat-~~
15 ~~ment resources or the capacity of the facility designated by the secretary~~
16 ~~for the incarceration and treatment of the person is not available; (B) the~~
17 ~~person fails to meaningfully participate in the treatment program of the~~
18 ~~designated facility; (C) the person is disruptive to the security or operation~~
19 ~~of the designated facility; or (D) the medical or mental health condition~~
20 ~~of the person renders the person unsuitable for confinement at the des-~~
21 ~~ignated facility. The determination by the secretary that the person either~~
22 ~~is not to be admitted into the designated facility or is to be transferred~~
23 ~~from the designated facility is not subject to review. The sheriff shall be~~
24 ~~responsible for all transportation expenses to and from the state correc-~~
25 ~~tional facility.~~

26 The court shall also require as a condition of parole that such person
27 enter into and complete a treatment program for alcohol and drug abuse
28 as provided by K.S.A. 8-1008, and amendments thereto.

29 (g) ~~(4)~~ On the fourth ~~or subsequent~~ conviction of a violation of this
30 section, a person shall be guilty of a nonperson felony and sentenced to
31 not less than 90 days nor more than one year's imprisonment and fined
32 \$2,500. The person convicted shall not be eligible for release on proba-
33 tion, suspension or reduction of sentence or parole until the person has
34 served at least 90 days' imprisonment. The 90 days' imprisonment man-
35 dated by this paragraph may be served in a work release program only
36 after such person has served 72 consecutive hours' imprisonment, pro-
37 vided such work release program requires such person to return to con-
38 finement at the end of each day in the work release program. ***[The court***
39 ***shall retain jurisdiction and may modify the sentence by directing***
40 ***that a less severe penalty be imposed in lieu of that originally ad-***
41 ***judged within statutory limits.]***

42 ~~(2) The court may order that the term of imprisonment imposed pur-~~
43 ~~suant to paragraph (1) be served in a state facility in the custody of the~~

1 ~~secretary of corrections in a facility designated by the secretary for the~~
2 ~~provision of substance abuse treatment pursuant to the provisions of~~
3 ~~K.S.A. 21-4704, and amendments thereto. The person shall remain im-~~
4 ~~prisoned at the state facility only while participating in the substance~~
5 ~~abuse treatment program designated by the secretary and shall be re-~~
6 ~~turned to the custody of the sheriff for execution of the balance of the~~
7 ~~term of imprisonment upon completion of or the person's discharge from~~
8 ~~the substance abuse treatment program. Custody of the person shall be~~
9 ~~returned to the sheriff for execution of the sentence imposed in the event~~
10 ~~the secretary of corrections determines. (A) That substance abuse treat-~~
11 ~~ment resources or the capacity of the facility designated by the secretary~~
12 ~~for the incarceration and treatment of the person is not available; (B) the~~
13 ~~person fails to meaningfully participate in the treatment program of the~~
14 ~~designated facility; (C) the person is disruptive to the security or operation~~
15 ~~of the designated facility; or (D) the medical or mental health condition~~
16 ~~of the person renders the person unsuitable for confinement at the des-~~
17 ~~ignated facility. The determination by the secretary that the person either~~
18 ~~is not to be admitted into the designated facility or is to be transferred~~
19 ~~from the designated facility is not subject to review. The sheriff shall be~~
20 ~~responsible for all transportation expenses to and from the state correc-~~
21 ~~tional facility.~~

22 *(h) (1) On the fifth or subsequent conviction of a violation of this*
23 *section, a person shall be guilty of a nonperson felony and sentenced to*
24 *not less than 90 days nor more than 12 months imprisonment and fined*
25 *\$2,500. The person convicted shall not be eligible for release on probation,*
26 *suspension or reduction of sentence or parole until the person has served*
27 *at least 90 days' imprisonment. The 90 days' imprisonment mandated by*
28 *this paragraph may be served in a work release program only after such*
29 *person has served 72 consecutive hours' imprisonment, provided such*
30 *work release program requires such person to return to confinement at*
31 *the end of each day in the work release program.*

32 *(2) The court may order that the term of imprisonment imposed pur-*
33 *suant to paragraph (1) be served in the custody of the secretary of cor-*
34 *rections in a state substance abuse treatment facility established by the*
35 *department of corrections, if the term of imprisonment is for 12 months,*
36 *or, if space is not available at such facility, in a facility designated by the*
37 *secretary for the provision of substance abuse treatment pursuant to the*
38 *provisions of K.S.A. 21-4704, and amendments thereto. The person shall*
39 *remain imprisoned at the state facility while participating in the substance*
40 *abuse treatment program designated by the secretary or if the person*
41 *refuses or fails to complete the substance abuse treatment program, the*
42 *expiration of the term of imprisonment. Upon successful completion of the*
43 *substance abuse treatment program the person shall be returned to the*

1 *custody of the sheriff for execution of the balance of the term of impris-*
2 *onment, except that the court shall retain jurisdiction and may modify the*
3 *sentence by directing that a less severe penalty be imposed in lieu of that*
4 *originally adjudged within statutory limits. The term of imprisonment in*
5 *the custody of the secretary of corrections shall not be reduced by good*
6 *time credit. The sheriff shall be responsible for all transportation expenses*
7 *to and from the state correctional facility.*

8 ~~At the time of the filing of the judgment form or journal entry as~~
9 ~~required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the~~
10 ~~court shall cause a certified copy to be sent to the officer having the~~
11 ~~offender in charge. The law enforcement agency maintaining custody and~~
12 ~~control of a defendant for imprisonment shall cause a certified copy of~~
13 ~~the judgment form or journal entry to be sent to the secretary of correc-~~
14 ~~tions within three business days of receipt of the judgment form or journal~~
15 ~~entry from the court and notify the secretary of corrections when the~~
16 ~~term of imprisonment expires and upon expiration of the term of impris-~~
17 ~~onment shall deliver the defendant to a location designated by the sec-~~
18 ~~retary. After the term of imprisonment imposed by the court under sub-~~
19 ~~section (h), the person shall be placed in the custody of the secretary of~~
20 ~~corrections supervised by community correctional services for a manda-~~
21 ~~tory one-year period of postrelease supervision, which such period of~~
22 ~~postrelease supervision shall not be reduced. During such postrelease~~
23 ~~supervision, the person shall be required to participate in an inpatient or~~
24 ~~outpatient program for alcohol and drug abuse, including, but not limited~~
25 ~~to, an approved aftercare plan or mental health counseling, as determined~~
26 ~~by the secretary and satisfy conditions imposed by the Kansas parole~~
27 ~~board as provided by K.S.A. 22-3717, and amendments thereto court.~~
28 Any violation of the conditions of such postrelease supervision may sub-
29 ject such person to revocation of postrelease supervision pursuant to
30 K.S.A. 75-5217 et seq., K.S.A. 22-3716, and amendments thereto, and as
31 otherwise provided by law.

32 ~~(h)~~ (i) Any person convicted of violating this section or an ordinance
33 which prohibits the acts that this section prohibits who had one or more
34 children under the age of 14 years in the vehicle at the time of the offense
35 shall have such person's punishment enhanced by one month of impris-
36 onment. This imprisonment must be served consecutively to any other
37 minimum mandatory penalty imposed for a violation of this section or an
38 ordinance which prohibits the acts that this section prohibits. Any en-
39 hanced penalty imposed shall not exceed the maximum sentence allow-
40 able by law. During the service of the enhanced penalty, the judge may
41 order the person on house arrest, work release or other conditional
42 release.

43 ~~(j)~~ (j) The court may establish the terms and time for payment of any

1 fines, fees, assessments and costs imposed pursuant to this section. Any
2 assessment and costs shall be required to be paid not later than 90 days
3 after imposed, and any remainder of the fine shall be paid prior to the
4 final release of the defendant by the court.

5 ~~(j)~~ (k) In lieu of payment of a fine imposed pursuant to this section,
6 the court may order that the person perform community service specified
7 by the court. The person shall receive a credit on the fine imposed in an
8 amount equal to \$5 for each full hour spent by the person in the specified
9 community service. The community service ordered by the court shall be
10 required to be performed not later than one year after the fine is imposed
11 or by an earlier date specified by the court. If by the required date the
12 person performs an insufficient amount of community service to reduce
13 to zero the portion of the fine required to be paid by the person, the
14 remaining balance of the fine shall become due on that date.

15 ~~(l)~~ (1) Except as provided in paragraph (5), in addition to any
16 other penalty which may be imposed upon a first conviction of a violation
17 of this section, the court may order that the convicted person's motor
18 vehicle or vehicles be impounded or immobilized for a period not to
19 exceed one year and that the convicted person pay all towing, impound-
20 ment and storage fees or other immobilization costs.

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

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

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

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

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

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

42 ~~(m)~~ (1) Except as provided in paragraph (3), in addition to any
43 other penalty which may be imposed upon a second or subsequent con-

1 viction of a violation of this section, the court shall order that each motor
2 vehicle owned or leased by the convicted person shall either be equipped
3 with an ignition interlock device or be impounded or immobilized for a
4 period of two years. The convicted person shall pay all costs associated
5 with the installation, maintenance and removal of the ignition interlock
6 device and all towing, impoundment and storage fees or other immobi-
7 lization costs.

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

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

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

24 ~~(n)~~ (o) For the purpose of determining whether a conviction is a first,
25 second, third, fourth or subsequent conviction in sentencing under this
26 section:

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

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

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

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

40 (5) a person may enter into a diversion agreement in lieu of further
41 criminal proceedings for a violation of this section, and amendments
42 thereto, or an ordinance which prohibits the acts of this section, and
43 amendments thereto, only once during the person's lifetime.

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

6 ~~(q)~~ (q) (1) Nothing contained in this section shall be construed as
7 preventing any city from enacting ordinances, or any county from adopt-
8 ing resolutions, declaring acts prohibited or made unlawful by this act as
9 unlawful or prohibited in such city or county and prescribing penalties
10 for violation thereof. Except as specifically provided by this subsection,
11 the minimum penalty prescribed by any such ordinance or resolution shall
12 not be less than the minimum penalty prescribed by this act for the same
13 violation, and the maximum penalty in any such ordinance or resolution
14 shall not exceed the maximum penalty prescribed for the same violation.
15 *On and after the effective date of this act and retroactive for ordinance*
16 *violations committed on or after July 1, 2006, an ordinance may grant to*
17 *a municipal court jurisdiction over a violation of such ordinance which*
18 *is concurrent with the jurisdiction of the district court over a violation of*
19 *this section, notwithstanding that the elements of such ordinance violation*
20 *are the same as the elements of a violation of this section that would*
21 *constitute, and be punished as, a felony.*

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

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

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

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

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

42 (4) Any personal property in a vehicle impounded or immobilized
43 pursuant to this subsection may be retrieved prior to or during the period

1 of such impoundment or immobilization.

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

8 ~~(q)~~ (r) No plea bargaining agreement shall be entered into nor shall
9 any judge approve a plea bargaining agreement entered into for the pur-
10 pose of permitting a person charged with a violation of this section, or a
11 violation of any ordinance of a city or resolution of any county in this state
12 which prohibits the acts prohibited by this section, to avoid the mandatory
13 penalties established by this section or by the ordinance. For the purpose
14 of this subsection, entering into a diversion agreement pursuant to K.S.A.
15 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not
16 constitute plea bargaining.

17 ~~(s)~~ (s) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3)
18 may be pleaded in the alternative, and the state, city or county, but shall
19 not be required to, may elect one or two of the three prior to submission
20 of the case to the fact finder.

21 ~~(t)~~ (t) Upon a fourth or subsequent conviction, the judge of any court
22 in which any person is convicted of violating this section, may revoke the
23 person's license plate or temporary registration certificate of the motor
24 vehicle driven during the violation of this section for a period of one year.
25 Upon revoking any license plate or temporary registration certificate pur-
26 suant to this subsection, the court shall require that such license plate or
27 temporary registration certificate be surrendered to the court.

28 ~~(u)~~ (u) For the purpose of this section: (1) "Alcohol concentration"
29 means the number of grams of alcohol per 100 milliliters of blood or per
30 210 liters of breath.

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

35 (3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-
36 4165, and amendments thereto.

37 ~~(v)~~ (v) The amount of the increase in fines as specified in this section
38 shall be remitted by the clerk of the district court to the state treasurer
39 in accordance with the provisions of K.S.A. 75-4215, and amendments
40 thereto. Upon receipt of remittance of the increase provided in this act,
41 the state treasurer shall deposit the entire amount in the state treasury
42 and the state treasurer shall credit 50% to the community alcoholism and
43 intoxication programs fund and 50% to the department of corrections

1 alcohol and drug abuse treatment fund, which is hereby created in the
2 state treasury.

3 ~~(v)~~ (w) Upon every conviction of a violation of this section, the court
4 shall order such person to submit to a pre-sentence alcohol and drug
5 abuse evaluation pursuant to K.S.A. 8-1008, and amendments thereto.
6 Such pre-sentence evaluation shall be made available, and shall be con-
7 sidered by the sentencing court.

8 Sec. 2. K.S.A. 21-4704 is hereby amended to read as follows: 21-
9 4704. (a) For purposes of sentencing, the following sentencing guidelines
10 grid for nondrug crimes shall be applied in felony cases for crimes com-
11 mitted 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 33	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	6 5 5

LEGEND
Presumptive Probation
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. 21-3415, and amend-
6 ments thereto, aggravated battery against a law enforcement officer com-
7 mitted prior to July 1, 2006, or K.S.A. 21-3411, and amendments thereto,
8 aggravated assault against a law enforcement officer, which places the
9 defendant'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 deci-
13 sion 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, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4)
25 of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments
26 thereto, shall be as provided by the specific mandatory sentencing
27 requirements of that section and shall not be subject to the provisions of
28 this section or K.S.A. 21-4707 and amendments thereto. If because of the
29 offender's criminal history classification the offender is subject to pre-
30 sumptive imprisonment or if the judge departs from a presumptive pro-
31 bation sentence and the offender is subject to imprisonment, the provi-
32 sions of this section and K.S.A. 21-4707, and amendments thereto, shall
33 apply and the offender shall not be subject to the mandatory sentence as
34 provided in K.S.A. 21-3710, and amendments thereto. Notwithstanding
35 the provisions of any other section, the term of imprisonment imposed
36 for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3)
37 of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710,
38 K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall not
39 be served in a state facility in the custody of the secretary of corrections,
40 *except that the term of imprisonment for felony violations under subsec-*
41 *tion (h) of K.S.A. 8-1567, and amendments thereto, may be served in a*
42 *state substance abuse treatment facility established by the department of*
43 *corrections, or if space is not available at such facility, in a state correc-*

1 *tional facility designated by the secretary of corrections.*

2 (j) (1) The sentence for any persistent sex offender whose current
3 convicted crime carries a presumptive term of imprisonment shall be
4 double the maximum duration of the presumptive imprisonment term.
5 The sentence for any persistent sex offender whose current conviction
6 carries a presumptive nonprison term shall be presumed imprisonment
7 and shall be double the maximum duration of the presumptive impris-
8 onment term.

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

21 (3) Except as provided in paragraph (2)(B), the provisions of this sub-
22 section shall not apply to any person whose current convicted crime is a
23 severity level 1 or 2 felony.

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

42 (l) ~~(4)~~ The sentence for a violation of subsection (a) of K.S.A. 21-
43 3715 and amendments thereto when such person being sentenced has a

1 prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715
2 or 21-3716 and amendments thereto shall be presumed imprisonment.

3 ~~(2) The sentence for a violation of K.S.A. 21-3715, and amendments~~
4 ~~thereto, when such person being sentenced has two or more prior con-~~
5 ~~victions for violations of K.S.A. 21-3715, and amendments thereto, or a~~
6 ~~prior conviction of K.S.A. 21-3715 and 21-3716, and amendments thereto,~~
7 ~~shall be presumed imprisonment and the defendant shall be sentenced~~
8 ~~to prison as provided by this section. Such sentence shall not be consid-~~
9 ~~ered a departure and shall not be subject to appeal.~~

10 (m) The sentence for a violation of K.S.A. 22-4903 or subsection (d)
11 of K.S.A. 21-3812, and amendments thereto, shall be presumptive im-
12 prisonment. If an offense under such sections is classified in grid blocks
13 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison
14 sentence upon making the following findings on the record:

15 (1) An appropriate treatment program exists which is likely to be
16 more effective than the presumptive prison term in reducing the risk of
17 offender recidivism, such program is available and the offender can be
18 admitted to such program within a reasonable period of time; or

19 (2) the nonprison sanction will serve community safety interests by
20 promoting offender reformation.

21 Any decision made by the court regarding the imposition of an optional
22 nonprison sentence pursuant to this section shall not be considered a
23 departure and shall not be subject to appeal.

24 *(n) The sentence for a felony violation of K.S.A. 21-3701, and amend-*
25 *ments thereto, when such person being sentenced has two or more prior*
26 *felony convictions for violations of K.S.A. 21-3701, and amendments*
27 *thereto, or the sentence for a violation of K.S.A. 21-3715, and amendments*
28 *thereto, when such person being sentenced has two or more prior convic-*
29 *tions for violations of K.S.A. 21-3715, and amendments thereto, or a prior*
30 *conviction of K.S.A. 21-3715 and 21-3716, and amendments thereto, shall*
31 *be presumed imprisonment and the defendant shall be sentenced to prison*
32 *as provided by this section, except that the court may recommend that an*
33 *offender be placed in a state substance abuse treatment facility established*
34 *by the department of corrections in the custody of the secretary of cor-*
35 *rections or, if space is not available at such facility, in a facility designated*
36 *by the secretary to participate in an intensive substance abuse treatment*
37 *program, upon making the following findings on the record:*

38 (1) *Substance addiction was an underlying factor in the commission*
39 *of the crime;*

40 (2) *substance abuse treatment with a possibility of an early release*
41 *from imprisonment is likely to be more effective than a prison term in*
42 *reducing the risk of offender recidivism; and*

43 (3) *participation in an intensive substance abuse treatment program*

1 *with the possibility of an early release from imprisonment will serve com-*
2 *munity safety interests by promoting offender reformation.*

3 *The intensive substance abuse treatment program shall be determined*
4 *by the secretary of corrections, but shall be for a period of at least four*
5 *months. Upon the successful completion of such intensive treatment pro-*
6 *gram, the offender shall be returned to the court and the court may modify*
7 *the sentence by directing that a less severe penalty be imposed in lieu of*
8 *that originally adjudged within statutory limits. If the offender's term of*
9 *imprisonment expires, the offender shall be placed under the applicable*
10 *period of postrelease supervision.*

11 *The sentence under this subsection shall not be considered a departure*
12 *and shall not be subject to appeal.*

13 Sec. 3. K.S.A. 21-4705 is hereby amended to read as follows: 21-
14 4705. (a) For the purpose of sentencing, the following sentencing guide-
15 lines grid for drug crimes shall be applied in felony cases under the uni-
16 form controlled substances act for crimes committed on or after July 1,
17 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 Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	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	29 28 23	23 22 20	19 18 17	15 13 14
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
Probation
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) (1) *The sentence for a third felony conviction of K.S.A. 65-4160*
12 *or 65-4162, and amendments thereto, shall be a presumptive term of im-*
13 *prisonment and the defendant shall be sentenced as provided by this sec-*
14 *tion. Such term of imprisonment shall be served in a state substance abuse*
15 *treatment facility established by the department of corrections or, if space*
16 *is not available in such facility, in a facility designated by the secretary*
17 *of corrections in the custody of the secretary of corrections to participate*
18 *in an intensive substance abuse treatment program. The intensive sub-*
19 *stance abuse treatment program shall be determined by the secretary of*
20 *corrections, but shall be for a period of at least four months. Upon the*
21 *successful completion of such intensive treatment program, the offender*
22 *shall be returned to the court and the court may modify the sentence by*
23 *directing that a less severe penalty be imposed in lieu of that originally*
24 *adjudged within statutory limits. If the offender's term of imprisonment*
25 *expires, the offender shall be placed under the applicable period of post-*
26 *release supervision.*

27 *The sentence under this subsection shall not be considered a departure*
28 *and shall not be subject to appeal.*

29 (2) The sentence for a ~~third~~ *fourth* or subsequent felony conviction
30 of K.S.A. 65-4160 or 65-4162, and amendments thereto, shall be a pre-
31 sumptive term of imprisonment and the defendant shall be sentenced to
32 prison as provided by this section, if the defendant has previously com-
33 pleted a certified drug abuse treatment program, as provided in K.S.A.
34 2007 Supp. 75-52,144, and amendments thereto, or has been discharged
35 or refused to participate in a certified drug abuse treatment program, as
36 provided in K.S.A. 2007 Supp. 75-52,144, and amendments thereto, *or*
37 *has participated in an intensive substance abuse treatment program under*
38 *paragraph (1).* Such sentence shall not be considered a departure and
39 shall not be subject to appeal.

40 Sec. 4. K.S.A. 21-4714 is hereby amended to read as follows: 21-
41 4714. (a) The court shall order the preparation of the presentence inves-
42 tigation report by the court services officer as soon as possible after con-
43 viction of the defendant.

- 1 (b) Each presentence report prepared for an offender to be sen-
2 tenced for one or more felonies committed on or after July 1, 1993, shall
3 be limited to the following information:
- 4 (1) A summary of the factual circumstances of the crime or crimes
5 of conviction.
- 6 (2) If the defendant desires to do so, a summary of the defendant's
7 version of the crime.
- 8 (3) When there is an identifiable victim, a victim report. The person
9 preparing the victim report shall submit the report to the victim and
10 request that the information be returned to be submitted as a part of the
11 presentence investigation. To the extent possible, the report shall include
12 a complete listing of restitution for damages suffered by the victim.
- 13 (4) An appropriate classification of each crime of conviction on the
14 crime severity scale.
- 15 (5) A listing of prior adult convictions or juvenile adjudications for
16 felony or misdemeanor crimes or violations of county resolutions or city
17 ordinances comparable to any misdemeanor defined by state law. Such
18 listing shall include an assessment of the appropriate classification of the
19 criminal history on the criminal history scale and the source of informa-
20 tion regarding each listed prior conviction and any available source of
21 journal entries or other documents through which the listed convictions
22 may be verified. If any such journal entries or other documents are ob-
23 tained by the court services officer, they shall be attached to the pre-
24 sentence investigation report. Any prior criminal history worksheets of
25 the defendant shall also be attached.
- 26 (6) A proposed grid block classification for each crime, or crimes of
27 conviction and the presumptive sentence for each crime, or crimes of
28 conviction.
- 29 (7) If the proposed grid block classification is a grid block which pre-
30 sumes imprisonment, the presumptive prison term range and the pre-
31 sumptive duration of postprison supervision as it relates to the crime
32 severity scale.
- 33 (8) If the proposed grid block classification does not presume prison,
34 the presumptive prison term range and the presumptive duration of the
35 nonprison sanction as it relates to the crime severity scale and the court
36 services officer's professional assessment as to recommendations for con-
37 ditions to be mandated as part of the nonprison sanction.
- 38 (9) For defendants who are being sentenced for a conviction of a
39 felony violation of K.S.A. 65-4160 or 65-4162, and amendments thereto,
40 and meet the requirements of K.S.A. 21-4729, and amendments thereto,
41 the drug abuse assessment as provided in K.S.A. 21-4729, and amend-
42 ments thereto.
- 43 (10) *For defendants who are being sentenced for a third conviction*

1 *of a violation of K.S.A. 65-4160 or 65-4162, and amendments thereto, the*
2 *drug abuse assessment as provided in K.S.A. 21-4729, and amendments*
3 *thereto.*

4 (c) The presentence report will become part of the court record and
5 shall be accessible to the public, except that the official version, defend-
6 ant's version and the victim's statement, any psychological reports, risk
7 and needs assessments and drug and alcohol reports and assessments shall
8 be accessible only to the parties, the sentencing judge, the department
9 of corrections, and if requested, the Kansas sentencing commission. If
10 the offender is committed to the custody of the secretary of corrections,
11 the report shall be sent to the secretary and, in accordance with K.S.A.
12 75-5220 and amendments thereto to the warden of the state correctional
13 institution to which the defendant is conveyed.

14 (d) The criminal history worksheet will not substitute as a present-
15 ence report.

16 (e) The presentence report will not include optional report compo-
17 nents, which would be subject to the discretion of the sentencing court
18 in each district except for psychological reports and drug and alcohol
19 reports.

20 (f) The court can take judicial notice in a subsequent felony proceed-
21 ing of an earlier presentence report criminal history worksheet prepared
22 for a prior sentencing of the defendant for a felony committed on or after
23 July 1, 1993.

24 (g) All presentence reports in any case in which the defendant has
25 been convicted of a felony shall be on a form approved by the Kansas
26 sentencing commission.

27 Sec. 5. K.S.A. 22-3716 is hereby amended to read as follows: 22-
28 3716. (a) At any time during probation, assignment to a community cor-
29 rectional services program, suspension of sentence or pursuant to sub-
30 section (d) for defendants who committed a crime prior to July 1, 1993,
31 and at any time during which a defendant is serving a nonprison sanction
32 for a crime committed on or after July 1, 1993, or pursuant to subsection
33 (d), the court may issue a warrant for the arrest of a defendant for violation
34 of any of the conditions of release or assignment, a notice to appear to
35 answer to a charge of violation or a violation of the defendant's nonprison
36 sanction. The notice shall be personally served upon the defendant. The
37 warrant shall authorize all officers named in the warrant to return the
38 defendant to the custody of the court or to any certified detention facility
39 designated by the court. Any court services officer or community correc-
40 tional services officer may arrest the defendant without a warrant or may
41 deputize any other officer with power of arrest to do so by giving the
42 officer a written statement setting forth that the defendant has, in the
43 judgment of the court services officer or community correctional services

1 officer, violated the conditions of the defendant's release or a nonprison
2 sanction. The written statement delivered with the defendant by the ar-
3 resting officer to the official in charge of a county jail or other place of
4 detention shall be sufficient warrant for the detention of the defendant.
5 After making an arrest, the court services officer or community correc-
6 tional services officer shall present to the detaining authorities a similar
7 statement of the circumstances of violation. Provisions regarding release
8 on bail of persons charged with a crime shall be applicable to defendants
9 arrested under these provisions.

10 (b) Upon arrest and detention pursuant to subsection (a), the court
11 services officer or community correctional services officer shall immedi-
12 ately notify the court and shall submit in writing a report showing in what
13 manner the defendant has violated the conditions of release or assignment
14 or a nonprison sanction. Thereupon, or upon an arrest by warrant as
15 provided in this section, the court shall cause the defendant to be brought
16 before it without unnecessary delay for a hearing on the violation charged.
17 The hearing shall be in open court and the state shall have the burden of
18 establishing the violation. The defendant shall have the right to be rep-
19 resented by counsel and shall be informed by the judge that, if the de-
20 fendant is financially unable to obtain counsel, an attorney will be ap-
21 pointed to represent the defendant. The defendant shall have the right
22 to present the testimony of witnesses and other evidence on the defend-
23 ant's behalf. Relevant written statements made under oath may be ad-
24 mitted and considered by the court along with other evidence presented
25 at the hearing. Except as otherwise provided, if the violation is estab-
26 lished, the court may continue or revoke the probation, assignment to a
27 community correctional services program, suspension of sentence or non-
28 prison sanction and may require the defendant to serve the sentence
29 imposed, or any lesser sentence, and, if imposition of sentence was sus-
30 pended, may impose any sentence which might originally have been im-
31 posed. Except as otherwise provided, no offender for whom a violation
32 of conditions of release or assignment or a nonprison sanction has been
33 established as provided in this section shall be required to serve any time
34 for the sentence imposed or which might originally have been imposed
35 in a state facility in the custody of the secretary of corrections for such
36 violation, unless such person has already at least one prior assignment to
37 a community correctional services program related to the crime for which
38 the original sentence was imposed, except these provisions shall not apply
39 to offenders who violate a condition of release or assignment or a non-
40 prison sanction by committing a new misdemeanor or felony offense. The
41 provisions of this subsection shall not apply to adult felony offenders as
42 described in subsection (a)(3) of K.S.A. 75-5291, and amendments
43 thereto. The court may require an offender for whom a violation of con-

1 ditions of release or assignment or a nonprison sanction has been estab-
2 lished as provided in this section to serve any time for the sentence im-
3 posed or which might originally have been imposed in a state facility in
4 the custody of the secretary of corrections without a prior assignment to
5 a community correctional services program if the court finds and sets
6 forth with particularity the reasons for finding that the safety of the mem-
7 bers of the public will be jeopardized or that the welfare of the inmate
8 will not be served by such assignment to a community correctional serv-
9 ices program. *For offenders who may be required to serve any time for*
10 *the sentence imposed or which might originally have been imposed in a*
11 *state facility in the custody of the secretary of corrections pursuant to this*
12 *subsection, the court upon sentencing the offender to the custody of the*
13 *secretary of corrections may recommend that an offender be placed in a*
14 *state substance abuse treatment facility established by the department of*
15 *corrections in the custody of the secretary of corrections or, if space is not*
16 *available at such facility, in a facility designated by the secretary to par-*
17 *ticipate in an intensive substance abuse treatment program, upon making*
18 *the following findings on the record:*

- 19 (1) *Substance addiction was an underlying factor for revocation;*
20 (2) *substance abuse treatment with a possibility of an early release*
21 *from imprisonment is likely to be more effective than a prison term in*
22 *reducing the risk of offender recidivism; and*
23 (3) *participation in an intensive substance abuse treatment program*
24 *with the possibility of an early release from imprisonment will serve com-*
25 *munity safety interests by promoting offender reformation.*

26 *The intensive substance abuse treatment program shall be determined*
27 *by the secretary of corrections, but shall be for a period of at least four*
28 *months. Upon the successful completion of such intensive treatment pro-*
29 *gram, the offender shall be returned to the court and the court may modify*
30 *the sentence by directing that a less severe penalty be imposed in lieu of*
31 *that originally adjudged within statutory limits. If the offender's term of*
32 *imprisonment expires, the offender shall be placed under the applicable*
33 *period of post release supervision.* When a new felony is committed while
34 the offender is on probation or assignment to a community correctional
35 services program, the new sentence shall be imposed pursuant to the
36 consecutive sentencing requirements of K.S.A. 21-4608 and amendments
37 thereto, and the court may sentence the offender to imprisonment for
38 the new conviction, even when the new crime of conviction otherwise
39 presumes a nonprison sentence. In this event, imposition of a prison sen-
40 tence for the new crime does not constitute a departure.

41 (c) A defendant who is on probation, assigned to a community cor-
42 rectional services program, under suspension of sentence or serving a
43 nonprison sanction and for whose return a warrant has been issued by

1 the court shall be considered a fugitive from justice if it is found that the
2 warrant cannot be served. If it appears that the defendant has violated
3 the provisions of the defendant's release or assignment or a nonprison
4 sanction, the court shall determine whether the time from the issuing of
5 the warrant to the date of the defendant's arrest, or any part of it, shall
6 be counted as time served on probation, assignment to a community cor-
7 rectional services program, suspended sentence or pursuant to a nonpri-
8 son sanction.

9 (d) The court shall have 30 days following the date probation, assign-
10 ment to a community correctional service program, suspension of sen-
11 tence or a nonprison sanction was to end to issue a warrant for the arrest
12 or notice to appear for the defendant to answer a charge of a violation of
13 the conditions of probation, assignment to a community correctional serv-
14 ice program, suspension of sentence or a nonprison sanction.

15 (e) Notwithstanding the provisions of any other law to the contrary,
16 an offender whose nonprison sanction is revoked and a term of impris-
17 onment imposed pursuant to either the sentencing guidelines grid for
18 nondrug or drug crimes shall not serve a period of postrelease supervision
19 upon the completion of the prison portion of that sentence. The provi-
20 sions of this subsection shall not apply to offenders sentenced to a non-
21 prison sanction pursuant to a dispositional departure, whose offense falls
22 within a border box of either the sentencing guidelines grid for nondrug
23 or drug crimes, offenders sentenced for a "sexually violent crime" as de-
24 fined by K.S.A. 22-3717, and amendments thereto, or whose nonprison
25 sanction was revoked as a result of a conviction for a new misdemeanor
26 or felony offense. The provisions of this subsection shall not apply to
27 offenders who are serving or are to begin serving a sentence for any other
28 felony offense that is not excluded from postrelease supervision by this
29 subsection on the effective date of this subsection. The provisions of this
30 subsection shall be applied retroactively. The department of corrections
31 shall conduct a review of all persons who are in the custody of the de-
32 partment as a result of only a revocation of a nonprison sanction. On or
33 before September 1, 2000, the department shall have discharged from
34 postrelease supervision those offenders as required by this subsection.

35 (f) Offenders who have been sentenced pursuant to K.S.A. 21-4729,
36 and amendments thereto, and who subsequently violate a condition of
37 the drug and alcohol abuse treatment program shall be subject to an
38 additional nonprison sanction for any such subsequent violation. Such
39 nonprison sanctions shall include, but not be limited to, up to 60 days in
40 a county jail, fines, community service, intensified treatment, house arrest
41 and electronic monitoring.

42 Sec. 6. K.S.A. 2007 Supp. 75-5206 is hereby amended to read as
43 follows: 75-5206. (a) Except as provided in subsection ~~(e)~~ or (d) or (e), to

1 carry out the purposes of this act, the secretary shall have authority to
2 order the housing and confinement of any person sentenced to the sec-
3 retary's custody to any institution or facility herein placed under the sec-
4 retary's supervision and management or to any contract facility, including
5 a conservation camp.

6 (b) All institutions of the department of corrections shall be institu-
7 tions for the incarceration of felons sentenced to the custody of the sec-
8 retary of corrections. The secretary may enter into interagency agree-
9 ments authorizing the use of department of corrections' institutions for
10 the temporary housing of pretrial detainees, misdemeanor offenders and
11 other persons confined in local detention facilities or jails when the local
12 facility cannot be used to house those persons due to a natural disaster
13 or other emergency. Authorization shall not be given for the temporary
14 housing of juveniles under 16 years of age.

15 (c) *The secretary shall have the authority to order the housing and*
16 *confinement of any person sentenced to the secretary's custody to a state*
17 *substance abuse treatment facility for the purpose of receiving substance*
18 *abuse treatment, if the secretary makes a determination that such person*
19 *would benefit from such assignment.*

20 ~~(c)~~ (d) No person under 16 years of age sentenced to the secretary's
21 custody shall be placed in the Lansing correctional facility or the Hutch-
22 inson correctional facility.

23 ~~(d)~~ (e) The secretary shall have the authority to order the placement
24 of a juvenile, as described in K.S.A. 2007 Supp. 38-2366, and amendments
25 thereto, in a juvenile correctional facility. Such juvenile shall be allowed
26 to be in a juvenile correctional facility only until such juvenile reaches
27 the age of 23 years.

28 Sec. 7. K.S.A. 2007 Supp. 75-5210 is hereby amended to read as
29 follows: 75-5210. (a) Persons committed to the institutional care of the
30 secretary of corrections shall be dealt with humanely, with efforts directed
31 to their rehabilitation and return to the community as safely and promptly
32 as practicable. For these purposes, the secretary shall establish programs
33 of classification and diagnosis, education, casework, mental health, coun-
34 seling and psychotherapy, chemical dependency counseling and treat-
35 ment, sexual offender counseling, prerelease programs which emphasize
36 re-entry skills, adjustment counseling and job placement, vocational train-
37 ing and guidance, work, library, physical education and other rehabilita-
38 tion and recreation services; the secretary may establish facilities for re-
39 ligious worship; and the secretary shall institute procedures for the study
40 and classification of inmates. The secretary shall maintain a comprehen-
41 sive record of the behavior of each inmate reflecting accomplishments
42 and progress toward rehabilitation as well as charges of infractions of rules
43 and regulations, punishments imposed and medical inspections made.

- 1 (b) Programs of work, education or training shall include a system of
2 promotional rewards entitling inmates to progressive transfer from high
3 security status to a lesser security status. The secretary shall have authority
4 at any time to transfer an inmate from one level of status to another level
5 of status. Inmates may apply to the secretary for such status privileges.
6 The secretary shall adopt a custody classification manual establishing stan-
7 dards relating to the transfer of an inmate from one status to another,
8 and in developing such standards the secretary shall take into consider-
9 ation progress made by the inmate toward attaining the educational, vo-
10 cational and behavioral goals set by the secretary for the individual in-
11 mate. In order to facilitate the reintegration into the community of some
12 inmates who are scheduled for release within the next 90 days, there shall
13 be a presumption of minimum security status for those offenders who
14 have been returned to prison for violating conditions of their postrelease
15 supervision not involving a new criminal conviction and whose last facility
16 security custody status was not either special management or maximum.
17 ~~This presumption shall be applied to the initial security custody status~~
18 ~~assigned to the offender upon readmission into a correctional facility. In-~~
19 ~~mates sentenced to a state substance abuse treatment facility established~~
20 ~~by the department of corrections, to a facility designated by the secretary~~
21 ~~for the provision of substance abuse treatment, or for whom the court has~~
22 ~~recommended intensive substance abuse treatment, shall have a presump-~~
23 ~~tion of minimum security status. These presumptions of minimum security~~
24 ~~status shall be applied to the initial security custody upon readmission~~
25 ~~into a correctional facility or admission into a state substance abuse treat-~~
26 ~~ment facility, unless the security custody status is increased pursuant to~~
27 ~~policies adopted by the secretary. The security custody status designated~~
28 ~~by the department shall not be subject to judicial review.~~
29 (c) The secretary, with the cooperation of the department of health
30 and environment, shall adopt rules and regulations establishing and pre-
31 scribing standards for health, medical and dental services for each insti-
32 tution, including preventive, diagnostic and therapeutic measures on both
33 an outpatient and a hospital basis, for all types of patients. An inmate may
34 be taken, when necessary, to a medical facility outside the institution.
35 (d) Under rules and regulations adopted by the secretary, directors
36 of institutions may authorize visits, correspondence and communication,
37 under reasonable conditions, between inmates and appropriate friends,
38 relatives and others.
39 (e) The secretary shall adopt rules and regulations under which in-
40 mates, as part of a program anticipating their release from minimum
41 security status, may be granted temporary furloughs from a correctional
42 institution or contract facility to visit their families or to be interviewed
43 by prospective employers.

- 1 (f) The secretary shall adopt rules and regulations for the mainte-
2 nance of good order and discipline in the correctional institutions, in-
3 cluding procedures for dealing with violations. Disciplinary rules and reg-
4 ulations may provide a system of punishment including segregation,
5 forfeitures of good time earned, fines, extra work, loss of privileges, re-
6 strictions and payment of restitution.
- 7 The secretary and any persons designated by rules and regulations of
8 the secretary may administer oaths for the purpose of conducting inves-
9 tigations and disciplinary proceedings pursuant to rules and regulations
10 adopted by the secretary under this subsection and under K.S.A. 75-5251
11 and amendments thereto. For this purpose, the secretary shall adopt rules
12 and regulations designating those persons who may administer oaths in
13 such investigations and proceedings and the form and manner of admin-
14 istration of the oaths.
- 15 (g) A copy of the rules and regulations adopted pursuant to subsec-
16 tion (f) shall be provided to each inmate. Other rules and regulations of
17 the secretary which are required to be published pursuant to K.S.A. 77-
18 415 through 77-437, and amendments thereto, shall be made available to
19 inmates by placing a copy in the inmate library at the institution or by
20 some other means providing reasonable accessibility to inmates.
- 21 (h) Any inmate participating in work and educational release pro-
22 grams under the provisions of K.S.A. 75-5267 and amendments thereto
23 shall continue to be in the legal custody of the secretary of corrections,
24 notwithstanding the inmate's absence from a correctional institution by
25 reason of employment, education or for any other purpose related to such
26 work and educational release programs, and any employer or educator of
27 that person shall be considered the representative or agent for the
28 secretary.
- 29 (i) The secretary shall establish administrative and fiscal procedures
30 to permit the use of regional or community institutions, local govern-
31 mental or private facilities or halfway houses for the placement of inmates
32 released for the purposes of this act and for the work and educational
33 release programs under K.S.A. 75-5267 and amendments thereto.
- 34 (j) The secretary may establish correctional work facilities and select
35 inmates to be assigned to such facilities.
- 36 (k) The secretary may acquire, in the name of the state, by lease,
37 purchase or contract additional facilities as may be needed for the housing
38 of persons in the secretary's custody.
- 39 (l) The secretary is hereby authorized to use any of the inmates as-
40 signed to the secretary's custody in the construction and repair of build-
41 ings or property on state owned or leased grounds.
- 42 (m) For the purposes of establishing and carrying out the programs
43 provided for by subsection (a) and by K.S.A. 75-5267 and amendments

1 thereto, the secretary may contract with qualified individuals, partner-
2 ships, corporations or organizations; with agencies of the state; or with
3 the United States or any political subdivision of the state, or any agency
4 thereof.

5 Sec. 8. K.S.A. 2007 Supp. 75-5220 is hereby amended to read as
6 follows: 75-5220. (a) Except as provided in subsection (d), within three
7 business days of receipt of the notice provided for in K.S.A. 75-5218 and
8 amendments thereto, the secretary of corrections shall notify the sheriff
9 having such offender in custody to convey such offender immediately to
10 the department of corrections reception and diagnostic unit or if space is
11 not available at such facility, then to some other state correctional insti-
12 tution until space at the facility is available, except that, in the case of
13 first offenders who are conveyed to a state correctional institution other
14 than the reception and diagnostic unit, such offenders shall be segregated
15 from the inmates of such correctional institution who are not being held
16 in custody at such institution pending transfer to the reception and di-
17 agnostic unit when space is available therein. The expenses of any such
18 conveyance shall be charged against and paid out of the general fund of
19 the county whose sheriff conveys the offender to the institution as pro-
20 vided in this subsection.

21 (b) Any female offender sentenced according to the provisions of
22 K.S.A. 75-5229 and amendments thereto shall be conveyed by the sheriff
23 having such offender in custody directly to a correctional institution des-
24 ignated by the secretary of corrections, subject to the provisions of K.S.A.
25 75-52,134 and amendments thereto. The expenses of such conveyance to
26 the designated institution shall be charged against and paid out of the
27 general fund of the county whose sheriff conveys such female offender
28 to such institution.

29 (c) Each offender conveyed to a state correctional institution pursu-
30 ant to this section shall be accompanied by the record of the offender's
31 trial and conviction as prepared by the clerk of the district court in ac-
32 cordance with K.S.A. 75-5218 and amendments thereto.

33 (d) If the offender in the custody of the secretary is a juvenile, as
34 described in K.S.A. 2007 Supp. 38-2366, and amendments thereto, such
35 juvenile shall not be transferred to the state reception and diagnostic
36 center until such time as such juvenile is to be transferred from a juvenile
37 correctional facility to a department of corrections institution or facility.

38 (e) *Any offender sentenced to a state substance abuse treatment fa-*
39 *cility established by the department of corrections shall not be transferred*
40 *to the state reception and diagnostic center but directly to such state*
41 *substance abuse treatment facility, unless otherwise directed by the sec-*
42 *retary. The secretary may transfer the housing and confinement of any*
43 *offender sentenced to a state substance abuse treatment facility to any*

1 *institution or facility pursuant to K.S.A. 75-5206, and amendments*
2 *thereto.*

3 *(f) An offender shall remain in the custody of the sheriff until com-*
4 *pletion of the prison portion of the sentence if:*

5 *(1) The offender has 10 or less days remaining to be served on the*
6 *prison portion of the sentence at the time the notice provided for in K.S.A.*
7 *75-5218, and amendments thereto, is received by the secretary of correc-*
8 *tions; or*

9 *(2) the offender has more than 10 days remaining to be served on the*
10 *prison portion of the sentence at the time the notice provided for in K.S.A.*
11 *75-5218, and amendments thereto, is received by the secretary of correc-*
12 *tions and the sheriff agrees to continue to maintain custody of such*
13 *offender.*

14 *The secretary shall inform the sheriff of the date of the expiration of*
15 *the prison portion of the offender's sentence under paragraphs (1) or (2).*

16 *Sec. 9. K.S.A. 21-4704, 21-4704b, 21-4705, 21-4714 and 22-3716 and*
17 *K.S.A. 2007 Supp. 8-1567, 8-1567b, 75-5206, 75-5210 and 75-5220 are*
18 *hereby repealed.*

19 *Sec. 10. This act shall take effect and be in force from and after its*
20 *publication in the statute book.*