

HOUSE BILL No. 2641

By Committee on Corrections and Juvenile Justice

2-3

9 AN ACT concerning crimes, punishment and criminal procedure; relat-
10 ing to unlawful sexual relations; sentencing; offender registration; traf-
11 fic in contraband in a correctional institution; amending K.S.A. 21-
12 3520 and K.S.A. 2009 Supp. 21-3826, 21-4704 and 22-4902 and
13 repealing the existing sections.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 21-3520 is hereby amended to read as follows: 21-
17 3520. (a) Unlawful sexual relations is engaging in consensual sexual in-
18 tercourse, lewd fondling or touching, or sodomy with a person who is not
19 married to the offender if:

20 (1) The offender is an employee or volunteer of the department of
21 corrections, or the employee or volunteer of a contractor who is under
22 contract to provide services for a correctional institution, and the person
23 with whom the offender is engaging in consensual sexual intercourse,
24 lewd fondling or touching, or sodomy is a person 16 years of age or older
25 who is an inmate; or

26 (2) the offender is a parole officer, volunteer for the department of
27 corrections or the employee or volunteer of a contractor who is under
28 contract to provide supervision services for persons on parole, conditional
29 release or postrelease supervision and the person with whom the offender
30 is engaging in consensual sexual intercourse, lewd fondling or touching,
31 or sodomy is a person 16 years of age or older who is an inmate who has
32 been released on parole or conditional release or postrelease supervision
33 under the direct supervision and control of the offender; or

34 (3) the offender is a law enforcement officer, an employee of a jail,
35 or the employee of a contractor who is under contract to provide services
36 in a jail and the person with whom the offender is engaging in consensual
37 sexual intercourse, lewd fondling or touching, or sodomy is a person 16
38 years of age or older who is confined by lawful custody to such jail; or

39 (4) the offender is a law enforcement officer, an employee of a ju-
40 venile detention facility or sanctions house, or the employee of a con-
41 tractor who is under contract to provide services in such facility or sanc-
42 tions house and the person with whom the offender is engaging in
43 consensual sexual intercourse, lewd fondling or touching, or sodomy is a

- 1 person 16 years of age or older who is confined by lawful custody to such
2 facility or sanctions house; or
- 3 (5) the offender is an employee of the juvenile justice authority or
4 the employee of a contractor who is under contract to provide services in
5 a juvenile correctional facility and the person with whom the offender is
6 engaging in consensual sexual intercourse, lewd fondling or touching, or
7 sodomy is a person 16 years of age or older who is confined by lawful
8 custody to such facility; or
- 9 (6) the offender is an employee of the juvenile justice authority or
10 the employee of a contractor who is under contract to provide direct
11 supervision and offender control services to the juvenile justice authority
12 and the person with whom the offender is engaging in consensual sexual
13 intercourse, lewd fondling or touching, or sodomy is 16 years of age or
14 older and (A) released on conditional release from a juvenile correctional
15 facility under the supervision and control of the juvenile justice authority
16 or juvenile community supervision agency or (B) placed in the custody of
17 the juvenile justice authority under the supervision and control of the
18 juvenile justice authority or juvenile community supervision agency and
19 the offender has knowledge that the person with whom the offender is
20 engaging in consensual sexual intercourse, lewd fondling or touching, or
21 sodomy is currently under supervision;
- 22 (7) the offender is an employee of the department of social and re-
23 habilitation services or the employee of a contractor who is under contract
24 to provide services in a social and rehabilitation services institution and
25 the person with whom the offender is engaging in consensual sexual in-
26 tercourse, not otherwise subject to subsection (a)(1)(C) of K.S.A. 21-3502,
27 and amendments thereto, lewd fondling or touching, or sodomy, not oth-
28 erwise subject to subsection (a)(3)(C) of K.S.A. 21-3506, and amendments
29 thereto, is a person 16 years of age or older who is a patient in such
30 institution;
- 31 (8) the offender is a teacher or a person in a position of authority and
32 the person with whom the offender is engaging in consensual sexual in-
33 tercourse, not otherwise subject to subsection (a)(2) of K.S.A. 21-3502 or
34 subsection (a)(1) of K.S.A. 21-3504, and amendments thereto, lewd fon-
35 dling or touching, not otherwise subject to K.S.A. 21-3503 or subsection
36 (a)(2) or (a)(3) of K.S.A. 21-3504, and amendments thereto, or sodomy,
37 not otherwise subject to K.S.A. 21-3505 or subsection (a)(1) or (a)(2) of
38 K.S.A. 21-3506, and amendments thereto, is a student enrolled at the
39 school where the offender is employed. If the offender is the parent of
40 the student, the provisions of K.S.A. 21-3603, and amendments thereto,
41 shall apply, not this subsection;
- 42 (9) the offender is a court services officer or the employee of a con-
43 tractor who is under contract to provide supervision services for persons

1 under court services supervision and the person with whom the offender
2 is engaging in consensual sexual intercourse, lewd fondling or touching,
3 or sodomy is a person 16 years of age or older who has been placed on
4 probation under the supervision and control of court services and the
5 offender has knowledge that the person with whom the offender is en-
6 gaging in consensual sexual intercourse, lewd fondling or touching, or
7 sodomy is currently under the supervision of court services; or
8 (10) the offender is a community correctional services officer or the
9 employee of a contractor who is under contract to provide supervision
10 services for persons under community corrections supervision and the
11 person with whom the offender is engaging in consensual sexual inter-
12 course, lewd fondling or touching, or sodomy is a person 16 years of age
13 or older who has been assigned to a community correctional services
14 program under the supervision and control of community corrections and
15 the offender has knowledge that the person with whom the offender is
16 engaging in consensual sexual intercourse, lewd fondling or touching, or
17 sodomy is currently under supervision of community corrections.
18 (b) *Unlawful sexual relations is a severity level 5, person felony.*
19 ~~(b)~~ (c) For purposes of this act:
20 (1) “Correctional institution” means the same as prescribed by K.S.A.
21 75-5202, and amendments thereto;
22 (2) “inmate” means the same as prescribed by K.S.A. 75-5202, and
23 amendments thereto;
24 (3) “parole officer” means the same as prescribed by K.S.A. 75-5202,
25 and amendments thereto;
26 (4) “postrelease supervision” means the same as prescribed in the
27 Kansas sentencing guidelines act in K.S.A. 21-4703, and amendments
28 thereto;
29 (5) “juvenile detention facility” means the same as prescribed by
30 K.S.A. 2007 Supp. 38-2302, and amendments thereto;
31 (6) “juvenile correctional facility” means the same as prescribed by
32 K.S.A. 2007 Supp. 38-2302, and amendments thereto;
33 (7) “sanctions house” means the same as prescribed by K.S.A. 2007
34 Supp. 38-2302, and amendments thereto;
35 (8) “institution” means the same as prescribed by K.S.A. 76-12a01,
36 and amendments thereto; and
37 (9) “teacher” means and includes teachers, supervisors, principals,
38 superintendents and any other professional employee in any public or
39 private school offering any of grades kindergarten through 12;
40 (10) “community corrections” means the entity responsible for su-
41 pervising adults and juvenile offenders for confinement, detention, care
42 or treatment, subject to conditions imposed by the court pursuant to the
43 community corrections act, K.S.A. 75-5290, and amendments thereto,

1 and the Kansas juvenile justice code, K.S.A. 38-1601 et seq., and amend-
2 ments thereto;

3 (11) “court services” means the entity appointed by the district court
4 that is responsible for supervising adults and juveniles placed on probation
5 and misdemeanants placed on parole by district courts of this state;

6 (12) “law enforcement officer” means the same as prescribed by
7 K.S.A. 21-3110, and amendments thereto; and

8 (13) “juvenile community supervision agency” means an entity that
9 receives grants for the purpose of providing direct supervision to juveniles
10 in the custody of the juvenile justice authority.

11 ~~(c) Unlawful sexual relations is a severity level 10, person felony.~~

12 Sec. 2. K.S.A. 2009 Supp. 21-3826 is hereby amended to read as
13 follows: 21-3826. (a) Traffic in contraband in a correctional institution or
14 care and treatment facility is introducing or attempting to introduce into
15 or upon the grounds of any correctional institution or care and treatment
16 facility or taking, sending, attempting to take or attempting to send from
17 any correctional institution or care and treatment facility or any unau-
18 thorized possession while in any correctional institution or care and treat-
19 ment facility or distributing within any correctional institution or care and
20 treatment facility, any item without the consent of the administrator of
21 the correctional institution or care and treatment facility.

22 (b) *Traffic in contraband in a correctional institution or care and*
23 *treatment facility is a:*

24 (1) *Severity level 6, nonperson felony, except as provided in subsection*
25 *(b)(2) or (b)(3);*

26 (2) *severity level 5, nonperson felony if such items are:*

27 (A) *Firearms, ammunition, explosives or a controlled substance which*
28 *is defined in K.S.A. 2009 Supp. 21-36a01, and amendments thereto, except*
29 *as provided in subsection (b)(3);*

30 (B) *defined as contraband by rules and regulations adopted by the*
31 *secretary of corrections, in a correctional institution by an employee of a*
32 *correctional institution, except as provided in subsection (b)(3); or*

33 (C) *defined as contraband by rules and regulations adopted by the*
34 *secretary of social and rehabilitation services, in a care and treatment*
35 *facility by an employee of a care and treatment facility, except as provided*
36 *in subsection (b)(3); and*

37 (3) *severity level 4, nonperson felony if such items are firearms, am-*
38 *munition or explosives, in a correctional institution by an employee of a*
39 *correctional institution or in a care and treatment facility by an employee*
40 *of a care and treatment facility.*

41 (c) *The provisions of subsection (b)(2)(A) shall not apply to the pos-*
42 *session of a firearm or ammunition by a person licensed under the per-*
43 *sonal and family protection act, K.S.A. 75-7c01 et seq., and amendments*

1 *thereto, in a parking lot open to the public if the firearm or ammunition*
2 *is carried on the person while in a vehicle or while securing the firearm*
3 *or ammunition in the vehicle, or stored out of plain view in a locked but*
4 *unoccupied vehicle.*

5 ~~(b)~~ (d) For purposes of this section:

6 (1) "Correctional institution" means any state correctional institution
7 or facility, conservation camp, juvenile correctional facility, community
8 correction center or facility for detention or confinement, juvenile deten-
9 tion facility or jail.

10 (2) "Care and treatment facility" means the state security hospital
11 provided for under K.S.A. 76-1305 et seq., and amendments thereto, and
12 a facility operated by the department of social and rehabilitation services
13 for the purposes provided for under K.S.A. 59-29a02 et seq., and amend-
14 ments thereto.

15 ~~(c) (1) Traffic in contraband in a correctional institution or care and~~
16 ~~treatment facility of firearms, ammunition, explosives or a controlled sub-~~
17 ~~stance which is defined in K.S.A. 2009 Supp. 21-36a01, and amendments~~
18 ~~thereto, is a severity level 5, nonperson felony. This paragraph shall not~~
19 ~~apply to the possession of a firearm or ammunition by a person licensed~~
20 ~~under the personal and family protection act, K.S.A. 75-7c01 et seq., and~~
21 ~~amendments thereto, in a parking lot open to the public if the firearm or~~
22 ~~ammunition is carried on the person while in a vehicle or while securing~~
23 ~~the firearm or ammunition in the vehicle, or stored out of plain view in~~
24 ~~a locked but unoccupied vehicle.~~

25 ~~—(2) Traffic in any contraband, as defined by rules and regulations~~
26 ~~adopted by the secretary, in a correctional institution by an employee of~~
27 ~~a correctional institution is a severity level 5, nonperson felony.~~

28 ~~—(3) Traffic in any contraband, as defined by rules and regulations~~
29 ~~adopted by the secretary of social and rehabilitation services, in a care~~
30 ~~and treatment facility by an employee of a care and treatment facility is~~
31 ~~a severity level 5, nonperson felony.~~

32 ~~—(d) Except as provided in subsection (c), traffic in contraband in a~~
33 ~~correctional institution or care and treatment facility is a severity level 6,~~
34 ~~nonperson felony.~~

35 Sec. 3. K.S.A. 2009 Supp. 21-4704 is hereby amended to read as
36 follows: 21-4704. (a) For purposes of sentencing, the following sentencing
37 guidelines grid for nondrug crimes shall be applied in felony cases for
38 crimes committed on or after July 1, 1993:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

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
Non-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 of K.S.A. 8-
41 1567, and amendments thereto, may be served in a state correctional
42 facility designated by the secretary of corrections if the secretary deter-
43 mines that substance abuse treatment resources and facility capacity is

1 available. The secretary's determination regarding the availability of treat-
2 ment resources and facility capacity shall not be subject to review.

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

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

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

25 (k) If it is shown at sentencing that the offender committed any felony
26 violation for the benefit of, at the direction of, or in association with any
27 criminal street gang, with the specific intent to promote, further or assist
28 in any criminal conduct by gang members, the offender's sentence shall
29 be presumed imprisonment. Any decision made by the court regarding
30 the imposition of the optional nonprison sentence shall not be considered
31 a departure and shall not be subject to appeal. As used in this subsection,
32 "criminal street gang" means any organization, association or group of
33 three or more persons, whether formal or informal, having as one of its
34 primary activities the commission of one or more person felonies or felony
35 violations of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amend-
36 ments thereto, which has a common name or common identifying sign
37 or symbol, whose members, individually or collectively engage in or have
38 engaged in the commission, attempted commission, conspiracy to commit
39 or solicitation of two or more person felonies or felony violations of K.S.A.
40 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, or any
41 substantially similar offense from another jurisdiction.

42 (l) Except as provided in subsection (o), the sentence for a violation
43 of subsection (a) of K.S.A. 21-3715 and amendments thereto when such

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

4 (m) The sentence for a violation of K.S.A. 22-4903 or subsection (d)
5 of K.S.A. 21-3812, and amendments thereto, shall be presumptive im-
6 prisonment. If an offense under such sections is classified in grid blocks
7 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison
8 sentence upon making the following findings on the record:

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

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

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

18 (n) The sentence for a third or subsequent violation of subsection (b)
19 of K.S.A. 21-3705, and amendments thereto, shall be presumptive im-
20 prisonment. Such sentence shall not be considered a departure and shall
21 not be subject to appeal.

22 (o) The sentence for a felony violation of K.S.A. 21-3701 or 21-3715,
23 and amendments thereto, when such person being sentenced has no prior
24 convictions for a violation of K.S.A. 21-3701 or 21-3715, and amendments
25 thereto; or the sentence for a felony violation of K.S.A. 21-3701, and
26 amendments thereto, when such person being sentenced has one or two
27 prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-
28 3716, and amendments thereto; or the sentence for a felony violation of
29 K.S.A. 21-3715, and amendments thereto, when such person being sen-
30 tenced has one prior felony conviction for a violation of K.S.A. 21-3701,
31 21-3715 or 21-3716, and amendments thereto, shall be the sentence as
32 provided by this section, except that the court may order an optional
33 nonprison sentence for a defendant to participate in a drug treatment
34 program, including, but not limited to, an approved after-care plan, if the
35 court makes the following findings on the record:

36 (1) Substance abuse was an underlying factor in the commission of
37 the crime;

38 (2) substance abuse treatment in the community is likely to be more
39 effective than a prison term in reducing the risk of offender recidivism;
40 and

41 (3) participation in an intensive substance abuse treatment program
42 will serve community safety interests.

43 A defendant sentenced to an optional nonprison sentence under this

1 subsection shall be supervised by community correctional services. The
2 provisions of subsection (f)(1) of K.S.A. 21-4729, and amendments
3 thereto, shall apply to a defendant sentenced under this subsection.

4 The sentence under this subsection shall not be considered a departure
5 and shall not be subject to appeal.

6 (p) The sentence for a felony violation of K.S.A. 21-3701, and amend-
7 ments thereto, when such person being sentenced has any combination
8 of three or more prior felony convictions for violations of K.S.A. 21-3701,
9 21-3715 or 21-3716 and amendments thereto, or the sentence for a vio-
10 lation of K.S.A. 21-3715, and amendments thereto, when such person
11 being sentenced has any combination of two or more prior convictions
12 for violations of K.S.A. 21-3701, 21-3715 and 21-3716, and amendments
13 thereto, shall be presumed imprisonment and the defendant shall be sen-
14 tenced to prison as provided by this section, except that the court may
15 recommend that an offender be placed in the custody of the secretary of
16 corrections, in a facility designated by the secretary to participate in an
17 intensive substance abuse treatment program, upon making the following
18 findings on the record:

19 (1) Substance abuse was an underlying factor in the commission of
20 the crime;

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

24 (3) participation in an intensive substance abuse treatment program
25 with the possibility of an early release from imprisonment will serve com-
26 munity safety interests by promoting offender reformation.

27 The intensive substance abuse treatment program shall be determined
28 by the secretary of corrections, but shall be for a period of at least four
29 months. Upon the successful completion of such intensive treatment pro-
30 gram, the offender shall be returned to the court and the court may
31 modify the sentence by directing that a less severe penalty be imposed
32 in lieu of that originally adjudged within statutory limits. If the offender's
33 term of imprisonment expires, the offender shall be placed under the
34 applicable period of postrelease supervision.

35 The sentence under this subsection shall not be considered a departure
36 and shall not be subject to appeal.

37 (q) The sentence for a violation of subsection (a)(2) of K.S.A. 21-
38 3413, and amendments thereto, shall be presumptive imprisonment and
39 shall be served consecutively to any other term or terms of imprisonment
40 imposed. Such sentence shall not be considered a departure and shall not
41 be subject to appeal.

42 (r) *The sentence for a violation of K.S.A. 21-3520, and amendments*
43 *thereto, shall be presumptive imprisonment. Such sentence shall not be*

1 *considered a departure and shall not be subject to appeal.*

2 Sec. 4. K.S.A. 2009 Supp. 22-4902 is hereby amended to read as
3 follows: 22-4902. As used in ~~this~~ *the Kansas offender registration act*,
4 unless the context otherwise requires:

5 (a) “Offender” means: (1) A sex offender as defined in subsection (b);

6 (2) a violent offender as defined in subsection (d);

7 (3) a sexually violent predator as defined in subsection (f);

8 (4) any person who, on and after ~~the effective date of this act~~ *May*
9 *29, 1997*, is convicted of any of the following crimes when the victim is
10 less than 18 years of age:

11 (A) Kidnapping as defined in K.S.A. 21-3420 and amendments
12 thereto, except by a parent;

13 (B) aggravated kidnapping as defined in K.S.A. 21-3421 and amend-
14 ments thereto; or

15 (C) criminal restraint as defined in K.S.A. 21-3424 and amendments
16 thereto, except by a parent;

17 (5) any person convicted of any of the following criminal sexual con-
18 duct if one of the parties involved is less than 18 years of age:

19 (A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;

20 (B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-
21 3505, and amendments thereto;

22 (C) promoting prostitution as defined by K.S.A. 21-3513, and amend-
23 ments thereto;

24 (D) patronizing a prostitute as defined by K.S.A. 21-3515, and
25 amendments thereto; *or*

26 (E) lewd and lascivious behavior as defined by K.S.A. 21-3508, and
27 amendments thereto; ~~or~~

28 ~~(F) unlawful sexual relations as defined by K.S.A. 21-3520, and~~
29 ~~amendments thereto;~~

30 (6) any person who has been required to register under any federal,
31 military or other state’s law or is otherwise required to be registered;

32 (7) any person who, on or after July 1, 2006, is convicted of any person
33 felony and the court makes a finding on the record that a deadly weapon
34 was used in the commission of such person felony;

35 (8) any person who has been convicted of an offense in effect at any
36 time prior to ~~the effective date of this act~~ *May 29, 1997*, that is compa-
37 rable to any crime defined in subsection (4), (5), (7) or (11), or any federal,
38 military or other state conviction for an offense that under the laws of
39 this state would be an offense defined in subsection (4), (5), (7) or (11);

40 (9) any person who has been convicted of an attempt, conspiracy or
41 criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303
42 and amendments thereto, of an offense defined in subsection (4), (5), (7)
43 or (10);

1 (10) any person who has been convicted of aggravated trafficking as
2 defined in K.S.A. 21-3447, and amendments thereto; or

3 (11) any person who has been convicted of: (A) Unlawful manufac-
4 ture or attempting such of any controlled substance or controlled sub-
5 stance analog as defined by K.S.A. 65-4159, prior to its repeal or K.S.A.
6 2009 Supp. 21-36a03, and amendments thereto, unless the court makes
7 a finding on the record that the manufacturing or attempting to manu-
8 facture such controlled substance was for such person's personal use;

9 (B) possession of ephedrine, pseudoephedrine, red phosphorus, lith-
10 ium metal, sodium metal, iodine, anhydrous ammonia, pressurized am-
11 monia or phenylpropanolamine, or their salts, isomers or salts of isomers
12 with intent to use the product to manufacture a controlled substance as
13 defined by K.S.A. 65-7006, prior to its repeal or K.S.A. 2009 Supp. 21-
14 36a09 or 21-36a10, and amendments thereto, unless the court makes a
15 finding on the record that the possession of such product was intended
16 to be used to manufacture a controlled substance for such person's per-
17 sonal use; or

18 (C) K.S.A. 65-4161, prior to its repeal or K.S.A. 2009 Supp. 21-36a05,
19 and amendments thereto.

20 Convictions which result from or are connected with the same act, or
21 result from crimes committed at the same time, shall be counted for the
22 purpose of this section as one conviction. Any conviction set aside pur-
23 suant to law is not a conviction for purposes of this section. A conviction
24 from another state shall constitute a conviction for purposes of this
25 section.

26 (b) "Sex offender" includes any person who, ~~after the effective date~~
27 ~~of this act~~ *on or after April 14, 1994*, is convicted of any sexually violent
28 crime set forth in subsection (c) or is adjudicated as a juvenile offender
29 for an act which if committed by an adult would constitute the commis-
30 sion of a sexually violent crime set forth in subsection (c).

31 (c) "Sexually violent crime" means:

32 (1) Rape as defined in K.S.A. 21-3502 and amendments thereto;

33 (2) indecent liberties with a child as defined in K.S.A. 21-3503 and
34 amendments thereto;

35 (3) aggravated indecent liberties with a child as defined in K.S.A. 21-
36 3504 and amendments thereto;

37 (4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of
38 K.S.A. 21-3505 and amendments thereto;

39 (5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and
40 amendments thereto;

41 (6) indecent solicitation of a child as defined by K.S.A. 21-3510 and
42 amendments thereto;

43 (7) aggravated indecent solicitation of a child as defined by K.S.A.

- 1 21-3511 and amendments thereto;
- 2 (8) sexual exploitation of a child as defined by K.S.A. 21-3516 and
3 amendments thereto;
- 4 (9) sexual battery as defined by K.S.A. 21-3517 and amendments
5 thereto;
- 6 (10) aggravated sexual battery as defined by K.S.A. 21-3518 and
7 amendments thereto;
- 8 (11) aggravated incest as defined by K.S.A. 21-3603 and amendments
9 thereto; ~~or~~
- 10 (12) electronic solicitation as defined by K.S.A. 21-3523, and amend-
11 ments thereto, committed on ~~and after the effective date of this act or~~
12 ~~after April 17, 2008;~~
- 13 (13) *unlawful sexual relations as defined by K.S.A. 21-3520, and*
14 *amendments thereto, committed on or after July 1, 2010;*
- 15 ~~(13)~~ (14) any conviction for an offense in effect at any time prior to
16 ~~the effective date of this act~~ *April 29, 1993*, that is comparable to a sexually
17 violent crime as defined in subparagraphs (1) through (11), or any federal,
18 military or other state conviction for an offense that under the laws of
19 this state would be a sexually violent crime as defined in this section;
- 20 ~~(14)~~ (15) an attempt, conspiracy or criminal solicitation, as defined in
21 K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of a sex-
22 ually violent crime, as defined in this section; or
- 23 ~~(15)~~ (16) any act which at the time of sentencing for the offense has
24 been determined beyond a reasonable doubt to have been sexually moti-
25 vated. As used in this subparagraph, “sexually motivated” means that
26 one of the purposes for which the defendant committed the crime was
27 for the purpose of the defendant’s sexual gratification.
- 28 (d) “Violent offender” includes any person who, ~~after the effective~~
29 ~~date of this act~~ *on or after May 29, 1997*, is convicted of any of the
30 following crimes:
- 31 (1) Capital murder as defined by K.S.A. 21-3439 and amendments
32 thereto;
- 33 (2) murder in the first degree as defined by K.S.A. 21-3401 and
34 amendments thereto;
- 35 (3) murder in the second degree as defined by K.S.A. 21-3402 and
36 amendments thereto;
- 37 (4) voluntary manslaughter as defined by K.S.A. 21-3403 and amend-
38 ments thereto;
- 39 (5) involuntary manslaughter as defined by K.S.A. 21-3404 and
40 amendments thereto; or
- 41 (6) any conviction for an offense in effect at any time prior to ~~the~~
42 ~~effective date of this act~~ *May 29, 1997*, that is comparable to any crime
43 defined in this subsection, or any federal, military or other state conviction

1 for an offense that under the laws of this state would be an offense defined
2 in this subsection; or

3 (7) an attempt, conspiracy or criminal solicitation, as defined in
4 K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an of-
5 fense defined in this subsection.

6 (e) “Law enforcement agency having jurisdiction” means the sheriff
7 of the county in which the offender expects to reside upon the offender’s
8 discharge, parole or release.

9 (f) “Sexually violent predator” means any person who, on or after July
10 1, 2001, is found to be a sexually violent predator pursuant to K.S.A. 59-
11 29a01 et seq. and amendments thereto.

12 (g) “Nonresident student or worker” includes any offender who
13 crosses into the state or county for more than 14 days, or for an aggregate
14 period exceeding 30 days in a calendar year, for the purposes of employ-
15 ment, with or without compensation, or to attend school as a student.

16 (h) “Aggravated offenses” means engaging in sexual acts involving
17 penetration with victims of any age through the use of force or the threat
18 of serious violence, or engaging in sexual acts involving penetration with
19 victims less than 14 years of age, and includes the following offenses:

20 (1) Rape as defined in subsection (a)(1)(A) and subsection (a)(2) of
21 K.S.A. 21-3502, and amendments thereto;

22 (2) aggravated criminal sodomy as defined in subsection (a)(1) and
23 subsection (a)(3)(A) of K.S.A. 21-3506, and amendments thereto; and

24 (3) any attempt, conspiracy or criminal solicitation, as defined in
25 K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an of-
26 fense defined in this subsection.

27 (i) “Institution of higher education” means any post-secondary school
28 under the supervision of the Kansas board of regents.

29 Sec. 5. K.S.A. 21-3520 and K.S.A. 2009 Supp. 21-3826, 21-4704 and
30 22-4902 are hereby repealed.

31 Sec. 6. This act shall take effect and be in force from and after its
32 publication in the statute book.