

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 4, 2009, in Room 535-N of the Capitol.

All members were present except:
Nile Dillmore-Excused

Committee staff present:
Sean Ostrow, Office of the Revisor of Statutes
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 briefed the Committee on next week's agenda and opened the continued action on **HB 2332** by calling on Representative Brookens to explain his amendment (Attachment 1).

Representative Brookens explained his 1st amendment to add "within 450 feet of any school property" after the word "minor" to Page 8, Line 33; Page 13, Lines 17 and 21; Page 16, Line 1 and made a motion to move his amendment on HB 2332. Representative Spalding seconded.

A discussion followed.

Representative Brookens explained his 2nd amendment (Attachment 2) and made a motion to move the amendment. Representative Roth seconded.

A lengthy discussion followed

Chairperson Colloton called for a vote on the motion on the floor to move the amendment adding on Page 9, Line 9 (f) "In any prosecution under this section involving the intent to distribute in the presence of a minor, there shall be a rebuttal presumption that a child within 150 feet of the illegal activity is in close proximity". Motion carried with 1 no "vote".

Chairperson Colloton called on Representative Lance Kinzer to continue explaining his amendments on **HB 2332**. Representative Kinzer referred the Committee to written copy of his amendments. (Attachment 3)

He explained an amendment on Page 45 Line 25, adding "third or" in front of the word "fourth" and changing "(iii)" to "(ii)" on line 29.

Representative Kinzer moved his amendment on Page 45. Representative Brookens seconded. Motion carried.

Representative Kinzer continued with an amendment on page 6, Line 12. He explained the changes stating he was adding the definition of "school property".

Representative Kinzer moved the amendment. Representative Patton seconded.

A lengthy discussion followed with the concerns of the Committee regarding this amendment.

CONTINUATION SHEET

Minutes of the House Corrections And Juvenile Justice Committee at 1:30 p.m. on March 4, 2009, in Room 535-N of the Capitol.

Chairperson Colloton called on Representative Kinzer and he moved the amendment for a vote. Motion carried.

Chairperson Collation announced they would continue tomorrow and adjourned the meeting at 2:30 p.m. with the next meeting scheduled March 5, 2009 at 1:30 p.m. in room 535 N.

CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 03-04-09

NAME	REPRESENTING
Ed Klump	KCCRC
Brett Watson	KCCRC
Richard Summary	Kenny & Assoc.
Jennifer Roth	KACDL

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.

35

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 (B) severity level 7, person felony if the quantity of the material is 25
2 grams or more but less than 450 grams;

3 (C) severity level 4, person felony if the quantity of the material is
4 450 grams or more but less than 30 kilograms; or

5 (D) severity level 3, person felony if the quantity of the material is
6 30 kilograms or more.

7 (3) Violation of subsection (a), with respect to material containing any
8 quantity of heroin, or an analog thereof, is a:

9 (A) Severity level 9, person felony if the quantity of the material is 1
10 gram or less;

11 (B) severity level 7, person felony if the quantity of the material is
12 more than 1 gram but less than 3.5 grams;

13 (C) severity level 4, person felony if the quantity of the material is
14 3.5 grams or more but less than 100 grams; or

15 (D) severity level 3, person felony if the quantity of the material is
16 100 grams or more.

17 (4) Violation of subsection (a), with respect to material containing any
18 quantity of a controlled substance or controlled substance analog desig-
19 nated in K.S.A. 65-4105, 65-4107, 65-4109 or 65-4111, and amendments
20 thereto, distributed by dosage unit, is a:

21 (A) Severity level 9, person felony if the number of dosage units is
22 fewer than 10;

23 (B) severity level 7, person felony if the number of dosage units is 10
24 or more but fewer than 100;

25 (C) severity level 4, person felony if the number of dosage units is
26 100 or more but fewer than 1,000; or

27 (D) severity level 3, person felony if the number of dosage units is
28 1,000 or more.

29 (5) For any violation of subsection (a), the severity level of the offense
30 shall be increased one level if the offender is 18 or more years of age and
31 the controlled substance or controlled substance analog is distributed or
32 possessed with the intent to distribute to a minor or in the presence of a
33 minor.

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34 (6) Violation of subsection (b) is a class A person misdemeanor, ex-
35 cept that violation of subsection (b) is a severity level 7, person felony if
36 the substance is distributed to or possessed with the intent to distribute
37 to a minor.

or on or within 450 feet of any school property

38 (7) Violation of subsection (c) is a:

39 (A) Severity level 7, person felony if the number of plants cultivated
40 is greater than 4 but fewer than 50;

41 (B) a severity level 5, person felony if the number of plants cultivated
42 is 50 or more but fewer than 100;

43 (C) a severity level 3, person felony if the number of plants cultivated

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1 tent to distribute or manufacture with intent to distribute any drug par-
2 aphanalia, 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 aphanalia; 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 aphanalia, 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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or on or within 450 feet of any school property

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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) naphtha;
- 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



or on or within 450 feet of any school property

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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

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,
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 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.

35

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:

Proposed amendment #2
Representative Brookens
March 3, 2009

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Date: 3-4-09
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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.

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 kilograms; 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;

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- 1 (B) severity level 7, person felony if the quantity of the material is 25
2 grams or more but less than 450 grams;
- 3 (C) severity level 4, person felony if the quantity of the material is
4 450 grams or more but less than 30 kilograms; or
- 5 (D) severity level 3, person felony if the quantity of the material is
6 30 kilograms or more.
- 7 (3) Violation of subsection (a), with respect to material containing any
8 quantity of heroin, or an analog thereof, is a:
- 9 (A) Severity level 9, person felony if the quantity of the material is 1
10 gram or less;
- 11 (B) severity level 7, person felony if the quantity of the material is
12 more than 1 gram but less than 3.5 grams;
- 13 (C) severity level 4, person felony if the quantity of the material is
14 3.5 grams or more but less than 100 grams; or
- 15 (D) severity level 3, person felony if the quantity of the material is
16 100 grams or more.
- 17 (4) Violation of subsection (a), with respect to material containing any
18 quantity of a controlled substance or controlled substance analog desig-
19 nated in K.S.A. 65-4105, 65-4107, 65-4109 or 65-4111, and amendments
20 thereto, distributed by dosage unit, is a:
- 21 (A) Severity level 9, person felony if the number of dosage units is
22 fewer than 10;
- 23 (B) severity level 7, person felony if the number of dosage units is 10
24 or more but fewer than 100;
- 25 (C) severity level 4, person felony if the number of dosage units is
26 100 or more but fewer than 1,000; or
- 27 (D) severity level 3, person felony if the number of dosage units is
28 1,000 or more.
- 29 (5) For any violation of subsection (a), the severity level of the offense
30 shall be increased one level if the offender is 18 or more years of age and
31 the controlled substance or controlled substance analog is distributed or
32 possessed with the intent to distribute to a minor or in the presence of a
33 minor.
- 34 (6) Violation of subsection (b) is a class A person misdemeanor, ex-
35 cept that violation of subsection (b) is a severity level 7, person felony if
36 the substance is distributed to or possessed with the intent to distribute
37 to a minor.
- 38 (7) Violation of subsection (c) is a:
- 39 (A) Severity level 7, person felony if the number of plants cultivated
40 is greater than 4 but fewer than 50;
- 41 (B) a severity level 5, person felony if the number of plants cultivated
42 is 50 or more but fewer than 100;
- 43 (C) a severity level 3, person felony if the number of plants cultivated

S.S.

1 is 100 or more.

2 (e) In any prosecution under this section, there shall be a rebuttable
3 presumption of an intent to distribute if any person possesses the quan-
4 tities of the following controlled substances or analogs thereof in the fol-
5 lowing amounts:

- 6 (1) 450 grams or more of marijuana;
- 7 (2) 3.5 grams or more of heroin;
- 8 (3) 100 dosage units or more containing a controlled substance; or
- 9 (4) 100 grams or more of any other controlled substance.

10 (f) It shall not be a defense to charges arising under this section that
11 the defendant:

12 (1) Is acting in an agency relationship on behalf of any other party in
13 a transaction involving a controlled substance;

14 (2) did not know the quantity of the controlled substance; or

15 (3) did not know the specific controlled substance contained in the
16 material that is distributed or possessed with the intent of distribution.

17 (g) As used in this section:

18 (1) "Material" means the total amount of any substance, including a
19 compound or a mixture, which contains any quantity of a controlled
20 substance.

21 (2) "Dosage unit" means a controlled substance distributed or pos-
22 sessed with the intent to distribute as a discrete unit, including, but not
23 limited to, one pill, one capsule or one microdot, and not distributed by
24 weight.

25 (A) For steroids, or controlled substances in liquid solution legally
26 manufactured for prescription use, "dosage unit" means the smallest
27 medically-approved dosage unit, as determined by the label, materials
28 provided by the manufacturer, a prescribing authority, licensed health
29 care professional or other qualified health authority.

30 (B) Except as provided further, for illegally manufactured controlled
31 substances in liquid solution or controlled substances in liquid products
32 not intended for human ingestion, "dosage unit" means 10 milligrams,
33 including the liquid carrier medium for controlled substances.

34 (C) For lysergic acid diethylamide (LSD) in liquid form, a "dosage
35 unit" means .4 milligrams, including the liquid carrier medium.

36 New Sec. 6. (a) It shall be unlawful for any person to possess any
37 opiates, opium or narcotic drugs, or any stimulant designated in subsec-
38 tion (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto,
39 or a controlled substance analog thereof.

40 (b) It shall be unlawful for any person to possess any of the following
41 controlled substances or controlled substance analogs thereof:

42 (1) Any depressant designated in subsection (e) of K.S.A. 65-4105,
43 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109

<p>(f) In any prosecution under this section involving the intent to distribute in the presence of a minor, there shall be a rebuttable presumption that a child within 150 feet of the illegal activity is in close proximity. [Reletter the remaining subsections accordingly.]</p>

9-8

1 (c) Any person who possesses any drug paraphernalia with the intent
2 to distribute or cultivate a controlled substance designated in subsection
3 (a) of section 5, and amendments thereto, or a controlled substance analog
4 thereof is guilty of attempted violation of subsection (a) of section 5, and
5 amendments thereto.

6 (d) Any person who possesses any drug paraphernalia with the intent
7 to distribute a controlled substance or controlled substance analog des-
8 ignated in K.S.A. 65-4113, and amendments thereto, shall be guilty of
9 attempted violation of subsection (b) of section 5, and amendments
10 thereto.

11 (e) Any person who possesses any drug paraphernalia with the intent
12 to possess or have under such person's control any controlled substance
13 designated in subsection (a) of section 6, and amendments thereto, or a
14 controlled substance analog thereof is guilty of attempted violation of
15 subsection (a) of section 6, and amendments thereto.

16 (f) Any person who possesses any drug paraphernalia with the intent
17 to possess or have under such person's control any controlled substance
18 designated in subsection (b) of section 6, and amendments thereto, or a
19 controlled substance analog thereof is guilty of attempted violation of
20 subsection (b) of section 6, and amendments thereto.

21 (g) This section does not preclude a person from conviction of at-
22 tempted manufacture, distribution, or possession of a controlled sub-
23 stance or a controlled substance analog based upon overt acts other than
24 those herein mentioned.

25 **New Sec. 10.** (a) It shall be unlawful for any person to advertise,
26 market, label, distribute or possess with the intent to distribute:

27 (1) Any product containing ephedrine, pseudoephedrine, red phos-
28 phorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pres-
29 surized ammonia or phenylpropanolamine or their salts, isomers or salts
30 of isomers if the person knows or reasonably should know that the pur-
31 chaser will use the product to manufacture a controlled substance; or

32 (2) any product containing ephedrine, pseudoephedrine or phenyl-
33 propanolamine, or their salts, isomers or salts of isomers for indication of
34 stimulation, mental alertness, weight loss, appetite control, energy or
35 other indications not approved pursuant to the pertinent federal over-
36 the-counter drug final monograph or tentative final monograph or ap-
37 proved new drug application.

38 (b) It shall be unlawful for any person to market, distribute or man-
39 ufacture with intent to distribute any drug paraphernalia, knowing or
40 under circumstances where one reasonably should know that it will be
41 used to manufacture or distribute a controlled substance in violation of
42 sections 1 through 17, and amendments thereto.

43 (c) It shall be unlawful for any person to distribute, possess with in-

2-7

1 tent to distribute or manufacture with intent to distribute any drug par-
 2 aphanalia, 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 aphanalia; 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 aphanalia, 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;

(f) In any prosecution under this section involving the intent to distribute in the presence of a minor, there shall be a rebuttable presumption that a child within 150 feet of the illegal activity is in close proximity.
 [Reletter the remaining subsection accordingly.]

8-9

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) naphtha;

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

56

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

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.

35

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:

Proposed amend
Representative K
March 3, 2009

Corrections and Juvenile Justice
Date: 3-4-09
Attachment # 3-1-09

3-2

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.

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,

(s) "School property" means property upon which is located a struc-
 ture 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. This
 definition shall not 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 above definition, 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.
 [reletter remaining subsection accordingly]

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3-3

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; 6
 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 kilograms; 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;

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1 (B) severity level ~~7~~ person felony if the quantity of the material is 25
2 grams or more but less than 450 grams;

3 (C) severity level 4, person felony if the quantity of the material is
4 450 grams or more but less than 30 kilograms; or

5 (D) severity level 3, person felony if the quantity of the material is
6 30 kilograms or more.

7 (3) Violation of subsection (a), with respect to material containing any
8 quantity of heroin, or an analog thereof, is a:

9 (A) Severity level ~~9~~ person felony if the quantity of the material is 1
10 gram or less;

11 (B) severity level ~~7~~ person felony if the quantity of the material is
12 more than 1 gram but less than 3.5 grams;

13 (C) severity level 4, person felony if the quantity of the material is
14 3.5 grams or more but less than 100 grams; or

15 (D) severity level 3, person felony if the quantity of the material is
16 100 grams or more.

17 (4) Violation of subsection (a), with respect to material containing any
18 quantity of a controlled substance or controlled substance analog desig-
19 nated in K.S.A. 65-4105, 65-4107, 65-4109 or 65-4111, and amendments
20 thereto, distributed by dosage unit, is a:

21 (A) Severity level ~~9~~ person felony if the number of dosage units is
22 fewer than 10;

23 (B) severity level ~~7~~ person felony if the number of dosage units is 10
24 or more but fewer than 100;

25 (C) severity level 4, person felony if the number of dosage units is
26 100 or more but fewer than 1,000; or

27 (D) severity level 3, person felony if the number of dosage units is
28 1,000 or more.

29 (5) For any violation of subsection (a), the severity level of the offense
30 shall be increased one level if the offender is 18 or more years of age and
31 the controlled substance or controlled substance analog is distributed or
32 possessed with the intent to distribute to a minor ~~or~~ in the presence of a
33 minor.

34 (6) Violation of subsection (b) is a class A person misdemeanor, ex-
35 cept that violation of subsection (b) is a severity level 7, person felony if
36 the substance is distributed to or possessed with the intent to distribute
37 to a minor.

38 (7) Violation of subsection (c) is a:

39 (A) Severity level 7, person felony if the number of plants cultivated
40 is greater than 4 but fewer than 50;

41 (B) a severity level 5, person felony if the number of plants cultivated
42 is 50 or more but fewer than 100;

43 (C) a severity level 3, person felony if the number of plants cultivated

7

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,

or on or within 1,000 feet of any school property

3-5

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 methylenedioxymethamphetamine (MDMA), marijuana or tetrahydro-
22 cannabinal 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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3-6

1 tent to distribute or manufacture with intent to distribute any drug par-
2 aphanalia, 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 aphanalia; 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 aphanalia, 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;

,

,

or on or within 1,000 feet of any school property

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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) naphtha;
- 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

3

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or on or within 1,000 feet of any school property

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 controlled
5 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 only after such person has served 48 consecutive hours' imprisonment,
 2 provided such work release program requires such person to return to
 3 confinement at the end of each day in the work release program. The
 4 person convicted must serve at least five consecutive days' imprisonment
 5 before the person is granted probation, suspension or reduction of sen-
 6 tence or parole or is otherwise released. As a condition of any grant of
 7 probation, suspension of sentence or parole or of any other release, the
 8 person shall be required to enter into and complete a treatment program
 9 for domestic violence prevention.

10 (3) ~~If, within five years immediately preceding commission of the~~
 11 ~~crime, a person is convicted of a violation of domestic battery~~ Upon a
 12 ~~third or subsequent time, such conviction of a violation of domestic bat-~~
 13 ~~tery, a person shall be guilty of a severity level 7, person felony and~~
 14 ~~sentenced to not less than 90 days nor more than one year's imprisonment~~
 15 ~~and fined not less than \$1,000 nor more than \$7,500. The person con-~~
 16 ~~victed shall not be eligible for release on probation, suspension or reduc-~~
 17 ~~tion of sentence or parole until the person has served at least 90 days'~~
 18 ~~imprisonment.~~

19 (A) *If within five years immediately preceding the commission of the*
 20 *crime, a person is convicted of domestic battery:*

21 ~~(i) A third time, such person shall be sentenced to not less than 30~~
 22 ~~days imprisonment. The person convicted shall not be eligible for release~~
 23 ~~on probation, suspension or reduction of sentence or parole until the per-~~
 24 ~~son has served at least 30 days' imprisonment.~~

25 ~~(ii) A fourth time, such person shall be sentenced to not less than 90~~
 26 ~~days imprisonment. The person convicted shall not be eligible for release~~
 27 ~~on probation, suspension or reduction of sentence or parole until the per-~~
 28 ~~son has served at least 90 days' imprisonment.~~

third or

29 ~~(iii) A fifth or subsequent time, such person shall be sentenced to not~~
 30 ~~less than one year imprisonment. The person convicted shall not be eligible~~
 31 ~~for release on probation, suspension or reduction of sentence or parole~~
 32 ~~until the person has served at least one year imprisonment.~~

(ii)

33 (c) *On a third or subsequent conviction of domestic battery, within five*
 34 *years immediately preceding the commission of the crime, the court shall*
 35 *require as a condition of parole that such person enter into and complete*
 36 *a treatment program for domestic violence. If the person does not enter*
 37 *into and complete a treatment program for domestic violence, the person*
 38 *shall serve not less than 180 days nor more than one year's imprisonment.*
 39 *The 90 days' imprisonment mandated by this subsection may be served*
 40 *in a work release program only after such person has served 48 consec-*
 41 *utive hours' imprisonment, provided such work release program requires*
 42 *such person to return to confinement at the end of each day in the work*
 43 *release program.*

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E

1 —(e) (d) As used in this section:

2 (1) Family or household member means persons 18 years of age or
3 older who are spouses, former spouses, parents or stepparents and chil-
4 dren or stepchildren, and persons who are presently residing together or
5 who have resided together in the past, and persons who have a child in
6 common regardless of whether they have been married or who have lived
7 together at any time. Family or household member also includes a man
8 and woman if the woman is pregnant and the man is alleged to be the
9 father, regardless of whether they have been married or have lived to-
10 gether at any time; and

11 (2) for the purpose of determining whether a conviction is a first,
12 second, third or subsequent conviction in sentencing under this section:

13 (A) "Conviction" includes being convicted of a violation of this sec-
14 tion or entering into a diversion or deferred judgment agreement in lieu
15 of further criminal proceedings on a complaint alleging a violation of this
16 section;

17 (B) "conviction" includes being convicted of a violation of a law of
18 another state, or an ordinance of any city, or resolution of any county,
19 which prohibits the acts that this section prohibits or entering into a di-
20 version or deferred judgment agreement in lieu of further criminal pro-
21 ceedings in a case alleging a violation of such law, ordinance or resolution;

22 (C) only convictions occurring in the immediately preceding five
23 years including prior to the effective date of this act shall be taken into
24 account, but the court may consider other prior convictions in determin-
25 ing the sentence to be imposed within the limits provided for a first,
26 second, third or subsequent offender, whichever is applicable; and

27 (D) it is irrelevant whether an offense occurred before or after con-
28 viction for a previous offense.

29 (E) A person may enter into a diversion agreement in lieu of further
30 criminal proceedings for a violation of this section or an ordinance of any
31 city or resolution of any county which prohibits the acts that this section
32 prohibits only twice during any three-year period.

33 (e) *Persons serving the mandatory sentence shall be supervised by*
34 *community correctional services upon release. Subject to availability, such*
35 *supervision shall include the offender participating in a behavior modi-*
36 *fication treatment program.*

37 ~~Sec. 36. K.S.A. 21 3413 is hereby amended to read as follows: 21-~~
38 ~~3413. (a) Battery against a law enforcement officer is:~~

39 ~~(1) Battery, as defined in subsection (a)(2) of K.S.A. 21 3412, and~~
40 ~~amendments thereto, committed against: (A) A uniformed or properly~~
41 ~~identified university or campus police officer while such officer is engaged~~
42 ~~in the performance of such officer's duty; or (B) a uniformed or properly~~
43 ~~identified state, county or city law enforcement officer, other than a state~~

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1 ~~correctional officer or employee, a city or county correctional officer or~~
2 ~~employee, a juvenile correctional facility officer or employee or a juvenile~~
3 ~~detention facility officer or employee, while such officer is engaged in the~~
4 ~~performance of such officer's duty; or~~

5 ~~(2) battery, as defined in subsection (a)(1) of K.S.A. 21-3412, and~~
6 ~~amendments thereto, committed against: (A) A uniformed or properly~~
7 ~~identified university or campus police officer while such officer is engaged~~
8 ~~in the performance of such officer's duty; or (B) a uniformed or properly~~
9 ~~identified state, county or city law enforcement officer, other than a state~~
10 ~~correctional officer or employee, a city or county correctional officer or~~
11 ~~employee, a juvenile correctional facility officer or employee or a juvenile~~
12 ~~detention facility officer or employee, while such officer is engaged in the~~
13 ~~performance of such officer's duty; or~~

14 ~~(3) battery, as defined in K.S.A. 21-3412, and amendments thereto,~~
15 ~~committed against: (A) A state correctional officer or employee by a per-~~
16 ~~son in custody of the secretary of corrections, while such officer or em-~~
17 ~~ployee is engaged in the performance of such officer's or employee's duty;~~

18 ~~(B) committed against a juvenile correctional facility officer or em-~~
19 ~~ployee by a person confined in such juvenile correctional facility, while~~
20 ~~such officer or employee is engaged in the performance of such officer's~~
21 ~~or employee's duty;~~

22 ~~(C) committed against a juvenile detention facility officer or em-~~
23 ~~ployee by a person confined in such juvenile detention facility, while such~~
24 ~~officer or employee is engaged in the performance of such officer's or~~
25 ~~employee's duty; or~~

26 ~~(D) committed against a city or county correctional officer or em-~~
27 ~~ployee by a person confined in a city holding facility or county jail facility,~~
28 ~~while such officer or employee is engaged in the performance of such~~
29 ~~officer's or employee's duty.~~

30 ~~(b) Battery against a law enforcement officer as defined in subsection~~
31 ~~(a)(1) is a class A person misdemeanor. Battery against a law enforcement~~
32 ~~officer as defined in subsection (a)(2) is a severity level 7, person felony.~~
33 ~~Battery against a law enforcement officer as defined in subsection (a)(3)~~
34 ~~is a severity level 5-9, person felony and such sentence shall be presumed~~
35 ~~imprisonment.~~

36 ~~(e) As used in this section:~~

37 ~~(1) "Correctional institution" means any institution or facility under~~
38 ~~the supervision and control of the secretary of corrections.~~

39 ~~(2) "State correctional officer or employee" means any officer or em-~~
40 ~~ployee of the Kansas department of corrections or any independent con-~~
41 ~~tractor, or any employee of such contractor, working at a correctional~~
42 ~~institution.~~

43 ~~(3) "Juvenile correctional facility officer or employee" means any of-~~

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1 ~~officer or employee of the juvenile justice authority or any independent~~
2 ~~contractor, or any employee of such contractor, working at a juvenile~~
3 ~~correctional facility, as defined in K.S.A. 2008 Supp. 38-2302, and amend-~~
4 ~~ments thereto.~~

5 (4) ~~“Juvenile detention facility officer or employee” means any officer~~
6 ~~or employee of a juvenile detention facility as defined in K.S.A. 2008~~
7 ~~Supp. 38-2302, and amendments thereto.~~

8 (5) ~~“City or county correctional officer or employee” means any cor-~~
9 ~~rectional officer or employee of the city or county or any independent~~
10 ~~contractor, or any employee of such contractor, working at a city holding~~
11 ~~facility or county jail facility.~~

Renumber remaining sections accordingly.

12 Sec. 37. K.S.A. 21-3414 is hereby amended to read as follows: 21-
13 3414. (a) Aggravated battery is:

14 (1) (A) Intentionally causing great bodily harm to another person or
15 disfigurement of another person; or

16 (B) intentionally causing bodily harm to another person with a deadly
17 weapon, or in any manner whereby great bodily harm, disfigurement or
18 death can be inflicted; or

19 (C) intentionally causing physical contact with another person when
20 done in a rude, insulting or angry manner with a deadly weapon, or in
21 any manner whereby great bodily harm, disfigurement or death can be
22 inflicted; or

23 (2) (A) recklessly causing great bodily harm to another person or dis-
24 figurement of another person; or

25 (B) recklessly causing bodily harm to another person with a deadly
26 weapon, or in any manner whereby great bodily harm, disfigurement or
27 death can be inflicted.

28 (b) Aggravated battery as described in subsection (a)(1)(A) is a se-
29 verity level 4, person felony. Aggravated battery as described in subsec-
30 tions (a)(1)(B) and (a)(1)(C) is a severity level 7, person felony. Aggravated
31 battery as described in subsection (a)(2)(A) is a severity level 5⁶, person
32 felony. Aggravated battery as described in subsection (a)(2)(B) is a sever-
33 ity level 8 9, person felony. A person convicted of aggravated battery shall
34 be subject to the provisions of subsection (h) of K.S.A. 21-4704, and
35 amendments thereto.

5

36 Sec. 38. K.S.A. 21-3415 is hereby amended to read as follows: 21-
37 3415. (a) Aggravated battery against a law enforcement officer is:

38 (1) An aggravated battery, as defined in subsection (a)(1)(A) of K.S.A.
39 21-3414, and amendments thereto, committed against: (A) A uniformed
40 or properly identified state, county or city law enforcement officer while
41 the officer is engaged in the performance of the officer’s duty; or (B) a
42 uniformed or properly identified university or campus police officer while
43 such officer is engaged in the performance of such officer’s duty;

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1 (2) an aggravated battery, as defined in subsection (a)(1)(B) or
 2 (a)(1)(C) of K.S.A. 21-3414, and amendments thereto, committed against:
 3 (A) A uniformed or properly identified state, county or city law enforce-
 4 ment officer while the officer is engaged in the performance of the offi-
 5 cer's duty; or (B) a uniformed or properly identified university or campus
 6 police officer while such officer is engaged in the performance of such
 7 officer's duty; or

8 (3) intentionally causing, with a motor vehicle, bodily harm to: (A) A
 9 uniformed or properly identified state, county or city law enforcement
 10 officer while the officer is engaged in the performance of the officer's
 11 duty; or (B) a uniformed or properly identified university or campus po-
 12 lice officer while such officer is engaged in the performance of such of-
 13 ficer's duty.

14 (b) (1) Aggravated battery against a law enforcement officer as de-
 15 scribed in subsection (a)(1) or (a)(3) is a severity level 3, person felony.

16 (2) Aggravated battery against a law enforcement officer as described
 17 in subsection (a)(2) is a severity level 4.5, person felony.

4

18 ~~(3) A person convicted of aggravated battery against a law enforce-~~
 19 ~~ment officer shall be subject to the provisions of subsection (g) of K.S.A.~~
 20 ~~21-4704, and amendments thereto.~~

21 Sec. 39. K.S.A. 2008 Supp. 21-3419a is hereby amended to read as
 22 follows: 21-3419a. (a) Aggravated criminal threat is the commission of
 23 one or more crimes of criminal threat, as defined in K.S.A. 21-3419 and
 24 amendments thereto, when a public, commercial or industrial building,
 25 place of assembly or facility of transportation is evacuated as a result of
 26 the threat or threats.

27 (b) Aggravated criminal threat ~~is a severity level 5, person felony,~~
 28 *when the value of the loss of productivity is in an amount of:*

29 (1) \$100,000 or more, is a severity level 5, nonperson felony.

30 (2) At least \$75,000 but less than \$100,000, is a severity level 6, non-
 31 person felony.

32 (3) At least \$50,000 but less than \$75,000, is a severity level 7, non-
 33 person felony.

34 (4) At least \$25,000 but less than \$50,000, is a severity level 8, non-
 35 person felony.

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

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

40 (7) At least \$500 but less than \$1,000, is a class A nonperson
 41 misdemeanor.

42 (8) Less than \$500 is a class B nonperson misdemeanor.

43 ~~Sec. 40. K.S.A. 21-3421 is hereby amended to read as follows: 21-~~

H/3

1 ~~3421. Aggravated kidnapping is kidnapping, as defined in K.S.A. 21-3420~~
2 ~~and amendments thereto, when bodily harm is inflicted upon the person~~
3 ~~kidnapped.~~

4 ~~Aggravated kidnapping is a severity level 12, person felony.~~

5 Sec. 41. K.S.A. 21-3435 is hereby amended to read as follows: 21-
6 3435. (a) It is unlawful for an individual who knows oneself to be infected
7 with a life threatening communicable disease knowingly:

8 (1) To engage in sexual intercourse or sodomy with another individual
9 with the intent to expose that individual to that life threatening commu-
10 nicable disease;

11 (2) to sell or donate one's own blood, blood products, semen, tissue,
12 organs or other body fluids with the intent to expose the recipient to a
13 life threatening communicable disease;

14 (3) to share with another individual a hypodermic needle, syringe, or
15 both, for the introduction of drugs or any other substance into, or for the
16 withdrawal of blood or body fluids from, the other individual's body with
17 the intent to expose another person to a life threatening communicable
18 disease.

19 (b) As used in this section, the term "sexual intercourse" shall not
20 include penetration by any object other than the male sex organ; the term
21 "sodomy" shall not include the penetration of the anal opening by any
22 object other than the male sex organ.

23 (c) Violation of this section is a severity level 7 6, person felony.

24 Sec. 42. K.S.A. 21-3436 is hereby amended to read as follows: 21-
25 3436. (a) Any of the following felonies shall be deemed an inherently
26 dangerous felony whether or not such felony is so distinct from the hom-
27 icide alleged to be a violation of subsection (b) of K.S.A. 21-3401, and
28 amendments thereto, as not to be an ingredient of the homicide alleged
29 to be a violation of subsection (b) of K.S.A. 21-3401, and amendments
30 thereto:

31 (1) Kidnapping, as defined in K.S.A. 21-3420, and amendments
32 thereto;

33 (2) aggravated kidnapping, as defined in K.S.A. 21-3421, and amend-
34 ments thereto;

35 (3) robbery, as defined in K.S.A. 21-3426, and amendments thereto;

36 (4) aggravated robbery, as defined in K.S.A. 21-3427, and amend-
37 ments thereto;

38 (5) rape, as defined in K.S.A. 21-3502, and amendments thereto;

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

41 (7) abuse of a child, as defined in K.S.A. 21-3609, and amendments
42 thereto;

43 (8) felony theft under subsection (a) or (c) of K.S.A. 21-3701, and

Renumber remaining sections accordingly.

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1 —(4) Mistreatment of a dependent adult as defined in subsection (a)(2)
2 is a severity level 9, person felony if the aggregate amount of the value
3 of the resources is at least \$1,000 but less than \$25,000.

4 —(5) Mistreatment of a dependent adult as defined in subsection (a)(2)
5 is a class A person misdemeanor if the aggregate amount of the value of
6 the resources is less than \$1,000, if the aggregate amount of the value of
7 the resources is:

- 8 (A) \$100,000 or more is a severity level 5, nonperson felony.
- 9 (B) At least \$75,000 but less than \$100,000 is a severity level 6, non-
- 10 person felony.
- 11 (C) At least \$50,000 but less than \$75,000 is a severity level 7, non-
- 12 person felony.
- 13 (D) At least \$25,000 but less than \$50,000 is a severity level 8, non-
- 14 person felony.
- 15 (E) At least \$2,000 but less than \$25,000 is a severity level 9, non-
- 16 person felony.
- 17 (F) At least \$1,000 but less than \$2,000 is a severity level 10, non-
- 18 person felony.
- 19 (G) At least \$500 but less than \$1,000 is a class A nonperson
- 20 misdemeanor.
- 21 (H) Less than \$500 is a class B nonperson misdemeanor.

22 ~~(6)~~ (3) Mistreatment of a dependent adult as defined in subsection
23 (a)(3) is a class A person misdemeanor.

24 ~~(7)~~ (4) Mistreatment of a dependent adult as defined in subsection
25 (a)(2) is a severity level 9, person felony if the aggregate amount of the
26 value of the resources is less than \$1,000 and committed by a person who
27 has, within five years immediately preceding commission of the crime,
28 been convicted of mistreatment of a dependent adult two or more times.

29 ~~Sec. 44. K.S.A. 21-3447 is hereby amended to read as follows: 21-~~
30 ~~3447. (a) Aggravated trafficking is:~~

31 ~~(1) Trafficking, as defined in K.S.A. 21-3446, and amendments~~
32 ~~thereto;~~

33 ~~(A) Involving the commission or attempted commission of kidnap-~~
34 ~~ping, as defined in K.S.A. 21-3420, and amendments thereto;~~

35 ~~(B) committed in whole or in part for the purpose of the sexual grat-~~
36 ~~ification of the defendant or another; or~~

37 ~~(C) resulting in a death; or~~

38 ~~(2) recruiting, harboring, transporting, providing or obtaining, by any~~
39 ~~means, a person under 18 years of age knowing that the person, with or~~
40 ~~without force, fraud, threat or coercion, will be used to engage in forced~~
41 ~~labor, involuntary servitude or sexual gratification of the defendant or~~
42 ~~another.~~

43 ~~(b) Except as provided further, aggravated trafficking is a severity~~

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1 ~~level 1 2, person felony. When the offender is 18 years of age or older,~~
2 ~~aggravated trafficking, if the victim is less than 14 years of age, is an off-~~
3 ~~grid person felony.~~

4 (e) ~~This section shall be part of and supplemental to the Kansas crim-~~
5 ~~inal code.~~

Renumber remaining sections accordingly.

6 Sec. 45. K.S.A. 21-3451 is hereby amended to read as follows: 21-
7 3451. (a) It is unlawful for any person knowingly or intentionally to receive
8 or acquire property, or engage in transactions involving property, for the
9 purpose of committing or furthering the commission of any violation of
10 K.S.A. 21-3449 or 21-3450, and amendments thereto. The provisions of
11 this subsection do not apply to any transaction between an individual and
12 that individual's counsel necessary to preserve that individual's right to
13 representation, as guaranteed by section 10 of the bill of rights of the
14 constitution of the state of Kansas and by the sixth amendment to the
15 United States constitution. This exception does not create any presump-
16 tion against or prohibition of the right of the state to seek and obtain
17 forfeiture of any proceeds derived from a violation of K.S.A. 21-3449 or
18 21-3450, and amendments thereto.

19 (b) It is unlawful for any person knowingly or intentionally to give,
20 sell, transfer, trade, invest, conceal, transport or maintain an interest in
21 or otherwise make available any property which that person knows is
22 intended to be used for the purpose of committing or furthering the
23 commission of any violation of K.S.A. 21-3449 or 21-3450, and amend-
24 ments thereto.

25 (c) It is unlawful for any person knowingly or intentionally to direct,
26 plan, organize, initiate, finance, manage, supervise or facilitate the trans-
27 portation or transfer of property known to be for the purpose of com-
28 mitting or furthering the commission of K.S.A. 21-3449 or 21-3450, and
29 amendments thereto.

30 (d) It is unlawful for any person knowingly or intentionally to conduct
31 a financial transaction involving property for the purpose of committing
32 or furthering the commission of any violation of K.S.A. 21-3449 or 21-
33 3450, and amendments thereto, when the transaction is designed in whole
34 or in part to conceal or disguise the nature, location, source, ownership
35 or control of the property known to be for the purpose of committing or
36 furthering the commission of any violation of K.S.A. 21-3449 or 21-3450,
37 and amendments thereto, or to avoid a transaction reporting requirement
38 under state or federal law.

39 (e) A person who violates this section is guilty of a ~~severity level 1,~~
40 ~~an off-grid~~ person felony.

41 (f) As used in this section:

42 (1) "Property" means anything of value, and includes any interest in
43 property, including any benefit, privilege, claim or right with respect to

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1 (D) At least \$25,000 but less than \$50,000, except as provided further,
2 is a severity level 8, nonperson felony.

3 (E) At least \$2,000 but less than \$25,000, except as provided further,
4 is a severity level 9, nonperson felony.

5 (F) At least \$1,000 but less than \$2,000, except as provided further,
6 is a severity level 10, nonperson felony.

7 (G) At least \$500 but less than \$1,000, except as provided further, is
8 a class A nonperson misdemeanor.

9 (H) Less than \$500, except as provided further, is a class B nonperson
10 misdemeanor.

11 (2) Counterfeiting of the retail value of at least \$1,000 but less than
12 \$25,000; that involves more than 100 but less than 1,000 items bearing a
13 counterfeit mark; or on a second violation of subsection (e)(1)(F),
14 (e)(1)(G) or (e)(1)(H) if the offender has a previous conviction of this
15 section, is a severity level 9, nonperson felony.

16 (3) Counterfeiting of the retail value of \$25,000 or more; that involves
17 1,000 or more items bearing a counterfeit mark; or on a third or subse-
18 quent violation of subsection (e)(1)(D), (e)(1)(E), (e)(1)(F), (e)(1)(G) or
19 (e)(1)(H) if the offender has two previous convictions of any combination
20 of subsection (e)(1)(D), (e)(1)(E), (e)(1)(F), (e)(1)(G) or (e)(1)(H), is a
21 severity level 7, nonperson felony.

22 (f) This section shall be part of and supplemental to the Kansas crim-
23 inal code.

24 ~~Sec. 59. K.S.A. 2008 Supp. 21-3811 is hereby amended to read as~~
25 ~~follows: 21-3811. Aiding escape is:~~

26 ~~(a) Assisting another who is in lawful custody on a charge or convic-~~
27 ~~tion of crime, on a charge or adjudication of a misdemeanor or felony or~~
28 ~~on a commitment to the state security hospital as provided in K.S.A. 22-~~
29 ~~3428 and amendments thereto based on a finding that the person com-~~
30 ~~mitted an act constituting any crime to escape from such custody; or~~

31 ~~(b) supplying to another who is in lawful custody on a charge or con-~~
32 ~~viction of crime, on a charge or adjudication of a misdemeanor or felony~~
33 ~~or on a commitment to the state security hospital as provided in K.S.A.~~
34 ~~22-3428 and amendments thereto based on a finding that the person~~
35 ~~committed an act constituting any crime, any object or thing adapted or~~
36 ~~designed for use in making an escape, with intent that it shall be so used;~~
37 ~~or~~

38 ~~(c) introducing into an institution in which a person is confined on a~~
39 ~~charge or conviction of crime, on a charge or adjudication of a misde-~~
40 ~~memeanor or felony or into the state security hospital if such person is con-~~
41 ~~fined on a commitment to the state security hospital as provided in K.S.A.~~
42 ~~22-3428 and amendments thereto based on a finding that the person~~
43 ~~committed an act constituting any crime any object or thing adapted or~~

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1 ~~designed for use in making any escape, with intent that it shall be so used.~~

2 ~~(d) (1) Except as provided in paragraph (2), aiding escape is a severity~~
 3 ~~level 8, nonperson felony.~~

4 ~~(2) Aiding escape by an employee or volunteer of the department of~~
 5 ~~corrections, or the employee or volunteer of a contractor who is under~~
 6 ~~contract to provide services to the department of corrections, is a severity~~
 7 ~~level 4 5, nonperson felony.~~

8 ~~Sec. 60. K.S.A. 21-3812 is hereby amended to read as follows: 21-~~
 9 ~~3812. (a) Aiding a felon is knowingly harboring, concealing or aiding any~~
 10 ~~person who has committed a felony under the laws of this state, other~~
 11 ~~than a violation of K.S.A. 22-4903, and amendments thereto, or another~~
 12 ~~state or the United States with intent that such person shall avoid or~~
 13 ~~escape from arrest, trial, conviction or punishment for such felony.~~

14 ~~Aiding a felon is a severity level 8, nonperson felony.~~

15 ~~(b) Aiding a person charged with a felony is knowingly harboring,~~
 16 ~~concealing or aiding a person who has been charged with a felony under~~
 17 ~~the laws of this state, other than a violation of K.S.A. 22-4903, and amend-~~
 18 ~~ments thereto, or another state or the United States with intent that such~~
 19 ~~person shall avoid or escape from arrest, trial, conviction or punishment~~
 20 ~~for such felony.~~

21 ~~Aiding a person charged with a felony is a severity level 8, nonperson~~
 22 ~~felony.~~

23 ~~(c) Aiding a person who has been convicted of or who has been~~
 24 ~~charged with committing a misdemeanor under the laws of Kansas or~~
 25 ~~another state is knowingly concealing or aiding such person with intent~~
 26 ~~that such person shall avoid or escape from arrest, trial, conviction or~~
 27 ~~punishment for such misdemeanor.~~

28 ~~Aiding a person convicted of or charged with committing a misde-~~
 29 ~~memeanor is a class C misdemeanor.~~

30 ~~(d) Aiding a person required to register under the Kansas offender~~
 31 ~~registration act, K.S.A. 22-4901 et seq., and amendments thereto, is~~
 32 ~~knowingly harboring, concealing or aiding any person who is required to~~
 33 ~~register under the act and who is not in compliance with the requirements~~
 34 ~~of the act with intent that such person shall avoid or escape from regis-~~
 35 ~~tration, arrest, trial, conviction, punishment or any criminal charges aris-~~
 36 ~~ing from the person's failure to comply with the requirements of the act.~~

37 ~~Aiding a person required to register under the Kansas offender regis-~~
 38 ~~tration act is a severity level 5-10, person felony.~~

39 ~~Sec. 61. K.S.A. 21-3826 is hereby amended to read as follows: 21-~~
 40 ~~3826. (a) Traffic in contraband in a correctional institution is introducing~~
 41 ~~or attempting to introduce into or upon the grounds of any correctional~~
 42 ~~institution or taking, sending, attempting to take or attempting to send~~
 43 ~~from any correctional institution or any unauthorized possession while in~~

Renumber remaining sections accordingly.

61-9

1 of serious violence, or engaging in sexual acts involving penetration with
2 victims less than 14 years of age, and includes the following offenses:

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

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

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

10 (i) "Institution of higher education" means any post-secondary school
11 under the supervision of the Kansas board of regents.

12 ~~Sec. 109. K.S.A. 22-4903 is hereby amended to read as follows: 22-~~
13 ~~4903. (a) Any person who is required to register as provided in the Kansas~~
14 ~~offender registration act who violates any of the provisions of such act,~~
15 ~~including all duties set out in K.S.A. 22-4904 through 22-4907, and~~
16 ~~amendments thereto, is guilty of a severity level 5-9, person felony. Any~~
17 ~~violation of any provision of such act, including a violation of the duties~~
18 ~~set forth in K.S.A. 22-4904 through K.S.A. 22-4907, and amendments~~
19 ~~thereto, which continues for more than 30 consecutive days shall, upon~~
20 ~~the 31st consecutive day, constitute a new and separate offense and shall~~
21 ~~continue to constitute a new and separate offense upon completion of~~
22 ~~every 30 days thereafter for as long as the offense continues.~~

23 ~~(b) Prosecution of violations under subsection (a), shall be held: (1)~~
24 ~~In the county in which the offender resides; (2) if the offender is tem-~~
25 ~~porarily domiciled in a county and is required to be registered, in such~~
26 ~~county; or (3) in the county in which the offender is required to be reg-~~
27 ~~istered under this act.~~

28 Sec. 110. K.S.A. 22-4906 is hereby amended to read as follows: 22-
29 4906. (a) Except as provided in subsection (d), any person required to
30 register as provided in this act shall be required to register: (1) Upon the
31 first conviction of a sexually violent crime as defined in subsection (c) of
32 K.S.A. 22-4902, and amendments thereto, any offense as defined in sub-
33 section (a) of K.S.A. 22-4902, and amendments thereto, or any offense as
34 defined in subsection (d) of K.S.A. 22-4902, and amendments thereto, if
35 not confined, for a period of 10 years after conviction, or, if confined, for
36 a period of 10 years after paroled, discharged or released, whichever date
37 is most recent. The ten-year period shall not apply to any person while
38 the person is incarcerated in any jail or correctional facility. The ten-year
39 registration requirement does not include any time period when any per-
40 son who is required to register under this act knowingly or willfully fails
41 to comply with the registration requirement; or (2) upon a second or
42 subsequent conviction for such person's lifetime.

43 (b) Upon the first conviction, liability for registration terminates, if

Renumber remaining sections accordingly.

02-5

1 (8) whether the substance is an immediate precursor of a substance
2 already controlled under this article.

3 (c) The board shall not include any nonnarcotic substance within a
4 schedule if such substance may be lawfully sold over the counter without
5 a prescription under the federal food, drug and cosmetic act.

6 (d) Authority to control under this section does not extend to distilled
7 spirits, wine, malt beverages or tobacco.

8 (e) Upon receipt of notice under ~~K.S.A. 65-4105a~~ *section 15, and*
9 *amendments thereto*, the board shall initiate scheduling of the controlled
10 substance analog on an emergency basis pursuant to this subsection. The
11 scheduling of a substance under this subsection expires one year after the
12 adoption of the scheduling rule. With respect to the finding of an im-
13 minent hazard to the public safety, the board shall consider whether the
14 substance has been scheduled on a temporary basis under federal law or
15 factors set forth in subsections (b)(4), (5) and (6), and may also consider
16 clandestine importation, manufacture or distribution, and if available, in-
17 formation concerning the other factors set forth in subsection (b). A rule
18 may not be adopted under this subsection until the board initiates a ru-
19 lemaking proceeding under subsection (a) with respect to the substance.
20 A rule adopted under this subsection lapses upon the conclusion of the
21 rulemaking proceeding initiated under subsection (a) with respect to the
22 substance.

23 Sec. 139. K.S.A. 65-4127c is hereby amended to read as follows: 65-
24 4127c. ~~Except as otherwise provided in K.S.A. 65-4127a and 65-4127b~~
25 ~~and K.S.A. 65-4160 through 65-4164 and amendments thereto~~, Any per-
26 son violating any of the provisions of the uniform controlled substances
27 act shall be guilty of a class A nonperson misdemeanor. The criminal
28 penalties prescribed for violations of the uniform controlled substances
29 act shall not be applicable to violations of the rules and regulations
30 adopted by the board pursuant thereto.

31 Sec. 140. K.S.A. 65-4139 is hereby amended to read as follows: 65-
32 4139. ~~This act~~ *Article 41 of chapter 65 of the Kansas Statutes Annotated,*
33 *and amendments thereto, shall be known and may be cited as the uniform*
34 *controlled substances act.*

35 Sec. 141. K.S.A. 65-2859 is hereby amended to read as follows: 65-
36 2859. Any person who shall file or attempt to file with the board any false
37 or forged diploma, certificate, affidavit or identification or qualification,
38 or any other written or printed instrument, shall be guilty of forgery as
39 provided by K.S.A. 21-3710, and ~~a severity level 8, nonperson felony~~
40 *amendments thereto.*

41 ~~Sec. 142. K.S.A. 2008 Supp. 65-3235 is hereby amended to read as~~
42 ~~follows: 65-3235. (a) Except as otherwise provided in subsection (b), a~~
43 ~~person that for valuable consideration, knowingly purchases or sells a part~~

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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, process-~~
5 ~~ing, 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 ~~10~~ 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.

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

Renumber remaining sections accordingly.

62-2

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,

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, 75-52,144, 75-5291, 76-11a13, 79-15,235 and 79-3228 are
6 hereby repealed.
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.

CU, E