

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairperson Pat Colloton at 1:30 p.m. on March 2, 2009, in Room 535-N of the Capitol.

All members were present.

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Jill Wolters, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Jackie Lunn, Committee Assistant

Conferees appearing before the committee:

Others attending:

See attached list.

HB 2332 - Recodification of certain drug crimes; quantities of drugs; proportionality of sentencing.

Chairperson Colloton opened the meeting by calling the Committee's attention to **HB 2332.**

Representative Pauls made a motion to move the bill. Chairperson Colloton seconded.

Chairperson Colloton called on Jill Wolters, Revisors Office, to explain the amendment on **HB 2332** from Kansas Securities Commission regarding domestic battery (Attachment 1) Ms. Wolters explained the intent of the amendment and stood for questions. A short question and answer session followed.

Representative Spaulding made a motion to approve the amendment from the Kansas Securities Commission Amendment for HB 2332. Representative Frownfelter seconded.

A discussion followed.

Chairperson Colloton called for a vote on the motion on the floor to approve the Kansas Securities Commission amendment.

Motion carried by a show of hands which resulted in a tie with the Chair breaking the tie with her vote.

Next, Ms. Wolters, Revisors Office, explained the Technical amendment for **HB 2332.** (Attachment 2)

Representative Roth made a motion to approve the technical amendment on HB 2332. Representative Frownfelter seconded. Motion carried.

Chairperson Colloton moved the Committee's attention to a balloon offered by the Kansas Sentencing Commission. (Attachment 3) She announced to the Committee the balloon contains several amendments and the Committee will be addressing them one at a time.

Amendment 1-Amend section 2 (f) on pg 3 line 8 as follows:

“Drug paraphernalia” shall not include any substance, chemical or other item listed in K.S.A. 65-7006, and amendments thereto, prior to its repeal, or Section 9 herein.

A discussion followed with Representative Roth making a motion to approve the amendment. Representative McCray-Miller seconded. Motion carried.

Continuing with the amendments, the Committee decided to skip number 2 and 3 and moved on to amendment 4.

CONTINUATION SHEET

Minutes of the House Corrections And Juvenile Justice Committee at 1:30 p.m. on March 2, 2009, in Room 535-N of the Capitol.

Amendment 4-Amend New Sec. 5(d)(1) beginning on page 7, line 35 as follows:

(d) Except as further provided

(1) Violation of subsection (a) is a:

(A) Severity level 9, person felony if the quantity of the material is less than 3.5 grams;

(B) severity level 7, person felony if the quantity of the material is 3.5 grams or more but less than 50 grams;

(C) severity level 4, person felony if the quantity of the material is 50 grams or more but less than 100 grams; or

(D) severity level 3, person felony if the quantity of the material is 200 grams or more.

A discussion followed with Representative Frownfelter making a motion to approve the amendment and Representative Pauls made a second.

A short discussion followed.

Motion carried.

The Committee decided to skip Amendment 5 and move to 6.

Amendment 6-Amend New Sec. 5(c)(4) on page 9, line 9 as follows:

In any prosecution under this section, there shall be a rebuttal presumption of an intent to distribute if any person possesses the quantities of the following controlled substances or analogs thereof in the following amounts:

(1) 450 grams or more of marijuana;

(2) 3.5 grams or more of heroin;

(3) 100 dosage units or more containing a controlled substance; or

(4) 50 grams or more any other controlled substance.

A discussion followed with Representative Kinzer making a motion to approve the amendment. Representative Spaulding seconded. Motion carried.

A lengthy discussion followed with no motions being made on amendment 7; and amendments 9 through 14 being skipped; with amendment 8 being held for tomorrow's meeting.

Chairperson Colloton adjourned the meeting at 2:45 p.m. with the next scheduled meeting being on March 3, 2009 at 1:30 p.m. in room 535 N.

CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 03-02-09

NAME	REPRESENTING
PATRICK COLLOTON	N/A
Richard Samadiego	Kenny & Assoc.
Chris Meckler	WA
Tim Madden	KDOC
Rick Fleming	Securities Comm.
Broth Watson	KCC PC (Recod)
Jef Redya	KSC
Brenda Harman	KSC

Amendments Proposed by the Office of the Securities Commissioner

HB 2332

- 1 ~~meanor.~~ \$100,000 or more is guilty of a severity level 5, nonperson felony.
2 (2) At least \$75,000 but less than \$100,000 is guilty of a severity level
3 6, nonperson felony.
4 (3) At least \$50,000 but less than \$75,000 is guilty of a severity level
5 7, nonperson felony.
6 (4) At least \$25,000 but less than \$50,000 is guilty of a severity level
7 8, nonperson felony.
8 (5) At least \$2,000 but less than \$25,000 is guilty of a severity level
9 9, nonperson felony.
10 (6) At least \$1,000 but less than \$2,000 is guilty of a severity level 10,
11 nonperson felony.
12 (7) At least \$500 hut less than \$1,000 is guilty of a class A nonperson
13 misdemeanor.

14 (8) Less than \$500 is guilty of a class B nonperson misdemeanor.

15 Sec. 26. K.S.A. 17-12a508 is hereby amended to read as follows: 17-

16 12a508. (a) Criminal penalties. (1) Except as provided in subsections

17 (a)(2) through (a)(4) ~~and (a)(3)~~, a conviction for an intentional violation
18 of this the Kansas uniform securities act, or a rule adopted or order issued
19 under this act, except K.S.A. 17-12a504, and amendments thereto, or the
20 notice filing requirements of K.S.A. 17-12a302 or 17-12a405, and amend-
21 ments thereto, is a severity level 7 ~~9~~, nonperson felony. An individual
22 convicted of violating a rule or order under this act may be fined, but
23 may not be imprisoned, if the individual did not have knowledge of the
24 rule or order.

25 (2) ~~A conviction for an intentional violation of K.S.A. 17-12a501 or~~
26 ~~17-12a502, and amendments thereto, is:~~

27 ~~—(A) A severity level 4, nonperson felony if the violation resulted in a~~
28 ~~loss of \$100,000 or more;~~

29 ~~—(B) a severity level 5, nonperson felony if the violation resulted in a~~
30 ~~loss of at least \$25,000 but less than \$100,000; or~~

31 ~~—(C) a severity level 7, nonperson felony if the violation resulted in a~~
32 ~~loss of less than \$25,000.~~

33 ~~—(3) A conviction for an intentional violation of K.S.A. 17-12a301, 17-~~
34 ~~12a401(a), 17-12a401(e), 17-12a402(a), 17-12a402(d), 17-12a403(a), 17-~~
35 ~~12a403(e), 17-12a403(d), 17-12a404(a), or 17-12a404(e), 17-12a501 or~~
36 ~~17-12a502, and amendments thereto, is if the violation resulted in a loss~~
37 ~~of an amount of:~~

38 (A) \$100,000 or more is a severity level 5, nonperson felony if the
39 violation resulted in a loss of \$100,000 or more;

40 (B) At least \$75,000 but less than \$100,000 is a severity level 6, non-
41 person felony if the violation resulted in a loss of at least \$25,000 but less
42 than \$100,000; or

43 (C) At least \$50,000 but less than \$75,000 is a severity level 7, non-

through (a)(4)

8

A conviction for an intentional violation of K.S.A. 17-12a501 or 17-12a502, and amendments thereto, if the violation resulted in a loss of an amount of:
(A) \$1,000,000 or more is a severity level 2, nonperson felony.
(B) At least \$250,000 but less than \$1,000,000 is a severity level 3, nonperson felony.
(C) At least \$100,000 but less than \$250,000 is a severity level 4, nonperson felony.
(D) At least \$75,000 but less than \$100,000 is a severity level 5, nonperson felony.
(E) At least \$50,000 but less than \$75,000 is a severity level 6, nonperson felony.
(F) At least \$25,000 but less than \$50,000 is a severity level 7, nonperson felony.
(G) Less than \$25,000 is a severity level 8, nonperson felony.

(3)

or

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**Amendments Proposed by the
Office of the Securities Commissioner**

HB 2332

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1 person felony if the violation resulted in a loss of less than \$25,000.
2 (D) At least \$25,000 but less than \$50,000 is a severity level 8, non-
3 person felony.

4 (E) At least \$2,000 but less than \$25,000 is a severity level 9, non-
5 person felony.

6 (F) At least \$1,000 but less than \$2,000 is a severity level 10, non-
7 person felony.

8 (G) At least \$500 but less than \$1,000 is a class A nonperson
9 misdemeanor.

10 (H) Less than \$500 is a class B nonperson misdemeanor.

11 ~~(4) (3) A conviction for an intentional violation of K.S.A. 17-12a505~~
12 ~~or 17-12a506, and amendments thereto, is a severity level 8, nonperson~~
13 ~~felony.~~

14 ~~(5) (4) Any violation of K.S.A. 17-12a301, 17-12a401(a), 17-~~
15 ~~12a401(e), 17-12a402(a), 17-12a402(d), 17-12a403(a), 17-12a403(e), 17-~~
16 ~~12a403(d), 17-12a404(a), 17-12a404(e), 17-12a501 or 17-12a502, and~~
17 ~~amendments thereto, resulting in a loss of \$25,000 \$100,000 or more shall~~
18 ~~have a presumptive sentence of be presumed imprisonment regardless of~~
19 ~~its location on the sentencing grid block.~~

20 (b) *Statute of Limitations.* Except as provided by subsection (9) of
21 K.S.A. 21-3106, and amendments thereto, no prosecution for any crime
22 under this act may be commenced more than 10 years after the alleged
23 violation if the victim is the Kansas public employees retirement system
24 and no prosecution for any other crime under this act may be commenced
25 more than five years after the alleged violation. A prosecution is com-
26 menced when a complaint or information is filed, or an indictment re-
27 turned, and a warrant thereon is delivered to the sheriff or other officer
28 for execution, except that no prosecution shall be deemed to have been
29 commenced if the warrant so issued is not executed without unreasonable
30 delay.

31 (c) *Criminal reference.* The administrator may refer such evidence as
32 may be available concerning violations of this act or of any rules and
33 regulations or order hereunder to the attorney general or the proper
34 county or district attorney, who may in the prosecutor's discretion, with
35 or without such a reference, institute the appropriate criminal proceed-
36 ings under this act. Upon receipt of such reference, the attorney general
37 or the county attorney or district attorney may request that a duly em-
38 ployed attorney of the administrator prosecute or assist in the prosecution
39 of such violation or violations on behalf of the state. Upon approval of the
40 administrator, such employee shall be appointed a special prosecutor for
41 the attorney general or the county attorney or district attorney to serve
42 without compensation from the attorney general or the county attorney
or district attorney. Such special prosecutor shall have all the powers and

(4) A conviction for an intentional violation of:
(A) K.S.A. 17-12a404(e), 17-12a505, 17-12a506, and amendments thereto, or an order to cease and desist issued by the administrator pursuant to K.S.A. 17-12a412(c) or 17-12a604(a), and amendments thereto, is a severity level 6, nonperson felony.
(B) K.S.A. 17-12a401(c) or 17-12a403(c), and amendments thereto, is a severity level 7, nonperson felony.

(5)

\$25,000

HOUSE BILL No. 2332

By Committee on Federal and State Affairs

2-12

9 AN ACT concerning crimes, punishment and criminal procedure;
 10 amending K.S.A. 9-2012, 12-4419, 12-4509, 16-305, 17-12a508, 17-
 11 1311a, 19-3519, 21-2501, 21-2511, 21-3301, 21-3302, 21-3303, 21-
 12 3411, 21-3413, 21-3414, 21-3415, 21-3421, 21-3435, 21-3436, 21-3437,
 13 21-3447, 21-3451, 21-3608a, 21-3609, 21-3701, 21-3704, 21-3707, 21-
 14 3710, 21-3718, 21-3720, 21-3729, 21-3734, 21-3761, 21-3763, 21-3812,
 15 21-3826, 21-3846, 21-3902, 21-3904, 21-3905, 21-3910, 21-4018, 21-
 16 4105, 21-4111, 21-4203, 21-4204, 21-4226, 21-4232, 21-4318, 21-4502,
 17 21-4503a, 21-4603d, 21-4611, 21-4638, 21-4643, 21-4703, 21-4706, 21-
 18 4707, 21-4709, 21-4710, 21-4711, 21-4713, 21-4717, 21-4720, 21-4722,
 19 21-4729, 22-2512, 22-2515, 22-2802, 22-2908, 22-2909, 22-3303, 22-
 20 3412, 22-3604, 22-3901, 22-4405, 22-4903, 22-4906, 36-601, 36-604,
 21 39-720, 41-405, 47-421, 58-3315, 60-427, 65-2859, 65-4102, 65-4127c,
 22 65-4139, 65-5709, 75-4228, 75-4314 and 79-5201 and K.S.A. 2008
 23 Supp. 8-2,128, 8-1567, 9-2203, 12-4104, 21-3412a, 21-3419a, 21-3705,
 24 21-3811, 21-4310, 21-4619, 21-4704, 21-4714, 22-3716, 22-3717, 22-
 25 4902, 38-2255, 38-2346, 38-2347, 38-2369, 38-2374, 38-2376, 38-2377,
 26 39-717, 40-247, 40-2,118, 40-5013, 44-5,125, 44-619, 44-706, 44-719,
 27 47-1827, 59-2132, 59-29b46, 60-4104, 65-516, 65-3235, 65-3236, 65-
 28 4167, 72-1397, 72-5445, 72-89c01 74-9101, 75-7c04, 75-5291, 75-
 29 52,144, 76-11a13, 79-15,235 and 79-3228 and repealing the existing
 30 sections; also repealing K.S.A. 21-4214, 21-4215, 21-4708, 21-4724,
 31 65-4105a, 65-4127d, 65-4141, 65-4142, 65-4155, 65-4158, 65-4164 and
 32 65-4165 and K.S.A. 2008 Supp. 21-4705, 65-4150, 65-4151, 65-4152,
 33 65-4153, 65-4159, 65-4159a, 65-4160, 65-4161, 65-4162, 65-4163, 65-
 34 4166, 65-4168, 65-4168a and 65-7006.

65-6a40,

21-4619d,

36 *Be it enacted by the Legislature of the State of Kansas:*
 37 New Section 1. As used in sections 1 through 17, and amendments
 38 thereto:
 39 (a) "Controlled substance" means any drug, substance or immediate
 40 precursor included in any of the schedules designated in K.S.A. 65-4105,
 41 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.
 42 (b) (1) "Controlled substance analog" means a substance that is in-
 43 tended for human consumption, and:

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1 with knowledge of and intent to have such control or knowingly keeping
2 some item in a place where the person has some measure of access and
3 right of control.

4 (r) "Presence of a minor" means:

- 5 (1) A minor is within close proximity to the illegal activity;
- 6 (2) the illegal activity is conducted in a place where minors can rea-
- 7 sonably be expected to be present; or
- 8 (3) in the minor's dwelling.

9 This definition shall not be construed as requiring that a defendant
10 actually be aware of the presence of a minor or a minor actually be aware
11 of the illegal activity.

12 (s) "Simulated controlled substance" means any product which iden-
13 tifies itself by a common name or slang term associated with a controlled
14 substance and which indicates on its label or accompanying promotional
15 material that the product simulates the effect of a controlled substance.

16 New Sec. 2. (a) Prosecutions for crimes committed prior to July 1,
17 2009, shall be governed by the law in effect at the time the crime was
18 committed. For purposes of this section, a crime was committed prior to
19 July 1, 2009, if any element of the crime occurred prior thereto.

2010

20 (b) The prohibitions of this act shall apply unless the conduct pro-
21 hibited is authorized by the pharmacy act of the state of Kansas, the
22 uniform controlled substances act or otherwise authorized by law.

23 New Sec. 3. (a) It shall be unlawful for any person to manufacture
24 any controlled substance or controlled substance analog.

25 (b) Violation or attempted violation of subsection (a) is a severity level
26 5, person felony, except that, violation of subsection (a) is a severity level
27 3, person felony if such substance being manufactured or attempted to
28 be manufactured is any methamphetamine as defined by subsection
29 (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto.

30 (c) The provisions of subsection (d) of K.S.A. 21-3301, and amend-
31 ments thereto, shall not apply to a violation of attempting to unlawfully
32 manufacture any controlled substance pursuant to this section.

33 (d) For persons arrested and charged under this section, bail shall be
34 at least \$50,000 cash or surety, unless the court determines, on the record,
35 that the defendant is not likely to re-offend, the court imposes pretrial
36 supervision, or the defendant agrees to participate in a licensed or cer-
37 tified drug treatment program.

38 (e) The sentence of a person who violates this section shall not be
39 subject to statutory provisions for suspended sentence, community serv-
40 ice work or probation.

41 (f) The sentence of a person who violates this section or K.S.A. 65-
42 4159 prior to its repeal, shall not be reduced because these sections pro-
43 hibit conduct identical to that prohibited by K.S.A. 65-4161 or 65-4163,

1 prior to such sections repeal, or section 5, and amendments thereto.

2 New Sec. 4. All costs and expenses resulting from the seizure, dis-
3 position and decontamination of an unlawful manufacturing site shall be
4 assessed as costs against the defendant.

5 New Sec. 5. (a) It shall be unlawful for any person to distribute or
6 possess with the intent to distribute any of the following controlled sub-
7 stances or controlled substance analogs thereof:

8 (1) Opiates, opium or narcotic drugs, or any stimulant designated in
9 subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments
10 thereto;

11 (2) any depressant designated in subsection (e) of K.S.A. 65-4105,
12 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109
13 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

14 (3) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
15 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.
16 65-4109, and amendments thereto;

17 (4) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
18 4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-
19 4109, and amendments thereto;

20 (5) any substance designated in subsection (g) of K.S.A. 65-4105 and
21 subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments
22 thereto; or

23 (6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
24 4109, and amendments thereto.

25 (b) It shall be unlawful for any person to distribute or possess with
26 the intent to distribute a controlled substance or a controlled substance
27 analog designated in K.S.A. 65-4113, and amendments thereto.

28 (c) It shall be unlawful for any person to cultivate any controlled
29 substance or controlled substance analog designated in subsection (a).

30 (d) Except as further provided:

31 (1) Violation of subsection (a) is a:

32 (A) Severity level 9, person felony if the quantity of the material is
33 less than 3.5 grams;

34 (B) severity level 7, person felony if the quantity of the material is
35 3.5 grams or more but less than 100 grams;

36 (C) severity level 4, person felony if the quantity of the material is
37 100 grams or more but less than 1 kilogram; or

38 (D) severity level 3, person felony if the quantity of the material is 1
39 kilogram or more.

40 (2) Violation of subsection (a), with respect to material containing any
41 quantity of marijuana, or an analog thereof, is a:

42 (A) Severity level 9, person felony if the quantity of the material is
43 less than 25 grams;

kilogram

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1 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

2 (2) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
3 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.
4 65-4109, and amendments thereto;

5 (3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
6 4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-
7 4109, and amendments thereto;

8 (4) any substance designated in subsection (g) of K.S.A. 65-4105 and
9 subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments
10 thereto; or

11 (5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
12 4109, and amendments thereto.

13 (c) (1) Violation of subsection (a) is a severity level 10, nonperson
14 felony;

15 (2) violation of subsection (b) is a class A nonperson misdemeanor,
16 except that, violation of subsection (b) is a severity level 10, nonperson
17 felony if that person has a prior conviction under such subsection, under
18 K.S.A. 65-4162 prior to its repeal, under a substantially similar offense
19 from another jurisdiction, or under any city ordinance or county resolu-
20 tion for a substantially similar offense if the substance involved was 3, 4-
21 methylenedioxyamphetamine (MDMA), marijuana or tetrahydro-
22 cannabinol as designated in subsection (d) of K.S.A. 65-4105, and
23 amendments thereto.

24 (d) It shall not be a defense to charges arising under this section that
25 the defendant was acting in an agency relationship on behalf of any other
26 party in a transaction involving a controlled substance.

27 New Sec. 7. (a) It shall be unlawful for any person to knowingly or
28 intentionally use any communication facility:

29 (1) In committing, causing, or facilitating the commission of any fel-
30 ony under section 3, 5 or 6, and amendments thereto; or

31 (2) in any attempt to commit, any conspiracy to commit, or any crim-
32 inal solicitation of any felony under section 3, 5 or 6, and amendments
33 thereto. Each separate use of a communication facility may be charged
34 as a separate offense under this subsection.

35 (b) Violation of subsection (a) is a ~~nondrug~~ severity level 8, nonperson
36 felony.

37 (c) As used in this section, "communication facility" means any and
38 all public and private instrumentalities used or useful in the transmission
39 of writing, signs, signals, pictures or sounds of all kinds and includes tel-
40 ephone, wire, radio, computer, computer networks, beepers, pagers and
41 all other means of communication.

42 New Sec. 8. (a) Unlawfully obtaining and distributing a prescription-
43 only drug is:

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1 (1) Making, altering or signing of a prescription order by a person
2 other than a practitioner or a mid-level practitioner;

3 (2) distribution of a prescription order, knowing it to have been made,
4 altered or signed by a person other than a practitioner or a mid-level
5 practitioner;

6 (3) possession of a prescription order with intent to distribute it and
7 knowing it to have been made, altered or signed by a person other than
8 a practitioner or a mid-level practitioner;

9 (4) possession of a prescription-only drug knowing it to have been
10 obtained pursuant to a prescription order made, altered or signed by a
11 person other than a practitioner or a mid-level practitioner; or

12 (5) providing false information to a practitioner or mid-level practi-
13 tioner for the purpose of obtaining a prescription-only drug.

14 (b) (1) Unlawfully obtaining and distributing a prescription-only
15 drug is a class A nonperson misdemeanor, except that:

16 (2) Unlawfully obtaining and distributing a prescription-only drug is
17 a ~~nondrug~~ severity level 6, nonperson felony if that person is distributing,
18 and such distribution involves selling, possessing with the intent to sell,
19 or offering for sale the prescription-only drug so obtained; and

20 (3) Unlawfully obtaining and distributing a prescription-only drug is
21 a ~~nondrug~~ severity level 9 nonperson felony if that person has a prior
22 conviction of paragraph (1) or K.S.A. 21-4214 prior to its repeal.

23 (c) As used in this section:

24 (1) "Pharmacist," "practitioner," "mid-level practitioner" and "pre-
25 scription-only drug" shall have the meanings ascribed thereto by K.S.A.
26 65-1626, and amendments thereto.

27 (2) "Prescription order" means an order transmitted in writing, orally,
28 telephonically or by other means of communication for a prescription-
29 only drug to be filled by a pharmacist. "Prescription order" does not mean
30 a drug dispensed pursuant to such an order.

31 (d) The provisions of this section shall not be applicable to prosecu-
32 tions involving prescription-only drugs which could be bought under sec-
33 tion 5 or 6, and amendments thereto.

34 New Sec. 9. (a) Any person who possesses ephedrine, pseudoephed-
35 rine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous
36 ammonia, pressurized ammonia or phenylpropanolamine, or their salts,
37 isomers or salts of isomers with intent to use the product to manufacture
38 a controlled substance or controlled substance analog is guilty of at-
39 tempted violation of subsection (a) of section 3, and amendments thereto.

40 (b) Any person who possesses drug paraphernalia with the intent to
41 manufacture a controlled substance or a controlled substance analog shall
42 be guilty of attempted violation of subsection (a) of section 3, and amend-
43 ments thereto.

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1 tent to distribute or manufacture with intent to distribute any drug par-
2 aphernalia, knowing or under circumstances where one reasonably should
3 know, that it will be used as such in violation of sections 1 through 17,
4 and amendments thereto, except subsection (b) of section 6, and amend-
5 ments thereto.

6 (d) It shall be unlawful for any person to distribute, possess with
7 intent to distribute or manufacture with intent to distribute any drug
8 paraphernalia, knowing, or under circumstances where one reasonably
9 should know, that it will be used as such in violation of subsection (b) of
10 section 6, and amendments thereto.

11 (e) (1) Violation of subsection (a) is a severity level 6, nonperson
12 felony.

13 (2) Violation of subsection (b) is a severity level 9, nonperson felony.

14 (3) Violation of subsection (c) is a level 9, nonperson felony, except
15 that violation of subsection (c) is a severity level 8, nonperson felony if
16 that person distributes or causes drug paraphernalia to be distributed to
17 a minor or in the presence of a minor.

18 (4) Violation of subsection (d) is a class A nonperson misdemeanor,
19 except that violation of subsection (d) is a **nondrug** severity level 9, non-
20 person felony if that person distributes or causes drug paraphernalia to
21 be distributed to a minor or in the presence of a minor.

22 (f) For persons arrested and charged under subsection (a), bail shall
23 be at least \$50,000 cash or surety, unless the court determines, on the
24 record, that the defendant is not likely to re-offend, the court imposes
25 pretrial supervision or the defendant agrees to participate in a licensed
26 or certified drug treatment program.

27 (g) As used in this section, "or under circumstances where one rea-
28 sonably should know" that an item will be used in violation of this section,
29 shall include, but not be limited to, the following:

30 (1) Actual knowledge from prior experience or statements by
31 customers;

32 (2) inappropriate or impractical design for alleged legitimate use;

33 (3) receipt of packaging material, advertising information or other
34 manufacturer supplied information regarding the item's use as drug par-
35 aphernalia; or

36 (4) receipt of a written warning from a law enforcement or prose-
37 cutorial agency having jurisdiction that the item has been previously de-
38 termined to have been designed specifically for use as drug paraphernalia.

39 New Sec. 11. (a) In determining whether an object is drug para-
40 phernalia, a court or other authority shall consider, in addition to all other
41 logically relevant factors, the following:

42 (1) Statements by an owner or person in control of the object con-
43 cerning its use;

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1 of the nervous system.

2 (b) Unlawful abuse of toxic vapors is a class B nonperson
3 misdemeanor.

4 (c) In addition to any sentence or fine imposed, the court shall enter
5 an order which requires that the person enroll in and successfully com-
6 plete an alcohol and drug safety action education program, treatment
7 program or both such programs as provided in K.S.A. 8-1008, and amend-
8 ments thereto.

9 (d) This section shall not apply to the inhalation of anesthesia or other
10 substances for medical or dental purposes.

11 (e) For the purposes of this section, the term "toxic vapors" means
12 vapors from the following substances or products containing such
13 substances:

- 14 (1) Alcohols, including methyl, isopropyl, propyl or butyl;
- 15 (2) aliphatic acetates, including ethyl, methyl, propyl or methyl cel-
16 losolve acetate;
- 17 (3) acetone;
- 18 (4) benzene;
- 19 (5) carbon tetrachloride;
- 20 (6) cyclohexane;
- 21 (7) freons, including freon 11 and freon 12;
- 22 (8) hexane;
- 23 (9) methyl ethyl ketone;
- 24 (10) methyl isobutyl ketone;
- 25 (11) naptha;
- 26 (12) perchlorethylene;
- 27 (13) toluene;
- 28 (14) trichloroethane; or
- 29 (15) xylene.

30 (f) In a prosecution for a violation of this section, evidence that a
31 container lists one or more of the substances described in subsection (e)
32 as one of its ingredients shall be prima facie evidence that the substance
33 in such container contains toxic vapors.

34 New Sec. 13. (a) It shall be unlawful for any person to distribute,
35 possess with the intent to distribute, or manufacture with the intent to
36 distribute any simulated controlled substance.

37 (b) It shall be unlawful for any person to use or possess with intent
38 to use any simulated controlled substance.

39 (c) (1) Violation of subsection (a) is a **nondrug** severity level 9, non-
40 person felony, except that violation of subsection (a) is a **nondrug** severity
41 level 7, nonperson felony if that person is 18 or more years of age and
42 the person distributes, possesses with the intent to distribute or manu-
43 factures with the intent to distribute to a minor or in the presence of a

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1 minor.

2 (2) Violation of subsection (b) is a class A nonperson misdemeanor.

3 New Sec. 14. (a) It shall be unlawful for any person to distribute or
4 possess with the intent to distribute any substance which is not a con-
5 trolled substance:

6 (1) Upon an express representation that the substance is a controlled
7 substance or that the substance is of such nature or appearance that the
8 recipient will be able to distribute the substance as a controlled substance;
9 or

10 (2) under circumstances which would give a reasonable person reason
11 to believe that the substance is a controlled substance.

12 (b) Violation of subsection (a) is a class A nonperson misdemeanor,
13 except that violation of subsection (a) is a **nondrug** severity level 9, non-
14 person felony if the distributor is 18 or more years of age, distributing to
15 a minor and at least three years older than the minor to whom the dis-
16 tribution is made.

17 (c) If any one of the following factors is established, there shall be a
18 presumption that distribution of a substance was under circumstances
19 which would give a reasonable person reason to believe that a substance
20 is a controlled substance:

21 (1) The substance was packaged in a manner normally used for the
22 illegal distribution of controlled substances;

23 (2) the distribution of the substance included an exchange of or de-
24 mand for money or other consideration for distribution of the substance
25 and the amount of the consideration was substantially in excess of the
26 reasonable value of the substance; or

27 (3) the physical appearance of the capsule or other material contain-
28 ing the substance is substantially identical to a specific controlled
29 substance.

30 (d) A person who violates the provisions of this section also may be
31 prosecuted for, convicted of and punished for theft by deception.

32 New Sec. 15. Within 10 days after the initiation of prosecution with
33 respect to a controlled substance analog by indictment, complaint or in-
34 formation, the prosecuting attorney shall notify the board of pharmacy of
35 information relevant to emergency scheduling as provided for in subsec-
36 tion (e) of K.S.A. 65-4102, and amendments thereto. After final deter-
37 mination that the controlled substance analog should not be scheduled,
38 no prosecution relating to that substance as a controlled substance analog
39 may be commenced or continued.

40 New Sec. 16. (a) It shall be unlawful for any person to receive or
41 acquire proceeds or engage in transactions involving proceeds, known to
42 be derived from a violation of sections 1 through 17, and amendments
43 thereto. The provisions of this subsection do not apply to any transaction

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1 anything of value, whether real or personal, tangible or intangible;

2 (2) "transaction" includes a purchase, sale, trade, loan, pledge, in-
3 vestment, gift, transfer, transmission, delivery, deposit, withdrawal, pay-
4 ment, transfer between accounts, exchange of currency, extension of
5 credit, purchase, or sale of any monetary instrument, use of a safe deposit
6 box, or any other acquisition or disposition of property whatever means
7 effected.

8 Sec. 46. K.S.A. 21-3608a is hereby amended to read as follows: 21-
9 3608a. (a) Aggravated endangering a child is:

10 (1) Intentionally causing or permitting a child under the age of 18
11 years to be placed in a situation in which the child's life, body or health
12 is ~~injured or~~ endangered;

13 (2) recklessly causing or permitting a child under the age of 18 years
14 to be placed in a situation in which the child's life, body or health is
15 ~~injured or~~ endangered;

16 (3) causing or permitting such child to be in an environment where
17 a person is ~~selling, offering for sale or having in such person's possession~~
18 ~~with intent to sell, deliver, distribute, prescribe, administer, dispense,~~
19 ~~manufacture or attempt~~ ~~to~~ manufacture any methamphetamine as de-
20 fined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments
21 thereto; or

distributing, possessing with the intent to distribute,
manufacturing or attempting

22 (4) causing or permitting such child to be in an environment where
23 drug paraphernalia or volatile, toxic or flammable chemicals are stored
24 for the purpose of manufacturing or attempting to manufacture any meth-
25 amphetamine as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107,
26 and amendments thereto.

27 (b) Aggravated endangering a child is a severity level 9 7, person
28 felony.

29 (c) As used in this section:

30 (1) "Manufacture" shall have the meaning ascribed to that term in
31 ~~K.S.A. 65-4104 section 1~~, and amendments thereto; and

32 (2) "drug paraphernalia" shall have the meaning ascribed to that term
33 in ~~K.S.A. 65-4150 section 1~~, and amendments thereto.

34 (d) This section shall be part of and supplemental to the Kansas crim-
35 inal code.

36 Sec. 47. K.S.A. 21-3609 is hereby amended to read as follows: 21-
37 3609. (a) Abuse of a child is intentionally:

38 (1) Torturing, cruelly beating, ~~or shaking~~ which results in great bodily
39 harm ~~upon any child under the age of 18 years~~; or

40 (2) inflicting cruel and inhuman corporal punishment upon any child
41 under the age of 18 years.

42 (b) Abuse of a child ~~as described in subsection (a)(1)~~ is a severity level
43 5 3, person felony. ~~Abuse of a child as described in subsection (a)(2) is a~~

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1 in K.S.A. 21-4729, and amendments thereto, to participate in a certified
 2 drug abuse treatment program, as provided in K.S.A. 2008 Supp. 75-
 3 52,144, and amendments thereto, including, but not limited to, an ap-
 4 proved after-care plan. If the defendant fails to participate in or has a
 5 pattern of intentional conduct that demonstrates the offender's refusal to
 6 comply with or participate in the treatment program, as established by
 7 judicial finding, the defendant shall be subject to revocation of probation
 8 and the defendant shall serve the underlying prison sentence as estab-
 9 lished in K.S.A. 21-4705, and amendments thereto. For those offenders
 10 who are convicted on or after the effective date of this act, upon com-
 11 pletion of the underlying prison sentence, the defendant shall not be
 12 subject to a period of postrelease supervision. The amount of time spent
 13 participating in such program shall not be credited as service on the un-
 14 derlying prison sentence.

21-4704

15 (o) *All offenders who are convicted of a class A misdemeanor shall be*
 16 *under the supervision of a court services officer. In releasing a defendant*
 17 *on probation, the court shall direct that the defendant be under the su-*
 18 *per vision of a court services officer.*

19 Sec. 79. K.S.A. 21-4611 is hereby amended to read as follows: 21-
 20 4611. (a) The period of suspension of sentence, probation or assignment
 21 to community corrections fixed by the court shall not exceed five years
 22 in felony cases involving crimes committed prior to July 1, 1993, or two
 23 years in misdemeanor cases, subject to renewal and extension for addi-
 24 tional fixed periods not exceeding five years in such felony cases, nor two
 25 years in misdemeanor cases. In no event shall the total period of proba-
 26 tion, suspension of sentence or assignment to community corrections for
 27 a felony committed prior to July 1, 1993, exceed the greatest maximum
 28 term provided by law for the crime, except that where the defendant is
 29 convicted of nonsupport of a child, the period may be continued as long
 30 as the responsibility for support continues. Probation, suspension of sen-
 31 tence or assignment to community corrections may be terminated by the
 32 court at any time and upon such termination or upon termination by
 33 expiration of the term of probation, suspension of sentence or assignment
 34 to community corrections, an order to this effect shall be entered by the
 35 court. The provisions of K.S.A. 75-5291, and amendments thereto, shall
 36 be applicable to any assignment to a community correctional services
 37 program pursuant to this section.

38 (b) The district court having jurisdiction of the offender may parole
 39 any misdemeanant sentenced to confinement in the county jail. The pe-
 40 riod of such parole shall be fixed by the court and shall not exceed two
 41 years and shall be terminated in the manner provided for termination of
 42 suspended sentence and probation.

43 (c) For all crimes committed on or after July 1, 1993, the duration of

2-11

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

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

11 Sec. 85. K.S.A. 21-4706 is hereby amended to read as follows: 21-
 12 4706. (a) For crimes committed on or after July 1, 1993, the sentences
 13 of imprisonment shall represent the time a person shall actually serve,
 14 subject to a reduction of up to 15% of the primary sentence for good
 15 time as authorized by law. For crimes committed on or after January 1,
 16 2008, the sentences of imprisonment shall represent the time a person
 17 shall actually serve, subject to a reduction of up to 20% of the primary
 18 sentence for good time for drug severity level 3 or 4, *prior to such levels*
 19 *repeal*, or ~~non~~drug severity level 7 through 10 crimes and a reduction for
 20 program credit as authorized by K.S.A. 21-4722, and amendments
 21 thereto.

level's

22 (b) The sentencing court shall pronounce sentence in all felony cases.

23 (c) Violations of K.S.A. 21-3401, 21-3439, 21-3449, 21-3450 and 21-
 24 3801, and amendments thereto, are off-grid crimes for the purpose of
 25 sentencing. Except as otherwise provided by K.S.A. 21-4622 through 21-
 26 4627, and 21-4629 through 21-4631, and amendments thereto, the sen-
 27 tence shall be imprisonment for life and shall not be subject to statutory
 28 provisions for suspended sentence, community service or probation.

29 (d) As identified in K.S.A. 21-3447, 21-3502, 21-3504, 21-3506, 21-
 30 3513 and 21-3516, and amendments thereto, if the offender is 18 years
 31 of age or older and the victim is under 14 years of age, such violations
 32 are off-grid crimes for the purposes of sentencing. Except as provided in
 33 K.S.A. 21-4642, and amendments thereto, the sentence shall be impris-
 34 onment for life pursuant to K.S.A. 21-4643, and amendments thereto.

35 Sec. 86. K.S.A. 21-4707 is hereby amended to read as follows: 21-
 36 4707. (a) The crime severity scale contained in the sentencing guidelines
 37 grid for ~~non~~drug crimes as provided in K.S.A. 21-4704, and amendments
 38 thereto, consists of 10 levels of crimes. Crimes listed within each level
 39 are considered to be relatively equal in severity. Level 1 crimes are the
 40 most severe crimes and level 10 crimes are the least severe crimes. If a
 41 person is convicted of two or more crimes, then the severity level shall
 42 be determined by the most severe crime of conviction.

43 (b) When the statutory definition of a crime includes a broad range

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1 (B) The chronic offender II, escalating felon is defined as an offender
2 adjudicated as a juvenile offender for an offense which, if committed by
3 an adult, would constitute:

4 (i) One present felony adjudication and either two prior misde-
5 meanor adjudications or one prior person or nonperson felony adjudica-
6 tion; or

7 (ii) one present felony adjudication and two prior severity level 4 drug
8 adjudications, prior to such **levels** repeal

9 ~~(iii) one present severity level 3 drug felony adjudication and either
10 two prior misdemeanor adjudications or one prior person or nonperson
11 felony adjudication; or~~

12 ~~(iv) one present severity level 3 drug felony adjudication and two
13 prior severity level 4 drug adjudications.~~

14 Offenders in this category may be committed to a juvenile correctional
15 facility for a minimum term of six months and up to a maximum term of
16 18 months. The aftercare term for this offender is set at a minimum term
17 of six months and up to a maximum term of 12 months.

18 (C) The chronic offender III, escalating misdemeanor is defined as
19 an offender adjudicated as a juvenile offender for an offense which, if
20 committed by an adult, would constitute:

21 (i) One present misdemeanor adjudication and either two prior mis-
22 demeanor adjudications or one prior person or nonperson felony adju-
23 dication and two placement failures; or

24 (ii) one present misdemeanor adjudication and two prior severity
25 level 4 drug felony adjudications, prior to such **levels** repeal and two place-
26 ment failures;

27 ~~(iii) one present severity level 4 drug felony adjudication and either
28 two prior misdemeanor adjudications or one prior person or nonperson
29 felony adjudication and two placement failures; or~~

30 ~~(iv) one present severity level 4 drug felony adjudication and two
31 prior severity level 4 drug felony adjudications and two placement
32 failures.~~

33 Offenders in this category may be committed to a juvenile correctional
34 facility for a minimum term of three months and up to a maximum term
35 of six months. The aftercare term for this offender is set at a minimum
36 term of three months and up to a maximum term of six months.

37 (4) *Conditional Release Violators*. Upon finding the juvenile violated
38 a requirement or requirements of conditional release, the court may:

39 (A) Subject to the limitations in subsection (a) of K.S.A. 2008 Supp.
40 38-2366, and amendments thereto, commit the offender directly to a
41 juvenile correctional facility for a minimum term of three months and up
42 to a maximum term of six months. The aftercare term for this offender
43 shall be a minimum of two months and a maximum of six months, or the

level's

1 for transplantation or therapy if removal of a part from an individual is
2 intended to occur after the individual's death commits a severity level 5
3 8, nonperson felony.

4 (b) A person may charge a reasonable amount for the removal, proc-
5 essing, preservation, quality control, storage, transportation, implantation,
6 or disposal of a part.

7 Sec. 143. K.S.A. 2008 Supp. 65-3236 is hereby amended to read as
8 follows: 65-3236. A person that, in order to obtain a financial gain, inten-
9 tionally falsifies, forges, conceals, defaces, or obliterates a document of
10 gift, an amendment or revocation of a document of gift or a refusal com-
11 mits a severity level 8, nonperson felony.

12 Sec. 144. K.S.A. 2008 Supp. 65-4167 is hereby amended to read as
13 follows: 65-4167. (a) Trafficking in counterfeit drugs is intentionally man-
14 ufacturing, distributing, ~~dispensing, selling or delivering~~ for consumption
15 purposes, ~~or holding or offering for sale~~, any counterfeit drug.

or possessing with the intent to distribute

16 (b) Trafficking in counterfeit drugs which have a retail value of less
17 than \$500 is a class A nonperson misdemeanor, ~~trafficking in counterfeit~~
18 ~~drugs which have a retail value of at least \$500 but less than \$25,000 is a~~
19 ~~severity level 9, nonperson felony and trafficking in counterfeit drugs~~
20 ~~which have a retail value of \$25,000 or more is a severity level 7, non-~~
21 ~~person felony.~~

- 22 (1) \$100,000 or more is a severity level 5, nonperson felony.
- 23 (2) At least \$75,000 but less than \$100,000 is a severity level 6, non-
- 24 person felony.
- 25 (3) At least \$50,000 but less than \$75,000 is a severity level 7, non-
- 26 person felony.
- 27 (4) At least \$25,000 but less than \$50,000 is a severity level 8, non-
- 28 person felony.
- 29 (5) At least \$2,000 but less than \$25,000 is a severity level 9, nonper-
- 30 son felony.
- 31 (6) At least \$1,000 but less than \$2,000 is a severity level 10, nonper-
- 32 son felony.
- 33 (7) At least \$500 but less than \$1,000 is a class A nonperson
- 34 misdemeanor.
- 35 (8) Less than \$500 is a class B nonperson misdemeanor.

36 (c) A pharmacy which is inadvertently in possession of counterfeit
37 drugs may return those drugs to the supplier who provided the drugs to
38 the pharmacy.

39 Sec. 145. K.S.A. 65-5709 is hereby amended to read as follows: 65-
40 5709. Violation of section 304 of the federal act, as adopted by K.S.A. 65-
41 5707, and amendments thereto, is a severity level 10, nonperson felony
42 punishable by a fine of not more than \$25,000 or imprisonment for not
43 more than two years, or both, for the first conviction and a fine of not

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1 tions for a term of not less than two nor more than five years. In addition
 2 to such criminal liability the treasurer or director of accounts and reports
 3 and the surety thereof shall also be liable, on official bond, for all profits
 4 realized from such unlawful use of any moneys. It shall be the duty of
 5 the attorney general to enter and prosecute to final termination all actions
 6 for violation of this act.

7 Sec. 154. K.S.A. 75-4314 is hereby amended to read as follows: 75-
 8 4314. Any officer or employee having rendered service for the state or
 9 any county, city or any municipality or for any public school district or
 10 for any private school, college or university receiving public funds who
 11 shall knowingly receive and convert to his or her receives and converts to
 12 such officer or employee's use any payment for such services without
 13 having subscribed and filed an oath as prescribed by this act shall be
 14 deemed is guilty of a severity level 10, nonperson felony and upon con-
 15 viction thereof shall be punished by confinement and hard labor not ex-
 16 ceeding five years or in the county jail not less than six months.

17 Sec. 155. K.S.A. 2008 Supp. 75-52,144 is hereby amended to read as
 18 follows: 75-52,144. (a) Drug abuse treatment programs certified in ac-
 19 cordance with subsection (b) shall provide:

20 (1) Presentence drug abuse assessments of any person who is con-
 21 victed of a felony violation of K.S.A. 65-4160 or 65-4162, prior to such
 22 sections repeal or section 6, and amendments thereto, and meets the
 23 requirements of K.S.A. 21-4729, and amendments thereto;

24 (2) treatment of all persons who are convicted of a felony violation
 25 of K.S.A. 65-4160 or 65-4162, prior to such sections repeal or section 6,
 26 and amendments thereto, meet the requirements of K.S.A. 21-4729, and
 27 amendments thereto, and whose sentence requires completion of a cer-
 28 tified drug abuse treatment program, as provided in this section;

29 (3) one or more treatment options in the continuum of services
 30 needed to reach recovery: Detoxification, rehabilitation, continuing care
 31 and aftercare, and relapse prevention;

32 (4) treatment options to incorporate family and auxiliary support serv-
 33 ices; and

34 (5) treatment options for alcohol abuse when indicated by the as-
 35 sessment of the offender or required by the court.

36 (b) The presentence criminal risk-need assessment shall be con-
 37 ducted by a court services officer or a community corrections officer. The
 38 presentence drug abuse treatment program placement assessment shall
 39 be conducted by a drug abuse treatment program certified in accordance
 40 with the provisions of this subsection to provide assessment and treatment
 41 services. A drug abuse treatment program shall be certified by the sec-
 42 retary of corrections. The secretary may establish qualifications for the
 43 certification of programs, which may include requirements for supervi-

section's

2-15

1 derpayment of tax was due to the failure of the personal representative
 2 to make a reasonable attempt to comply with the provisions of this act, a
 3 penalty shall be imposed in the amount of 25% of the unpaid balance of
 4 tax due.

5 (c) If any personal representative has failed to file a return or has
 6 filed an incorrect or insufficient return, and after notice from the director
 7 refuses or neglects within 20 days to file a proper return, the director
 8 shall determine the value of the taxable estate according to the best avail-
 9 able information and assess the tax together with a penalty of 50% of the
 10 unpaid balance of tax due plus interest at the rate prescribed by subsec-
 11 tion (a) of K.S.A. 79-2968, and amendments thereto, from the date the
 12 tax was originally due to the date of payment.

13 (d) Any personal representative who, with fraudulent intent, fails to
 14 pay any tax or to make, render or sign any return, or to supply any infor-
 15 mation, within the time required by or under the provisions of this act,
 16 shall be assessed a penalty equal to the amount of the unpaid balance of
 17 tax due plus interest at the rate prescribed by subsection (a) of K.S.A. 79-
 18 2968, and amendments thereto, from the date the tax was originally due
 19 to the date of payment. Such person ~~shall be~~ is also guilty of ~~a~~ an un-
 20 classified misdemeanor and, upon conviction, shall be fined not more than
 21 \$1,000 or be imprisoned in the county jail not less than 30 days nor more
 22 than one year, or both such fine and imprisonment.

23 (e) Any personal representative who intentionally signs a fraudulent
 24 return ~~shall be~~ is guilty of a *severity level 10, nonperson felony*, ~~and upon~~
 25 ~~conviction shall be punished by imprisonment for a term not exceeding~~
 26 ~~five years.~~

27 (f) (1) Whenever the director determines that the failure of the per-
 28 sonal representative to comply with the provisions of subsection (a), (b)
 29 or (c) was due to reasonable causes, the director may waive or reduce any
 30 of the penalties upon making a record of the reasons therefor.

31 (2) No penalty shall be assessed hereunder with respect to any un-
 32 derpayment of estate tax liability reported on any amended return filed
 33 by any personal representative who at the time of filing pays such un-
 34 derpayment and where the return is not being examined at the time of
 35 filing.

36 (3) No penalty assessed hereunder shall be collected if the personal
 37 representative has had the tax abated on appeal, and any penalty collected
 38 upon such tax shall be refunded.

39 Sec. 158. K.S.A. 2008 Supp. 79-3228 is hereby amended to read as
 40 follows: 79-3228. (a) For all taxable years ending prior to January 1, 2002,
 41 if any taxpayer, without intent to evade the tax imposed by this act, shall
 42 fail to file a return or pay the tax, if one is due, at the time required by
 43 or under the provisions of this act, but shall voluntarily file a correct return

nonperson

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1 the failure to do any act required by or under the provision of this act
2 shall prohibit such nonresident from being awarded any contract for con-
3 struction, reconstruction or maintenance or for the sale of materials and
4 supplies to the state of Kansas or any political subdivision thereof until
5 such time as such nonresident has fully complied with this act.

6 Sec. 159. K.S.A. 79-5201 is hereby amended to read as follows: 79-
7 5201. As used in this act:

8 (a) "Marijuana" means any marijuana, whether real or counterfeit, as
9 defined by ~~subsection (c) of K.S.A. 65-4101~~ *section 1*, and amendments
10 thereto, which is held, possessed, transported, transferred, sold or offered
11 to be sold in violation of the laws of Kansas;

12 (b) "controlled substance" means any drug or substance, whether real
13 or counterfeit, as defined by ~~subsection (c) of K.S.A. 65-4101~~ *section 1*,
14 and amendments thereto, which is held, possessed, transported, trans-
15 ferred, sold or offered to be sold in violation of the laws of Kansas. Such
16 term shall not include marijuana;

17 (c) "dealer" means any person who, in violation of Kansas law, man-
18 ufactures, produces, ships, transports or imports into Kansas or in any
19 manner acquires or possesses more than 28 grams of marijuana, or more
20 than one gram of any controlled substance, or 10 or more dosage units
21 of any controlled substance which is not sold by weight;

22 (d) "domestic marijuana plant" means any cannabis plant at any level
23 of growth which is harvested or tended, manicured, irrigated, fertilized
24 or where there is other evidence that it has been treated in any other way
25 in an effort to enhance growth.

26 Sec. 160. K.S.A. 9-2012, ~~12-4104~~, 12-4419, 12-4509, 16-305, 17-
27 12a508, 17-1311a, 19-3519, 21-2501, 21-2511, 21-3301, 21-3302, 21-
28 3303, 21-3411, 21-3413, 21-3414, 21-3415, 21-3421, 21-3435, 21-3436,
29 21-3437, 21-3447, 21-3451, 21-3608a, 21-3609, 21-3701, 21-3704, 21-
30 3707, 21-3710, 21-3718, 21-3720, 21-3729, 21-3734, 21-3761, 21-3763,
31 21-3812, 21-3826, 21-3846, 21-3902, 21-3904, 21-3905, 21-3910, 21-
32 4018, 21-4105, 21-4111, 21-4203, 21-4204, 21-4214, 21-4215, 21-4226,
33 21-4232, 21-4318, 21-4502, 21-4503a, 21-4603d, 21-4611, 21-4638, 21-
34 4643, 21-4703, 21-4706, 21-4707, 21-4708, 21-4709, 21-4710, 21-4711,
35 21-4713, 21-4717, 21-4720, 21-4722, 21-4724, 21-4729, 22-2512, 22-
36 2515, 22-2802, 22-2908, 22-2909, 22-3303, 22-3412, 22-3604, 22-3901,
37 22-4405, 22-4903, 22-4906, 36-601, 36-604, 39-720, 41-405, 47-421, 58-
38 3315, 60-427, 65-2859, 65-4102, 65-4105a, 65-4127c, 65-4127d, 65-4139,
39 65-4141, 65-4142, 65-4155, 65-4158, 65-4164, 65-4165, 65-5709, ~~65-6a40~~,
40 ~~72-1397~~, 75-4228, 75-4314 and 79-5201 and K.S.A. 2008 Supp. 8-2,128,
41 8-1567, 9-2203, 21-3412a, 21-3419a, 21-3705, 21-3811, 21-4310, 21-4619,
42 21-4704, 21-4705, 21-4714, 22-3716, 22-3717, 22-4902, 38-2255, 38-
43 2346, 38-2347, 38-2369, 38-2374, 38-2376, 38-2377, 39-717, 40-2,118,

65-6a40,

12-4104,

40-247,

2-17

1 ~~40-247~~ 40-5013, 44-5,125, 44-619, 44-706, 44-719, 47-1827, 59-2132, 59-
2 29b46, 60-4104, 65-516, 65-3235, 65-3236, 65-4150, 65-4151, 65-4152,
3 65-4153, 65-4159, 65-4159a, 65-4160, 65-4161, 65-4162, 65-4163, 65-
4 4166, 65-4167, 65-4168, 65-4168a, 65-7006, 72-5445, 72-89c01, 74-9101,
5 75-7c04, ~~75-52144~~, ~~75-5291~~, 76-11a13, 79-15,235 and 79-3228 are
6 hereby repealed.

72-1397,

75-5291,

7 Sec. 161. This act shall take effect and be in force from and after
8 July 1, 2010, and its publication in the statute book.

[Priorities in Bold]

1. Amend Section 1(f) on pg 3 line 8 as follows:

“Drug paraphernalia” shall not include any substance, chemical or other item listed in K.S.A. 65-7006, and amendments thereto, prior to its repeal, or in Section 9 herein.

2. Amend New Section 1(r) pg 6 beginning on line 7 as follows:

“Presence of a minor” means:

- (1) A minor is within close proximity to the illegal activity;
- (2) the illegal activity is conducted in a place where minors can reasonably be expected to be present; ~~or~~
- (3) in the minor’s dwelling; *or (4) or in or on, or within 1,000 feet of any school property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12. Nothing in this subsection shall be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the description above, the actual use of that structure or property at the time alleged shall not be a defense to the crime charged or the sentence imposed*

3. Amend New Section 3(f) on beginning on pg 6 line 43 as follows:

The sentence of a person who violates this section or K.S.A. 65-4159 prior to its repeal shall not be reduced because these actions prohibit conduct identical to that prohibited by K.S.A. ~~65-4152~~, 65-4161, 65-4163, or 65-7006 prior to such sections repeal, or sections 5 or 9, and amendments thereto.

4. Amend New Sec. 5(d)(1) beginning on pg 7 line 35 as follows:

(d) Except as further provided:

- (1) Violation of subsection (a) is a:
 - (A) Severity level 9, person felony if the quantity of the material is less than 3.5 grams;
 - (B) severity level 7, person felony if the quantity of the material is 3.5 grams or more but less than ~~100~~ 50 grams;
 - (C) severity level 4, person felony if the quantity of the material is ~~100~~ 50 grams or more but less than ~~1 kilogram~~ 100 grams; or
 - (D) severity level 3, person felony if the quantity of the material is ~~1 Kilogram~~ 100 grams or more.

5. Amend New Sec. 5(d)(5)ph 8 line 33 as follows:

For any violation of subsection (a), the severity level of the offense shall be increased one level if the offender is 18 or more years of age and the controlled substance or controlled substance analog is distributed or possessed with the intent to distribute to a minor or in the presence of a minor, *or in or on, or within 1,000 feet of any school property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12. Nothing in this subsection shall be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the description above, the actual use of that structure or property at the time alleged shall not be a defense to the crime charged or the sentence imposed.*

6. Amend New Sec. 5(e)(4) on pg 9 line 9 as follows:

In any prosecution under this section, there shall be a rebuttable presumption of an intent to distribute if any person possesses the quantities of the following controlled substances or analogs thereof in the following amounts:

- (1) 450 grams or more of marijuana;
- (2) 3.5 grams or more of heroin;
- (3) 100 dosage units or more containing a controlled substance; or
- (4) ~~100~~ 50 grams or more of any other controlled substance.

7. Amend New Sec. 5(g)(2) on pg 9 line 24 as follows:

“Dosage unit” means a controlled substance distributed or possessed with the intent to distribute as a discrete unit, including, but not limited to, one pill, one capsule or one microdot, and not distributed by weight. *“Dosage unit” also means any rock of cocaine base, or any portion thereof, which can be sold individually for use.*

8. Amend New Sec. 16(e) on pg 17 beginning on line 26 as follows :

(e) Violation of this section, if the value of the proceeds is:

- (1) \$100,000 or more is a severity level ~~5~~ 3, nonperson felony.
- (2) At least \$75,000 but less than \$100,000 is a severity level ~~6~~ 4, nonperson felony.
- (3) At least \$50,000 but less than \$75,000 is a severity level ~~7~~ 5, nonperson felony.
- (4) At least \$25,000 but less than \$50,000 is a severity level ~~8~~ 6, nonperson felony.
- (5) At least \$2,000 but less than \$25,000 is a severity level ~~9~~ 7, nonperson felony.
- (6) At least \$1,000 but less than \$2,000 is a severity level ~~10~~ 8, non-

person felony.

(7) At least \$500 but less than \$1,000 is a ~~class A nonperson~~
~~Misdemeanor~~. severity level 9, nonperson felony.

9. Amend Sec. 18(o) on pg 19 line 36 as follows:

(o) "felony" means any offense under state or federal law that is punishable by death or imprisonment for a term exceeding one year, *or as otherwise defined by Kansas law as a felony*;

10. Amend Sec. 38(b)(2) pg 49 line 15 as follows:

(b) (1) Aggravated battery against a law enforcement officer as described in subsection (a)(1) or (a)(3) is a severity level 3, person felony. (2) Aggravated battery against a law enforcement officer as described in subsection (a)(2) is a severity level 4 ~~5~~, person felony.

11. Amend Sec. 78(a)(5) on pg 87 line 2 as follows:

~~(5) assign the defendant to a conservation camp for a period not to exceed six months as a condition of probation followed by a six-month period of follow-up through adult intensive supervision by a community correctional services program, if the offender successfully completes the conservation camp program;~~

12. Amend Sec. 78(g) on pg 89 line 37 as follows:

~~(g) Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either the sentencing guideline *guidelines* grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5 H, 5 I or 6 G 6-E, 6 F, 6 G, 6 H, 6 I, 7 C, 7 D, 7 E, 7 F, 8 C, 8 D, 8 E, 8 F, 9 C, 9 D or 9 E of the sentencing guidelines grid for nondrug crimes or in grid blocks 3 E, 3 F, 3 G, 3 H or 3 I of the sentencing guidelines grid for drug crimes, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 4 E or 4 F 10-E or 10-F of the sentencing guideline *guidelines* grid for drug crimes and whose offense does not meet the requirements of K.S.A. 21-4729, and amendments thereto, prior to revocation of a nonprison sanction of a defendant whose offense is classified in grid blocks 4 E or 4 F of the sentencing guideline *guidelines* grid for drug crimes prior to such grid's repeal or classified in grid blocks 10-E or 10-F of the sentencing guidelines grid and whose offense does not meet the requirements of K.S.A. 21-4729, and amendments thereto, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either the sentencing guideline *guidelines* grid or grid blocks 5 H, 5 I or 6 G 6-E, 6 F, 6 G, 6 H, 6 I, 7 C, 7 D, 7 E, 7 F, 8 C, 8 D, 8 E, 8 F, 9 C, 9 D or 9 E of the sentencing guidelines grid for nondrug crimes or in grid blocks 3 E, 3 F,~~

~~3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, the court shall consider placement of the defendant in the Labette correctional conservation camp, conservation camps established by the secretary of corrections pursuant to K.S.A. 75-52,127, and amendment amendments thereto, or a community intermediate sanction center. Pursuant to this paragraph the defendant shall not be sentenced to imprisonment if space is available in a conservation camp or a community intermediate sanction center and the defendant meets all of the conservation camp's or a community intermediate sanction center's placement criteria unless the court states on the record the reasons for not placing the defendant in a conservation camp or a community intermediate sanction center.~~

13. Amend Sec. 78(l) on pg 91 line 17 as follows:

~~(l) The secretary of corrections is authorized to make direct placement to the Labette correctional conservation camp or a conservation camp established by the secretary pursuant to K.S.A. 75-52,127, and amendments thereto, of an inmate sentenced to the secretary's custody if the inmate: (1) Has been sentenced to the secretary for a probation revocation, as a departure from the presumptive nonimprisonment grid block of either the sentencing grid, for an offense which is classified in grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, or for an offense which is classified in gridblocks 4-E or 4-F 10-E or 10-F of the sentencing guidelines grid for drug crimes and such offense does not meet the requirements of K.S.A. 21-4729, and amendments thereto, and (2) otherwise meets admission criteria of the camp. If the inmate successfully completes a conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district attorney. The inmate shall then be assigned by the court to six months of follow-up supervision conducted by the appropriate community corrections services program. The court may also order that supervision continue thereafter for the length of time authorized by K.S.A. 21-4611, and amendments thereto.~~

14. Amend Section 79(c)(4) on pg 93 line 17 as follows:

~~(4) In felony cases sentenced at severity levels 9 and 10 on the sentencing guidelines grid for nondrug crimes and severity level 4 on the sentencing guidelines grid for drug crimes prior to such level's repeal, if a nonprison sanction is imposed, the court shall order the defendant to serve a period of probation, or assignment to a community correctional services program as provided under K.S.A. 75-5291 et seq., and amendments thereto, of up to ± 18 months in length. [To reflect the Holt decision.]~~