

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:36 A.M. on March 11, 2008, in Room 123-S of the Capitol.

All members were present except:

Julia Lynn arrived, 9:45 A.M.

Committee staff present:

Bruce Kinzie, Office of Revisor of Statutes

Athena Andaya, Kansas Legislative Research Department

Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Others attending:

See attached list.

The Chairman called for final action on **SB 409—Third or subsequent felony conviction, sentence.**

Bruce Kinzie, staff revisor, distributed a proposed substitute for **SB 409** and provided the committee with a summary of the bill which incorporated recommendations from the Sub-committee (Attachment 1). The bill includes provisions from **SB 482—Substance abuse treatment for certain offenders; SB 483—Substance abuse treatment for violation of conditions of release;** and, **SB 484—Driving under the influence substance abuse treatment facility.**

Discussion followed regarding costs and the bed impact.

Senator Schmidt moved, Senator Umbarger seconded, to amend **SB 409** by striking the current contents of **SB 409** and replacing it with the proposed **Substitute SB 409**. Motion carried.

The Chairman summarized the effects on **SB 495** of the changes made to **SB 409**. Following discussion, Senator Journey moved, Senator Betts seconded, to amend **Substitute SB 409** by adding **SB 495** to it with a provision to change the time frame to the original 10 days. Motion carried.

Senator Journey moved, Senator Lynn seconded, to recommend **Substitute SB 409** as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 589—Landowner and surface owner protection act.**

Bruce Kinzie, staff revisor, distributed a proposed substitute for **SB 589** and provided the committee with a summary of the draft (Attachment 2). Senator Vratil provided a brief history regarding the attempts by various interested parties to work out differences on this issue. Senator Umbarger indicated **SB 589** incorporates several issues that have been agreed on by the interested parties and distributed a brief summarizing the proposed substitute for **SB 589** (Attachment 3).

Senator moved, Senator seconded, to amend **SB 589** by striking the current contents of **SB 589** and replacing it with the proposed **Substitute SB 589**. Motion carried.

Senator Goodwin moved, Senator Umbarger seconded, to recommend **Substitute SB 589** as amended, favorably for passage. Motion failed.

The meeting adjourned at 10:30 A.M. The next scheduled meeting is March 12, 2008.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 11, 2008

NAME	REPRESENTING
Ed Klumpp	KACP & KPOA
Jeff Bo Harberg	KSA
Ed Cross	KIOGA
Brent Sommer	KPC
Ken Pelera	KPC
Karl Wertz	KJAT
Wanda Kunze	KCA-
DON McNEELY	KADA
Marge Petty	KCE
Libby Scott	KPB
Helen Pedigo	KSC
Brenda Hanson	KSC
J. Miller	CAPTIVE STRATEGIES
Tim Madolin	KDOC
Roger Werhol +2	KDOC
Roger Hadwin	KDOC

PROPOSED Substitute for SENATE BILL NO. 409

By Committee on Judiciary

AN ACT relating to crimes, punishment and criminal procedure; providing for substance abuse treatment for certain offenders; amending K.S.A. 21-4704, 21-4705, 21-4714 and 22-3716 and K.S.A. 2007 Supp. 8-1567, 75-5206, 75-5210 and 75-5220 and repealing the existing sections; also repealing K.S.A. 21-4704b and K.S.A. 2007 Supp. 8-1567b.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) ~~{1}~~ On the third conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's

imprisonment and fined not less than \$1,500 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

(2) The court may order that the term of imprisonment imposed pursuant to paragraph (1) be served in a state facility in the custody of the secretary of corrections in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of K.S.A. 21-4704, and amendments thereto. The person shall remain imprisoned at the state facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the sheriff for execution of the sentence imposed in the event the secretary of corrections determines: (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the

~~secretary-that-the-person-either-is-not-to-be-admitted--into--the designated--facility--or-is-to-be-transferred-from-the-designated facility--is--not--subject--to--review.--The--sheriff--shall--be responsible-for-all-transportation-expenses-to-and-from-the-state correctional-facility-~~

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

(g) ~~(1)~~ On the fourth ~~or--subsequent~~ conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served 72 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.

~~(2)--The-court--may--order--that--the--term--of--imprisonment imposed--pursuant--to-paragraph-(1)-be-served-in-a-state-facility in-the-custody-of-the-secretary--of--corrections--in--a--facility designated--by-the-secretary-for-the-provision-of-substance-abuse treatment-pursuant-to--the--provisions--of--K.S.A.--21-4704,--and amendments--thereto.--The--person--shall-remain-imprisoned-at-the state-facility-only-while-participating-in--the--substance--abuse treatment--program--designated--by--the--secretary--and--shall-be returned-to-the-custody-of--the--sheriff--for--execution--of--the balance--of--the--term--of-imprisonment-upon-completion-of-or-the person's-discharge-from-the-substance--abuse--treatment--program. Custody--of--the--person--shall--be--returned--to-the-sheriff-for execution-of-the-sentence-imposed-in-the-event-the--secretary--of corrections---determines:--(A)--That--substance--abuse--treatment~~

~~resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.~~

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

(2) The court may order that the term of imprisonment imposed pursuant to paragraph (1) be served in the custody of the secretary of corrections in a state substance abuse treatment facility established by the department of corrections, if the term of imprisonment is for 12 months, or, if space is not available at such facility, in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of K.S.A. 21-4704, and amendments thereto. The person shall remain imprisoned at the state facility while participating in the substance abuse treatment program designated by the secretary or if the person refuses or fails to complete

the substance abuse treatment program, the expiration of the term of imprisonment. Upon successful completion of the substance abuse treatment program the person shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment, except that the court shall retain jurisdiction and may modify the sentence by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits. The term of imprisonment in the custody of the secretary of corrections shall not be reduced by good time credit. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.

~~At the time of the filing of the judgment form or journal entry as required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the secretary of corrections within three business days of receipt of the judgment form or journal entry from the court and notify the secretary of corrections when the term of imprisonment expires and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the secretary. After the term of imprisonment imposed by the court under subsection (h), the person shall be placed in the custody of the secretary of corrections supervised by community correctional services for a mandatory one-year period of postrelease supervision, which such period of postrelease supervision shall not be reduced. During such postrelease supervision, the person shall be required to participate in an inpatient or outpatient program for alcohol and drug abuse, including, but not limited to, an approved aftercare plan or mental health counseling, as determined by the secretary and satisfy conditions imposed by the Kansas parole board as provided by K.S.A. 22-3717, and amendments thereto court.~~ Any violation of the conditions of such postrelease supervision may subject such

person to revocation of postrelease supervision pursuant to ~~K.S.A.-75-5217-et-seq.~~ K.S.A. 22-3716, and amendments thereto, and as otherwise provided by law.

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

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

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

~~(k)~~ (l) (1) Except as provided in paragraph (5), in addition to any other penalty which may be imposed upon a first conviction

of a violation of this section, the court may order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

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

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

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

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

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

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

~~††~~ (m) (1) Except as provided in paragraph (3), in addition to any other penalty which may be imposed upon a second or subsequent conviction of a violation of this section, the court shall order that each motor vehicle owned or leased by the convicted person shall either be equipped with an ignition

interlock device or be impounded or immobilized for a period of two years. The convicted person shall pay all costs associated with the installation, maintenance and removal of the ignition interlock device and all towing, impoundment and storage fees or other immobilization costs.

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

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

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

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

(1) "Conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(2) "conviction" includes being convicted of a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of

such law, ordinance or resolution;

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

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and

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

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

~~(p)~~ (q) (1) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof. Except as specifically provided by this subsection, the minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this act for the same violation, and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed for the same violation. On and after the effective date of this act and retroactive for ordinance violations committed on or after July 1, 2006, an ordinance may grant to a municipal court jurisdiction over a violation of such ordinance which is concurrent with the jurisdiction of the district court over a violation of this section, notwithstanding that the elements of such ordinance violation are the same as the elements of a

violation of this section that would constitute, and be punished as, a felony.

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

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

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

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

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

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

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the

amount of time remaining on the lease.

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

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

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

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

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

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

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

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

Sec. 2. K.S.A. 21-4704 is hereby amended to read as follows: 21-4704. (a) For purposes of sentencing, the following sentencing guidelines grid for nondrug crimes shall be applied in felony cases for crimes committed on or after July 1, 1993:

SENTENCING RANGE - NONDRUG OFFENSES

1-14

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	18 17 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	11 11 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	7 7 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	5 5 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	5 5 5

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

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

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

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

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

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

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is

classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence upon making the following findings on the record:

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

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

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

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

(g) The sentence for the violation of K.S.A. 21-3415, and amendments thereto, aggravated battery against a law enforcement officer committed prior to July 1, 2006, or K.S.A. 21-3411, and amendments thereto, aggravated assault against a law enforcement officer, which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence, if the offense is classified in grid block 6-H or 6-I, shall not be considered departure and shall not be subject to appeal.

(h) When a firearm is used to commit any person felony, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community

safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal.

(i) The sentence for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or K.S.A. 21-4707 and amendments thereto. If because of the offender's criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the offender is subject to imprisonment, the provisions of this section and K.S.A. 21-4707, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in K.S.A. 21-3710, and amendments thereto. Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall not be served in a state facility in the custody of the secretary of corrections, except that the term of imprisonment for felony violations under subsection (h) of K.S.A. 8-1567, and amendments thereto, may be served in a state substance abuse treatment facility established by the department of corrections, or if space is not available at such facility, in a state correctional facility designated by the secretary of corrections.

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

the maximum duration of the presumptive imprisonment term.

(2) Except as otherwise provided in this subsection, as used in this subsection, "persistent sex offender" means a person who:

(A) (i) Has been convicted in this state of a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto; and (ii) at the time of the conviction under paragraph (A) (i) has at least one conviction for a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto in this state or comparable felony under the laws of another state, the federal government or a foreign government; or (B) (i) has been convicted of rape, K.S.A. 21-3502, and amendments thereto; and (ii) at the time of the conviction under paragraph (B) (i) has at least one conviction for rape in this state or comparable felony under the laws of another state, the federal government or a foreign government.

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

(k) If it is shown at sentencing that the offender committed any felony violation for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members, the offender's sentence shall be presumed imprisonment. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal. As used in this subsection, "criminal street gang" means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 et seq., and amendments thereto, which has a common name or common identifying sign or symbol, whose members, individually or collectively engage in or have engaged in the commission, attempted commission, conspiracy to commit or

solicitation of two or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 et seq., and amendments thereto, or any substantially similar offense from another jurisdiction.

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

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

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

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

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

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

(n) The sentence for a felony violation of K.S.A. 21-3701, and amendments thereto, when such person being sentenced has two

or more prior felony convictions for violations of K.S.A. 21-3701, and amendments thereto, or the sentence for a violation of K.S.A. 21-3715, and amendments thereto, when such person being sentenced has two or more prior convictions for violations of K.S.A. 21-3715, and amendments thereto, or a prior conviction of K.S.A. 21-3715 and 21-3716, and amendments thereto, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section, except that the court may recommend that an offender be placed in a state substance abuse treatment facility established by the department of corrections in the custody of the secretary of corrections or, if space is not available at such facility, in a facility designated by the secretary to participate in an intensive substance abuse treatment program, upon making the following findings on the record:

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

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

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

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

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

Sec. 3. K.S.A. 21-4705 is hereby amended to read as follows:
21-4705. (a) For the purpose of sentencing, the following sentencing guidelines grid for drug crimes shall be applied in felony cases under the uniform controlled substances act for crimes committed on or after July 1, 1993:

1-22

SENTENCING RANGE - DRUG OFFENSES

	A	B	C	D	E	F	G	H	I
	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
	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
	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	26 24 23	23 22 20	19 18 17	18 16 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	10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

(b) The provisions of subsection (a) will apply for the purpose of sentencing violations of the uniform controlled substances act except as otherwise provided by law. Sentences expressed in the sentencing guidelines grid for drug crimes in subsection (a) represent months of imprisonment.

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

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

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

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

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing

the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

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

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

(e) The sentence for a second or subsequent conviction of K.S.A. 65-4159 and amendments thereto, manufacture of any controlled substance or controlled substance analog shall be a presumptive term of imprisonment of two times the maximum duration of the presumptive term of imprisonment. The court may impose an optional reduction in such sentence of not to exceed 50% of the mandatory increase provided by this subsection upon making a finding on the record that one or more of the mitigating factors as specified in K.S.A. 21-4716 and amendments thereto justify such a reduction in sentence. Any decision made by the court regarding the reduction in such sentence shall not be considered a departure and shall not be subject to appeal.

(f) (1) The sentence for a third felony conviction of K.S.A. 65-4160 or 65-4162, and amendments thereto, shall be a presumptive term of imprisonment and the defendant shall be sentenced as provided by this section. Such term of imprisonment shall be served in a state substance abuse treatment facility established by the department of corrections or, if space is not available in such facility, in a facility designated by the secretary of corrections in the custody of the secretary of corrections to participate in an intensive substance abuse treatment program. The intensive substance abuse treatment program shall be determined by the secretary of corrections, but shall be for a period of at least four months. Upon the successful completion of such intensive treatment program, the

offender shall be returned to the court and the court may modify the sentence by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits. If the offender's term of imprisonment expires, the offender shall be placed under the applicable period of postrelease supervision.

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

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

Sec. 4. K.S.A. 21-4714 is hereby amended to read as follows: 21-4714. (a) The court shall order the preparation of the presentence investigation report by the court services officer as soon as possible after conviction of the defendant.

(b) Each presentence report prepared for an offender to be sentenced for one or more felonies committed on or after July 1, 1993, shall be limited to the following information:

(1) A summary of the factual circumstances of the crime or crimes of conviction.

(2) If the defendant desires to do so, a summary of the defendant's version of the crime.

(3) When there is an identifiable victim, a victim report. The person preparing the victim report shall submit the report to the victim and request that the information be returned to be submitted as a part of the presentence investigation. To the extent possible, the report shall include a complete listing of

restitution for damages suffered by the victim.

(4) An appropriate classification of each crime of conviction on the crime severity scale.

(5) A listing of prior adult convictions or juvenile adjudications for felony or misdemeanor crimes or violations of county resolutions or city ordinances comparable to any misdemeanor defined by state law. Such listing shall include an assessment of the appropriate classification of the criminal history on the criminal history scale and the source of information regarding each listed prior conviction and any available source of journal entries or other documents through which the listed convictions may be verified. If any such journal entries or other documents are obtained by the court services officer, they shall be attached to the presentence investigation report. Any prior criminal history worksheets of the defendant shall also be attached.

(6) A proposed grid block classification for each crime, or crimes of conviction and the presumptive sentence for each crime, or crimes of conviction.

(7) If the proposed grid block classification is a grid block which presumes imprisonment, the presumptive prison term range and the presumptive duration of postprison supervision as it relates to the crime severity scale.

(8) If the proposed grid block classification does not presume prison, the presumptive prison term range and the presumptive duration of the nonprison sanction as it relates to the crime severity scale and the court services officer's professional assessment as to recommendations for conditions to be mandated as part of the nonprison sanction.

(9) For defendants who are being sentenced for a conviction of a felony violation of K.S.A. 65-4160 or 65-4162, and amendments thereto, and meet the requirements of K.S.A. 21-4729, and amendments thereto, the drug abuse assessment as provided in K.S.A. 21-4729, and amendments thereto.

(10) For defendants who are being sentenced for a third

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

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

(d) The criminal history worksheet will not substitute as a presentence report.

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

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

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

Sec. 5. K.S.A. 22-3716 is hereby amended to read as follows: 22-3716. (a) At any time during probation, assignment to a community correctional services program, suspension of sentence or pursuant to subsection (d) for defendants who committed a crime prior to July 1, 1993, and at any time during which a defendant is serving a nonprison sanction for a crime committed on or after July 1, 1993, or pursuant to subsection (d), the

court may issue a warrant for the arrest of a defendant for violation of any of the conditions of release or assignment, a notice to appear to answer to a charge of violation or a violation of the defendant's nonprison sanction. The notice shall be personally served upon the defendant. The warrant shall authorize all officers named in the warrant to return the defendant to the custody of the court or to any certified detention facility designated by the court. Any court services officer or community correctional services officer may arrest the defendant without a warrant or may deputize any other officer with power of arrest to do so by giving the officer a written statement setting forth that the defendant has, in the judgment of the court services officer or community correctional services officer, violated the conditions of the defendant's release or a nonprison sanction. The written statement delivered with the defendant by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the defendant. After making an arrest, the court services officer or community correctional services officer shall present to the detaining authorities a similar statement of the circumstances of violation. Provisions regarding release on bail of persons charged with a crime shall be applicable to defendants arrested under these provisions.

(b) Upon arrest and detention pursuant to subsection (a), the court services officer or community correctional services officer shall immediately notify the court and shall submit in writing a report showing in what manner the defendant has violated the conditions of release or assignment or a nonprison sanction. Thereupon, or upon an arrest by warrant as provided in this section, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing shall be in open court and the state shall have the burden of establishing the violation. The defendant shall have the right to be represented by counsel and shall be informed by the judge that, if the defendant is

financially unable to obtain counsel, an attorney will be appointed to represent the defendant. The defendant shall have the right to present the testimony of witnesses and other evidence on the defendant's behalf. Relevant written statements made under oath may be admitted and considered by the court along with other evidence presented at the hearing. Except as otherwise provided, if the violation is established, the court may continue or revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction and may require the defendant to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed. Except as otherwise provided, no offender for whom a violation of conditions of release or assignment or a nonprison sanction has been established as provided in this section shall be required to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections for such violation, unless such person has already at least one prior assignment to a community correctional services program related to the crime for which the original sentence was imposed, except these provisions shall not apply to offenders who violate a condition of release or assignment or a nonprison sanction by committing a new misdemeanor or felony offense. The provisions of this subsection shall not apply to adult felony offenders as described in subsection (a)(3) of K.S.A. 75-5291, and amendments thereto. The court may require an offender for whom a violation of conditions of release or assignment or a nonprison sanction has been established as provided in this section to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections without a prior assignment to a community correctional services program if the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will be jeopardized or that the welfare of the inmate will not be

served by such assignment to a community correctional services program. For offenders who may be required to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections pursuant to this subsection, the court upon sentencing the offender to the custody of the secretary of corrections may recommend that an offender be placed in a state substance abuse treatment facility established by the department of corrections in the custody of the secretary of corrections or, if space is not available at such facility, in a facility designated by the secretary to participate in an intensive substance abuse treatment program, upon making the following findings on the record:

(1) Substance addiction was an underlying factor for revocation;

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

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

The intensive substance abuse treatment program shall be determined by the secretary of corrections, but shall be for a period of at least four months. Upon the successful completion of such intensive treatment program, the offender shall be returned to the court and the court may modify the sentence by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits. If the offender's term of imprisonment expires, the offender shall be placed under the applicable period of post release supervision. When a new felony is committed while the offender is on probation or assignment to a community correctional services program, the new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608 and amendments thereto, and the court may sentence

the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(c) A defendant who is on probation, assigned to a community correctional services program, under suspension of sentence or serving a nonprison sanction and for whose return a warrant has been issued by the court shall be considered a fugitive from justice if it is found that the warrant cannot be served. If it appears that the defendant has violated the provisions of the defendant's release or assignment or a nonprison sanction, the court shall determine whether the time from the issuing of the warrant to the date of the defendant's arrest, or any part of it, shall be counted as time served on probation, assignment to a community correctional services program, suspended sentence or pursuant to a nonprison sanction.

(d) The court shall have 30 days following the date probation, assignment to a community correctional service program, suspension of sentence or a nonprison sanction was to end to issue a warrant for the arrest or notice to appear for the defendant to answer a charge of a violation of the conditions of probation, assignment to a community correctional service program, suspension of sentence or a nonprison sanction.

(e) Notwithstanding the provisions of any other law to the contrary, an offender whose nonprison sanction is revoked and a term of imprisonment imposed pursuant to either the sentencing guidelines grid for nondrug or drug crimes shall not serve a period of postrelease supervision upon the completion of the prison portion of that sentence. The provisions of this subsection shall not apply to offenders sentenced to a nonprison sanction pursuant to a dispositional departure, whose offense falls within a border box of either the sentencing guidelines grid for nondrug or drug crimes, offenders sentenced for a "sexually violent crime" as defined by K.S.A. 22-3717, and amendments thereto, or whose nonprison sanction was revoked as a

result of a conviction for a new misdemeanor or felony offense. The provisions of this subsection shall not apply to offenders who are serving or are to begin serving a sentence for any other felony offense that is not excluded from postrelease supervision by this subsection on the effective date of this subsection. The provisions of this subsection shall be applied retroactively. The department of corrections shall conduct a review of all persons who are in the custody of the department as a result of only a revocation of a nonprison sanction. On or before September 1, 2000, the department shall have discharged from postrelease supervision those offenders as required by this subsection.

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

Sec. 6. K.S.A. 2007 Supp. 75-5206 is hereby amended to read as follows: 75-5206. (a) Except as provided in subsection ~~(e)~~ or (d) or (e), to carry out the purposes of this act, the secretary shall have authority to order the housing and confinement of any person sentenced to the secretary's custody to any institution or facility herein placed under the secretary's supervision and management or to any contract facility, including a conservation camp.

(b) All institutions of the department of corrections shall be institutions for the incarceration of felons sentenced to the custody of the secretary of corrections. The secretary may enter into interagency agreements authorizing the use of department of corrections' institutions for the temporary housing of pretrial detainees, misdemeanor offenders and other persons confined in local detention facilities or jails when the local facility cannot be used to house those persons due to a natural disaster

or other emergency. Authorization shall not be given for the temporary housing of juveniles under 16 years of age.

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

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

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

Sec. 7. K.S.A. 2007 Supp. 75-5210 is hereby amended to read as follows: 75-5210. (a) Persons committed to the institutional care of the secretary of corrections shall be dealt with humanely, with efforts directed to their rehabilitation and return to the community as safely and promptly as practicable. For these purposes, the secretary shall establish programs of classification and diagnosis, education, casework, mental health, counseling and psychotherapy, chemical dependency counseling and treatment, sexual offender counseling, prerelease programs which emphasize re-entry skills, adjustment counseling and job placement, vocational training and guidance, work, library, physical education and other rehabilitation and recreation services; the secretary may establish facilities for religious worship; and the secretary shall institute procedures for the study and classification of inmates. The secretary shall maintain a comprehensive record of the behavior of each inmate reflecting accomplishments and progress toward rehabilitation as well as charges of infractions of rules and regulations, punishments

imposed and medical inspections made.

(b) Programs of work, education or training shall include a system of promotional rewards entitling inmates to progressive transfer from high security status to a lesser security status. The secretary shall have authority at any time to transfer an inmate from one level of status to another level of status. Inmates may apply to the secretary for such status privileges. The secretary shall adopt a custody classification manual establishing standards relating to the transfer of an inmate from one status to another, and in developing such standards the secretary shall take into consideration progress made by the inmate toward attaining the educational, vocational and behavioral goals set by the secretary for the individual inmate. In order to facilitate the reintegration into the community of some inmates who are scheduled for release within the next 90 days, there shall be a presumption of minimum security status for those offenders who have been returned to prison for violating conditions of their postrelease supervision not involving a new criminal conviction and whose last facility security custody status was not either special management or maximum. ~~This presumption shall be applied to the initial security custody status assigned to the offender upon readmission into a correctional facility~~ Inmates sentenced to a state substance abuse treatment facility established by the department of corrections, to a facility designated by the secretary for the provision of substance abuse treatment, or for whom the court has recommended intensive substance abuse treatment, shall have a presumption of minimum security status. These presumptions of minimum security status shall be applied to the initial security custody upon readmission into a correctional facility or admission into a state substance abuse treatment facility, unless the security custody status is increased pursuant to policies adopted by the secretary. The security custody status designated by the department shall not be subject to judicial review.

(c) The secretary, with the cooperation of the department of

health and environment, shall adopt rules and regulations establishing and prescribing standards for health, medical and dental services for each institution, including preventive, diagnostic and therapeutic measures on both an outpatient and a hospital basis, for all types of patients. An inmate may be taken, when necessary, to a medical facility outside the institution.

(d) Under rules and regulations adopted by the secretary, directors of institutions may authorize visits, correspondence and communication, under reasonable conditions, between inmates and appropriate friends, relatives and others.

(e) The secretary shall adopt rules and regulations under which inmates, as part of a program anticipating their release from minimum security status, may be granted temporary furloughs from a correctional institution or contract facility to visit their families or to be interviewed by prospective employers.

(f) The secretary shall adopt rules and regulations for the maintenance of good order and discipline in the correctional institutions, including procedures for dealing with violations. Disciplinary rules and regulations may provide a system of punishment including segregation, forfeitures of good time earned, fines, extra work, loss of privileges, restrictions and payment of restitution.

The secretary and any persons designated by rules and regulations of the secretary may administer oaths for the purpose of conducting investigations and disciplinary proceedings pursuant to rules and regulations adopted by the secretary under this subsection and under K.S.A. 75-5251 and amendments thereto. For this purpose, the secretary shall adopt rules and regulations designating those persons who may administer oaths in such investigations and proceedings and the form and manner of administration of the oaths.

(g) A copy of the rules and regulations adopted pursuant to subsection (f) shall be provided to each inmate. Other rules and regulations of the secretary which are required to be published

pursuant to K.S.A. 77-415 through 77-437, and amendments thereto, shall be made available to inmates by placing a copy in the inmate library at the institution or by some other means providing reasonable accessibility to inmates.

(h) Any inmate participating in work and educational release programs under the provisions of K.S.A. 75-5267 and amendments thereto shall continue to be in the legal custody of the secretary of corrections, notwithstanding the inmate's absence from a correctional institution by reason of employment, education or for any other purpose related to such work and educational release programs, and any employer or educator of that person shall be considered the representative or agent for the secretary.

(i) The secretary shall establish administrative and fiscal procedures to permit the use of regional or community institutions, local governmental or private facilities or halfway houses for the placement of inmates released for the purposes of this act and for the work and educational release programs under K.S.A. 75-5267 and amendments thereto.

(j) The secretary may establish correctional work facilities and select inmates to be assigned to such facilities.

(k) The secretary may acquire, in the name of the state, by lease, purchase or contract additional facilities as may be needed for the housing of persons in the secretary's custody.

(l) The secretary is hereby authorized to use any of the inmates assigned to the secretary's custody in the construction and repair of buildings or property on state owned or leased grounds.

(m) For the purposes of establishing and carrying out the programs provided for by subsection (a) and by K.S.A. 75-5267 and amendments thereto, the secretary may contract with qualified individuals, partnerships, corporations or organizations; with agencies of the state; or with the United States or any political subdivision of the state, or any agency thereof.

Sec. 8. K.S.A. 2007 Supp. 75-5220 is hereby amended to read

as follows: 75-5220. (a) Except as provided in subsection (d), within three business days of receipt of the notice provided for in K.S.A. 75-5218 and amendments thereto, the secretary of corrections shall notify the sheriff having such offender in custody to convey such offender immediately to the department of corrections reception and diagnostic unit or if space is not available at such facility, then to some other state correctional institution until space at the facility is available, except that, in the case of first offenders who are conveyed to a state correctional institution other than the reception and diagnostic unit, such offenders shall be segregated from the inmates of such correctional institution who are not being held in custody at such institution pending transfer to the reception and diagnostic unit when space is available therein. The expenses of any such conveyance shall be charged against and paid out of the general fund of the county whose sheriff conveys the offender to the institution as provided in this subsection.

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

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

(d) If the offender in the custody of the secretary is a juvenile, as described in K.S.A. 2007 Supp. 38-2366, and amendments thereto, such juvenile shall not be transferred to the state reception and diagnostic center until such time as such

juvenile is to be transferred from a juvenile correctional facility to a department of corrections institution or facility.

(e) Any offender sentenced to a state substance abuse treatment facility established by the department of corrections shall not be transferred to the state reception and diagnostic center but directly to such state substance abuse treatment facility, unless otherwise directed by the secretary. The secretary may transfer the housing and confinement of any offender sentenced to a state substance abuse treatment facility to any institution or facility pursuant to K.S.A. 75-5206, and amendments thereto.

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

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

PROPOSED Substitute for SENATE BILL NO. 589

By

AN ACT enacting the Kansas surface use notice and compensation act; amending K.S.A. 55-153 and repealing the existing section.

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

New Section 1. Sections 1 through 10, and amendments thereto, may be cited as the Kansas surface use notice and compensation act.

New Sec. 2. The purposes of this act are to provide timely relief to surface owners whose surface is damaged by oil and gas activities, to promote best practices in the relationship between surface owners and oil and gas operators and to provide educational information about oil and gas leasing and related activities to surface owners, oil and gas operators, legal practitioners and other interested persons. The provisions of this act shall be liberally construed to carry out these purposes.

New Sec. 3. As used in this act:

(a) "Agricultural surface use" means the use of the surface estate for pasture, livestock, cultivation, harvesting, growing of crops, timber, grasses and other vegetation, woodlands and hunting, including any improvements, fresh water and soil used for these purposes;

(b) "commission" means the state corporation commission;

(c) "oil and gas" means crude oil, natural gas, casinghead gas, condensate, or any combination thereof, inclusive of shale or coal bed methane;

(d) "oil and gas operations" means those operations which require entry upon the surface estate, including geophysical and other exploration operations, drilling operations, completion operations, production operations, plugging and abandonment operations, and restoration of the surface estate;

(e) "oil and gas operator" means the person or such person's representative who is responsible for or conducts or controls the physical operation of a well and who conducts oil and gas operations on its own behalf or on behalf of others on a surface

estate pursuant to an oil and gas lease or other agreements or contracts, except that such term shall not include an independent contractor who performs specified services for oil and gas operations pursuant to an express or implied contract with an oil and gas operator;

(f) "person" means any natural person, partnership, governmental or political subdivision, firm, association, corporation or other legal entity;

(g) "restoration" means to substantially restore that part of the surface affected by oil and gas operations to the condition that existed prior to those operations to the extent that such restoration is reasonably desired by the surface owner or practicable, or as otherwise agreed to in writing by the oil and gas operator and the surface owner, except that any such agreement between an oil and gas operator and a surface owner shall not affect any duty to reclaim the surface pursuant to any law or governmental regulation or as otherwise shall be prescribed in an oil and gas lease or other contract effecting the surface estate;

(h) "surface damages" means nonincidental damages incurred to the surface estate for disturbances, impacts, or alterations to the surface or surface estate resulting from oil and gas operations, including damages arising from agricultural surface use and other improvements appurtenant to the surface estate;

(i) "surface" or "surface estate" means a specific tract of land and improvements thereon created by and held in fee or other legal or equitable title under a deed or other instrument of conveyance by a person other than the United States, a state, an Indian tribal organization, or any agency, instrumentality or subdivision of any of the foregoing, regardless of whether such person also owns or otherwise holds interest in the mineral estate underlying the surface estate; and

(j) "surface owner" means any person who holds or owns legal or equitable title to the surface estate or an interest therein as shown on the records of the register of deeds for the county where the surface estate is located, and who is assessed real

estate property taxes in accordance with the records of the county treasurer, except that surface owner shall not include a tenant, or persons whose only rights to use that surface estate are based upon an easement, right-of-way, license, mortgage, lien, severed mineral interest or any non-possessory interest in the surface.

New Sec. 4. (a) An oil and gas operator shall notify the surface owner, in accordance with the provisions of this section, not less than 14 days prior to the commencement of the following oil and gas operations on the surface estate and expressly or impliedly allowed pursuant to an oil and gas lease or other contract governing the use of the surface estate:

(1) The well site preparation, rigging up or drilling of a new well;

(2) the initial or additional construction of roads for ingress or egress, but shall not include maintenance of such roads;

(3) the installation, removal, replacement, relocation or substantial repairing of a pipeline or an electrical line unless an exigent or emergency situation necessitates a lesser time for such notice;

(4) the installation of a tank battery; or

(5) the construction, expansion, installation or reworking of any other facility, structure or operation which substantially disturbs the surface or substantially expands the use of the surface from conditions existing prior to such operations.

(b) With regard to each proposed oil and gas operation requiring notice in accordance with subsection (a):

(1) Each such specifically identified oil and gas operation shall be noticed on a form prescribed for such purposes and adopted by the commission prior to the commencement of such operation, except that the oil and gas operator may combine all or some of the required notices of oil and gas operations into a single notice if such operations are continuous and shall be completed within six months from the initial date of entry upon the surface estate for the conduct of such oil and gas

operations;

(2) in accordance with subsection (c), the oil and gas operator shall deliver a copy of the prescribed and completed form to the surface owner not less than 14 days prior to the commencing of such oil and gas operations, unless otherwise agreed to, or unless, an exigent or emergency situation necessitates a lesser time for such notice;

(3) the oil and gas operations form prescribed by the commission shall include the proposed location or a general description of the noticed oil and gas operations to be conducted and shall specifically provide that the surface owner may contact the oil and gas operator through its representative designated on such form to discuss the proposed operations, and shall include the designated representative's address and telephone number and shall also include an electronic mail or facsimile address if available;

(4) in determining surface ownership, absent actual knowledge to the contrary, the oil and gas operator shall be entitled to rely solely upon the property ownership records maintained by the treasurer for the county where the relevant surface estate is located; and

(5) in the case of drilling operations, a copy of the approved intent to drill shall be posted on the commission website for the surface owners to access or it may be obtained by the surface owners from the oil and gas operator upon written request, including via electronic mail or facsimile.

(c) In addition to informal notice conveyed in person or by telephone, facsimile or electronic mail, unless otherwise waived the oil and gas operator shall give the notice required under subsection (a) to the surface owner either:

(1) By certified, first class, express or overnight mail addressed to the surface owner at the address obtained from the county treasurer for the county where the surface estate is located and such notice shall be mailed not less than 14 days prior to commencement of the oil and gas operations required to be noticed on the prescribed commission form; or

(2) by personal delivery by the oil and gas operator to the surface owner not less than 14 days prior to commencement of the oil and gas operations required to be noticed on the prescribed commission form.

(d) When notice is provided by mail, the 14-day notice period shall commence on the date of the postmark on such notice.

(e) Notice by the oil and gas operator to the surface owners of record as provided under this section shall be deemed conclusive notice to all persons having any legal or equitable interest in or to the surface estate.

(f) Notice by the oil and gas operator to the surface owner, either in writing or verbally, shall include sufficient disclosure of the planned oil and gas operations to enable the surface owner to evaluate the probable effects of such operations on the property.

(g) The oil and gas operator shall deliver to the surface owner a copy of the well plugging application contemporaneously with the filing of such application with the commission.

New Sec. 5. (a) The surface owner and the oil and gas operator may, by an agreement separate and apart from an oil and gas lease, alter or waive, in whole or in part, their respective rights and obligations under section 4, and amendments thereto, provided such alteration or waiver conspicuously and expressly acknowledges such agreement alters the provisions of section 4, and amendments thereto. Such agreement is not effective until filed or recorded in the office of register of deeds of the county in which the real estate is located.

(b) The surface owner cannot waive or agree to forego any rights or benefits under this act, except as provided in subsection (a).

New Sec. 6. The oil and gas operator is responsible for surface damages and for the restoration of the surface estate, except that an oil and gas operator shall not be responsible for surface damages incurred or caused by a previous oil and gas operator unless the current oil and gas operator has assumed such duty or responsibility.

New Sec. 7. (a) The commission shall establish the surface owner assistance program and shall assign personnel to such program to carry out the provisions of this act.

(b) (1) Upon the filing of a written complaint by the surface owner that the oil and gas operator is not complying with the notice provisions under section 4, and amendments thereto, the commission may issue an order requiring compliance with such notice requirements under section 4, and amendments thereto.

(2) Any person violating an order issued pursuant to paragraph (1) shall be subject to an administrative penalty not to exceed \$500 per day or part thereof.

(c) When a dispute arises between a surface owner and an oil and gas operator as to surface damages, the commission is hereby authorized to conduct an investigation upon the filing of a written complaint. The commission shall notify the oil and gas operator of the filing of the complaint. As part of any initial investigation, the commission shall determine whether the oil and gas operations have been completed.

(d) The parties to the investigation, under subsection (c), should attempt to negotiate in good faith to resolve the dispute concerning such surface damages. If the parties are unable to resolve the dispute, the commission may provide for the appointment of a commission staff member as a mediator, or the parties may agree to employ and pay for an independent mediator for the purpose of mediating the surface damages dispute.

(e) If the parties are not successful in resolving the dispute through negotiation or mediation, at the surface owner's election, the commission shall conduct the investigation under subsection (c) and may proceed after notice and hearing to order any of the following:

(1) That the oil and gas operator pay the surface owner fair and reasonable surface damages as determined by the commission, up to a maximum of \$20,000;

(2) that the oil and gas operator restore the surface;

(3) prohibit the oil and gas operator from conducting any actions or activities which are causing or would cause surface

damages;

(4) impose an administrative penalty not to exceed \$500 per day for each day or part thereof that an oil and gas operator is in violation of an order issued pursuant to the subsection;

(5) that the commission recover reasonable expenses and costs associated with any investigation and hearing under this subsection.

(f) An attorney for the commission may bring an action to enforce any order issued pursuant to subsection (b) or (e) in the district court of Sedgwick county or in such other county where jurisdiction would be proper.

(g) The commission shall report to the legislature on the program's operations and funding by January 30, 2009, and January 30, 2010.

New Sec. 8. Notwithstanding any provision of this act to the contrary, no notice, compensation or damage payment for failure to give any notice required by this act shall be required in any exigent or emergency situation which requires that an oil and gas operator immediately access the surface estate and conduct activities reasonably necessary to protect the health or safety of any person or the environment.

New Sec. 9. (a) There is hereby created in the state treasury the surface use notice and compensation fund. The commission shall remit all moneys received by or for it under the provisions of this act to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon the receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the surface use notice and compensation fund. All expenditures from the surface use notice and compensation fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports and issued pursuant to vouchers approved by the chairperson of the state corporation commission or by a person or persons designated by such chairperson.

(b) Upon request of the chairperson of the state corporation commission to provide for amounts that may be required to assist

in financing the commencement of operations of the surface owner assistance office, and expenses related thereto, the pooled money investment board shall loan to the state corporation commission an amount not to exceed \$500,000. Upon receipt of such loan amounts, the total amount received shall be credited to the surface use notice and compensation fund. The total amount loaned shall be repaid by the state corporation commission over the period of five fiscal years after fiscal year 2009 in accordance with appropriation acts. Amounts loaned under this subsection shall not bear interest.

New Sec. 10. (a) Jurisdiction to implement and enforce the provisions of this act is hereby conferred on the commission, except that nothing in this act shall be construed to divest the district courts of Kansas of jurisdiction to determine the issues relating to private contract rights or in any way limit or effect the rights or remedies which are otherwise available or permitted by law.

(b) In order to provide assistance in implementing and carrying out the purpose of this act, the commission shall make available to surface owners and oil and gas operators information concerning the provisions of this act. The commission shall maintain a publicized telephone number to facilitate the handling of inquiries as to the application of this act and complaint procedures and shall assign personnel to handle complaints arising under this act and the rules and regulations promulgated thereunder.

(c) The commission may adopt such rules and regulations deemed necessary to carry out the provisions of this act.

Sec. 11. K.S.A. 55-153 is hereby amended to read as follows: 55-153. There is hereby established the advisory committee on regulation of oil and gas activities to be composed of ~~ten~~ 12 members. One member shall be appointed by each of the following associations: Kansas petroleum council, Kansas independent oil and gas association and eastern Kansas oil and gas association. One member shall be appointed jointly by the Kansas farm bureau and Kansas livestock association and such person shall be an

owner of surface and mineral interests. One member shall be appointed jointly by the southwest Kansas royalty owners association and the eastern Kansas royalty owners association and such person shall be an owner of surface and mineral interests.

One member shall be appointed by the governor from the general public. One member shall represent groundwater management districts and shall be appointed jointly by the presidents of each groundwater management district. All such appointees shall serve at the pleasure of the appointing authority. The following state agencies shall designate a person as a member of such committee: The commission, the department of health and environment, the Kansas geological survey, the Kansas water office and the division of water resources of the Kansas department of agriculture. The designated person of the commission shall be the chairperson of the advisory committee. The committee shall meet at least once each quarter calendar year and upon the call of the chairperson. The committee shall review and make recommendations on oil and gas activities, including but not limited to current drilling methods, geologic formation standards, plugging techniques, casing and cementing standards and materials and, all matters pertaining to the protection of waters of the state from pollution relating to oil and gas activities and to promote best practices in the relationship between surface owners and oil and gas operators and to provide educational information about oil and gas leasing and related activities to surface owners, mineral owners, oil and gas operators, legal practitioners and other interested persons.

Sec. 12. K.S.A. 55-153 is hereby repealed.

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

Sen. Quayne Umbarger

**Oil and gas operations: notification and surface damage legislation
Proposed Substitute for Senate Bill No. 589**

- **The Substitute for SB 589 does not** alter terms of existing oil and gas lease agreements.
- **The Substitute for SB 589 does not** restrict oil and gas exploration activities.
- **The Substitute for SB 589 does not** prohibit entry to conduct oil and gas operations on any leased property.
- **The Substitute for SB 589 does not** establish a predetermined amount for payment of surface damages
- **The Substitute for SB 589 does not** require an oil and gas operator to pay for any damages that are not fair and reasonable.

What does the bill do?

The intent of the bill is to:

- provide timely relief to surface owners whose surface is damaged by oil and gas activities;
- promote best practices in the relationship between surface owners and oil and gas operators;
- provide educational information about oil and gas leasing and related activities to surface owners, oil and gas operators, legal practitioners and other interested persons.
- Promotes effective communication between surface owners and oil and gas operators, thereby likely minimizing enforcement through the KCC or by private litigation.

The bill requires that the oil and gas operator provide the surface owner at least 14 days advance notice prior to commencing major oil and gas operations. The required notice provision can be waived in writing by the parties. The notice provision does not apply to emergency situations, when immediate access is required to protect the public or the property.

The bill identifies items that should be included in any notification so the parties understand the scope of the operations, which allows the opportunity for negotiations on the location of access points, installation of facilities and settlement of damages.

The bill acknowledges that an oil and gas operator is responsible for surface damages caused by their operations and has a duty to restore the surface affected by their operations.

The bill establishes at the KCC a mechanism for resolving disputes that arise relating to notification or surface damages. Parties should attempt to resolve disputes on good faith prior to the KCC taking action. The KCC may direct the parties to participate in mediation, or may take administrative action against violators to enforce the Act. The bill provides for private civil action by the parties to resolve disputes that exceed the KCC authority.

The bill expands the membership of the Oil and Gas Advisory Committee to include surface and mineral owners. The committee makes recommendations to the KCC on oil and gas activities in the State.

The bill addresses issues not found in typical oil and gas leases; typical leases are silent as to notice regarding operations, and typical leases do not address payment for damages caused by operations, other than perhaps damages to crops. This bill recognizes Kansas case law precedents which provide that a oil and gas lessee or operator make accommodations for the reasonable use of the surface for oil and gas operations.

Senate Judiciary

3-11-08

Attachment 3