

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 10, 2009, in Room 535-N of the Capitol.

All members were present.

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:

Danny Thayer, Neodesha Chief of Police
Ed Klumpp, Kansas Association of Chiefs of Police and Kansas Peace Officers Association,

Others attending:

See attached list.

Chairperson Colloton recognized Representative Bethell. **He stated having voted on the prevailing side of HB 2332 yesterday, he would like to make a motion to reconsider action on HB 2332. Representative Brookens seconded. Motion carried.**

Chairperson Colloton called on Jill Wolters, Office of the Revisor, to pass out written copy of all the amendments on **HB 2332** and who made them. (Attachment 1)

Representative Bethell made a motion to make a substitute amend for HB 2332 and pass it out favorably. Representative Roth seconded.

Representative Bethell explained his amendment. (Attachment 2) He stated the amendment would like to keep the school property at 450 ft. and the technical amendments and definitions on domestic battery made by the Kansas Sentencing Commission and the amendments from the Kansas Securities Commission .

Chairperson Colloton called for a vote on the substitute motion on the floor. Motion carried with Representative Kinzer and Representative Patton voting “no”.

Chairperson Colloton moved the Committee’s attention to **Sub for SB 28** and called on Jason Thompson, Office of the Revisor, to explain the **Sub for SB 28**. He state the bill would amend the statute on authorized disposition for crimes committed on or after the adoption of the Kansas Sentencing Guidelines Act. The bill would add a drivers license suspension or restriction to the penalty or disposition already imposed by law for a conviction of unlawful possession of a controlled substance or controlled substance analog if the unlawful possession occurred while transporting the controlled substance or controlled substance analog in any vehicle on a highway or street.

A short discussion followed regarding analog.

Chairperson Colloton opened the hearing on **Sub for SB 28** and introduced Ed Klumpp, Kansas Association of Chiefs of Police and Kansas Peace Officers Association, to give his testimony as a proponent of the bill. Mr. Klumpp provided written copy of his testimony. (Attachment 3) Mr. Klumpp stated that it made sense that if you are transporting drugs or transporting open containers, sanctions should be made on drivers licenses. He urged the Committee to report this bill favorably for passage to the House.

Upon the conclusion of Mr. Klumpp’s testimony, Chairperson Colloton called the Committee to the “written only” proponent testimony of Danny Thayer, Chief of Police, Neodesha Police Department. (Attachment 4)

CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on March 10, 2009, in Room 535-N of the Capitol.

A discussion followed.

With no others wishing to testify, Chairperson Colloton closed the hearing on **Sub for SB 28** and adjourned the meeting at 2:05 p.m. with the next scheduled meeting for March 11, 2009 at 1:30 p.m. in room 535 N.

HOUSE BILL No. 2332

By Committee on Federal and State Affairs

2-12

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

65-6a40,

21-4619d,

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

37 New Section 1. As used in sections 1 through 17, and amendments
38 thereto:

39 (a) "Controlled substance" means any drug, substance or immediate
40 precursor included in any of the schedules designated in K.S.A. 65-4105,
41 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

42 (b) (1) "Controlled substance analog" means a substance that is in-
43 tended for human consumption, and:

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

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

5 (1) A minor is within close proximity to the illegal activity;

6 (2) the illegal activity is conducted in a place where minors can rea-
7 sonably be expected to be present; or

8 (3) in the minor's dwelling.

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

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

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

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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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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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or on or within 450 feet of any school property

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

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

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- 1 or subsection (b) of K.S.A. 65-4111, and amendments thereto;
- 2 (2) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
3 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.
4 65-4109, and amendments thereto;
- 5 (3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
6 4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-
7 4109, and amendments thereto;
- 8 (4) any substance designated in subsection (g) of K.S.A. 65-4105 and
9 subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments
10 thereto; or
- 11 (5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
12 4109, and amendments thereto.
- 13 (c) (1) Violation of subsection (a) is a severity level 10, nonperson
14 felony;
- 15 (2) violation of subsection (b) is a class A nonperson misdemeanor,
16 except that, violation of subsection (b) is a severity level 10, nonperson
17 felony if that person has a prior conviction under such subsection, under
18 K.S.A. 65-4162 prior to its repeal, under a substantially similar offense
19 from another jurisdiction, or under any city ordinance or county resolu-
20 tion for a substantially similar offense if the substance involved was 3, 4-
21 methylenedioxymethamphetamine (MDMA), marijuana or tetrahydro-
22 cannabinol as designated in subsection (d) of K.S.A. 65-4105, and
23 amendments thereto.
- 24 (d) It shall not be a defense to charges arising under this section that
25 the defendant was acting in an agency relationship on behalf of any other
26 party in a transaction involving a controlled substance.
- 27 New Sec. 7. (a) It shall be unlawful for any person to knowingly or
28 intentionally use any communication facility:
- 29 (1) In committing, causing, or facilitating the commission of any fel-
30 ony under section 3, 5 or 6, and amendments thereto; or
- 31 (2) in any attempt to commit, any conspiracy to commit, or any crim-
32 inal solicitation of any felony under section 3, 5 or 6, and amendments
33 thereto. Each separate use of a communication facility may be charged
34 as a separate offense under this subsection.
- 35 (b) Violation of subsection (a) is a **nondrug** severity level 8, nonperson
36 felony.
- 37 (c) As used in this section, "communication facility" means any and
38 all public and private instrumentalities used or useful in the transmission
39 of writing, signs, signals, pictures or sounds of all kinds and includes tel-
40 ephone, wire, radio, computer, computer networks, beepers, pagers and
41 all other means of communication.
- 42 New Sec. 8. (a) Unlawfully obtaining and distributing a prescription-
43 only drug is:

9.1

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

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

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

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

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

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

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

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

23 (c) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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or on or within 450 feet of any school

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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

01-10

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

15 Sec. 26. K.S.A. 17-12a508 is hereby amended to read as follows: 17-
 16 12a508. (a) *Criminal penalties.* (1) Except as provided in subsections
 17 (a)(2) through (a)(4) and (a)(3), a conviction for an intentional violation
 18 of this the Kansas uniform securities act, or a rule adopted or order issued
 19 under this act, except K.S.A. 17-12a504, and amendments thereto, or the
 20 notice filing requirements of K.S.A. 17-12a302 or 17-12a405, and amend-
 21 ments thereto, is a severity level 7 9, nonperson felony. An individual
 22 convicted of violating a rule or order under this act may be fined, but
 23 may not be imprisoned, if the individual did not have knowledge of the
 24 rule or order.

through (a)(4)

8

25 (2) ~~A conviction for an intentional violation of K.S.A. 17-12a501 or~~
 26 ~~17-12a502, and amendments thereto, is:~~
 27 ~~—(A)—a severity level 4, nonperson felony if the violation resulted in a~~
 28 ~~loss of \$100,000 or more;~~
 29 ~~—(B)—a severity level 5, nonperson felony if the violation resulted in a~~
 30 ~~loss of at least \$25,000 but less than \$100,000; or~~
 31 ~~—(C)—a severity level 7, nonperson felony if the violation resulted in a~~
 32 ~~loss of less than \$25,000.~~

A conviction for an intentional violation of K.S.A. 17-12a501 or 17-12a502, and amendments thereto, if the violation resulted in a loss of an amount of:

- (A) \$1,000,000 or more is a severity level 2, nonperson felony.
- (B) At least \$250,000 but less than \$1,000,000 is a severity level 3, nonperson felony.
- (C) At least \$100,000 but less than \$250,000 is a severity level 4, nonperson felony.
- (D) At least \$75,000 but less than \$100,000 is a severity level 5, nonperson felony.
- (E) At least \$50,000 but less than \$75,000 is a severity level 6, nonperson felony.
- (F) At least \$25,000 but less than \$50,000 is a severity level 7, nonperson felony.
- (G) At least \$25,000 but less than \$1,000 is a severity level 8, nonperson felony.

(3)

or

33 ~~—(3) A conviction for an intentional violation of K.S.A. 17-12a301, 17-~~
 34 ~~12a401(a), 17-12a401(e), 17-12a402(a), 17-12a402(d), 17-12a403(a), 17-~~
 35 ~~12a403(e), 17-12a403(d), 17-12a404(a), or 17-12a404(e), 17-12a501 or~~
 36 ~~17-12a502, and amendments thereto, is if the violation resulted in a loss~~
 37 ~~of an amount of:~~
 38 (A) *\$100,000 or more is a severity level 5, nonperson felony if the*
 39 *violation resulted in a loss of \$100,000 or more.*
 40 (B) *At least \$75,000 but less than \$100,000 is a severity level 6, non-*
 41 *person felony if the violation resulted in a loss of at least \$25,000 but less*
 42 *than \$100,000; or.*
 43 (C) *At least \$50,000 but less than \$75,000 is a severity level 7, non-*

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

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

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

Less

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

(A)

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

6 11 (4) (3) A conviction for an intentional violation of K.S.A. 17-12a505
12 or 17-12a506, and amendments thereto, is a severity level 8, nonperson
13 felony.

17-12a404 (e),

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

or an order to cease and desist issued by the administrator pursuant to K.S.A. 17-12a412(c) or 17-12a604(a), and amendments thereto,

(B) K.S.A. 17-12a401(c) or 17-12a403(c), and amendments thereto, is a severity level 7, nonperson felony.

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

\$25,000

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

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1 levels below the appropriate level for the underlying or completed crime.
 2 The lowest severity level for criminal solicitation to commit a ~~non~~drug
 3 felony shall be level 10. The provisions of this subsection shall not apply
 4 to a violation of criminal solicitation to commit the crime of terrorism
 5 pursuant to K.S.A. 21-3449, and amendments thereto, or of illegal use of
 6 weapons of mass destruction pursuant to K.S.A. 21-3450, and amend-
 7 ments thereto.

8 ~~(e) Criminal solicitation to commit a felony which prescribes a sen-~~
 9 ~~tence on the drug grid shall reduce the prison term prescribed in the~~
 10 ~~drug grid block for an underlying or completed crime by six months.~~

11 Sec. 34. K.S.A. 21-3411 is hereby amended to read as follows: 21-
 12 3411. (a) Aggravated assault of a law enforcement officer is an aggravated
 13 assault, as defined in K.S.A. 21-3410 and amendments thereto:

14 (1) Committed against a uniformed or properly identified state,
 15 county or city law enforcement officer while such officer is engaged in
 16 the performance of such officer's duty; or

17 (2) committed against a uniformed or properly identified university
 18 or campus police officer while such officer is engaged in the performance
 19 of such officer's duty.

20 (b) Aggravated assault of a law enforcement officer is a severity level
 21 6, person felony. ~~A person convicted of aggravated assault of a law en-~~
 22 ~~forcement officer shall be subject to the provisions of subsection (g) of~~
 23 ~~K.S.A. 21-4704, and amendments thereto.~~

24 Sec. 35. K.S.A. 2008 Supp. 21-3412a is hereby amended to read as
 25 follows: 21-3412a. (a) Domestic battery is:

26 (1) Intentionally or recklessly causing bodily harm by a family or
 27 household member against a family or household member; or

28 (2) intentionally causing physical contact with a family or household
 29 member by a family or household member when done in a rude, insulting
 30 or angry manner.

31 (b) (1) Upon a first conviction of a violation of domestic battery, a
 32 person shall be guilty of a class B person misdemeanor and sentenced to
 33 not less than 48 consecutive hours nor more than six months' imprison-
 34 ment and fined not less than \$200, nor more than \$500 or in the court's
 35 discretion the court may enter an order which requires the person enroll
 36 in and successfully complete a domestic violence prevention program.

behavior modification treatment program for

37 ~~(2) If, within five years immediately preceding commission of the~~
 38 ~~crime, a person is convicted of a violation of domestic battery a second~~
 39 ~~time, such~~ Upon a second conviction of a violation of domestic battery, a
 40 person shall be guilty of a class A person misdemeanor and sentenced to
 41 not less than 90 days nor more than one year's imprisonment and fined
 42 not less than \$500 nor more than \$1,000. The five days' imprisonment
 43 mandated by this subsection may be served in a work release program

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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.

Such probation or parole shall be supervised by court services.

behavior modification

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.

serve

and is sentenced to probation

serve

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.

as a condition of probation

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.

serve

and is sentenced to probation

as a condition of probation

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 conse-
 41 cutive 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.

(B) If the offender is sentenced to probation pursuant to this paragraph, such offender shall be supervised by community correctional services upon release.

behavior modification

the underlying prison sentence

probation or

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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

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.

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-

Renumber remaining sections accordingly.

1-16

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

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

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

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

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

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

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

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

29 (c) As used in this section:

30 (1) "Manufacture" shall have the meaning ascribed to that term in
 31 ~~K.S.A. 65-4101~~ section 1, and amendments thereto; and

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

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

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

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

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

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

1-19

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

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

If an offender, who is convicted of a class A misdemeanor, is placed

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

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

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

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1 time; or
2 ~~(3)~~ (iii) the nonprison sanction will serve community safety interests
3 by promoting offender reformation.

4 (B) Any party requesting the nonprison sentence be served by at-
5 tending and successfully completing a treatment or behavioral modifica-
6 tion program shall notify the court and opposing counsel **20 days** prior
7 to sentencing of the proposed program. The presentence investigation re-
8 port by the court services officer shall verify the availability of the pro-
9 gram and the adequacy of the provider of such program and the treatment
10 or behavioral modification plan.

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

6-E, 6-F, 6-G, 6-H, 6-I, 7-C, 7-D, 7-E, 7-F, 8-C, 8-D, 8-E, 8-F, 9-C, 9-D or 9-E,

15 (g) The sentence for the violation of K.S.A. 21-3415, and amend-
16 ments thereto, aggravated battery against a law enforcement officer com-
17 mitted prior to July 1, 2006, or K.S.A. 21-3411, and amendments thereto,
18 aggravated assault against a law enforcement officer, which places the
19 defendant's sentence in grid block 6-H or 6-I shall be presumed impris-
20 onment. The court may impose an optional nonprison sentence upon
21 making a finding on the record that the nonprison sanction will serve
22 community safety interests by promoting offender reformation. Any de-
23 cision made by the court regarding the imposition of the optional non-
24 prison sentence, if the offense is classified in grid block 6-H or 6-I, shall
25 not be considered departure and shall not be subject to appeal.

26 —(h) When a firearm is used to commit any person felony, the of-
27 fender's sentence shall be presumed imprisonment. The court may im-
28 pose an optional nonprison sentence upon making a finding on the record
29 that the nonprison sanction will serve community safety interests by pro-
30 moting offender reformation. Any decision made by the court regarding
31 the imposition of the optional nonprison sentence shall not be considered
32 a departure and shall not be subject to appeal.

33 ~~(i)~~ (h) The sentence for the violation of the felony provision of K.S.A.
34 8-1567, subsection (b)(3) of K.S.A. 21-3412a, ~~subsections (b)(3) and sub-~~
35 ~~section~~ (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and
36 amendments thereto, shall be as provided by the specific mandatory sen-
37 tencing requirements of that section and shall not be subject to the pro-
38 visions of this section or K.S.A. 21-4707, and amendments thereto. If
39 because of the offender's criminal history classification the offender is
40 subject to presumptive imprisonment or if the judge departs from a pre-
41 sumptive probation sentence and the offender is subject to imprisonment,
42 the provisions of this section and K.S.A. 21-4707, and amendments
43 thereto, shall apply and the offender shall not be subject to the mandatory

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1 sentence as provided in K.S.A. 21-3412a, 21-3710, 21-4310 or 21-4318,
 2 and amendments thereto. Notwithstanding the provisions of any other
 3 section, the term of imprisonment imposed for the violation of the felony
 4 provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a, subsec-
 5 tions (b)(3) and subsection (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and
 6 K.S.A. 21-4318, and amendments thereto, shall not be served in a state
 7 facility in the custody of the secretary of corrections, except that the term
 8 of imprisonment for felony violations of K.S.A. 8-1567, and amendments
 9 thereto, may be served in a state correctional facility designated by the
 10 secretary of corrections if the secretary determines that substance abuse
 11 treatment resources and facility capacity is available. The secretary's de-
 12 termination regarding the availability of treatment resources and facility
 13 capacity shall not be subject to review.

(A)(i)

14 ~~(j)~~ (i) (1) The sentence for any persistent sex offender whose current
 15 convicted crime carries a presumptive term of imprisonment shall be
 16 double the maximum duration of the presumptive imprisonment term.
 17 The sentence for any persistent sex offender whose current conviction
 18 carries a presumptive nonprison term shall be presumed imprisonment
 19 and shall be double the maximum duration of the presumptive impris-
 20 onment term.

21 (2) Except as otherwise provided in this subsection, as used in this
 22 subsection, "persistent sex offender" means a person who: (A) (i) Has
 23 been convicted in this state of a sexually violent crime, as defined in K.S.A.
 24 22-3717 and amendments thereto; and (ii) at the time of the conviction
 25 under paragraph (A) (i) has at least one conviction for a sexually violent
 26 crime, as defined in K.S.A. 22-3717 and amendments thereto in this state
 27 or comparable felony under the laws of another state, the federal gov-
 28 ernment or a foreign government; or (B) (i) has been convicted of rape,
 29 K.S.A. 21-3502, and amendments thereto; and (ii) at the time of the
 30 conviction under paragraph (B) (i) has at least one conviction for rape in
 31 this state or comparable felony under the laws of another state, the federal
 32 government or a foreign government.

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

36 ~~(k)~~ (j) If it is shown at sentencing that the offender committed any
 37 felony violation for the benefit of, at the direction of, or in association
 38 with any criminal street gang, with the specific intent to promote, further
 39 or assist in any criminal conduct by gang members, the offender's sen-
 40 tence shall be presumed imprisonment. Any decision made by the court
 41 regarding the imposition of the optional nonprison sentence shall not be
 42 considered a departure and shall not be subject to appeal. As used in this
 43 subsection, "criminal street gang" means any organization, association or

pg 1

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

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

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

level's

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

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

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

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

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

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

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

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

level's

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

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

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

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

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

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

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

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

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

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

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

h
2-1

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

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

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

or possessing with the intent to distribute

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

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

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

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

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

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

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

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

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

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

section's

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

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

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

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

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

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

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

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

nonperson

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

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

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

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

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

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

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

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

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

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

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

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

65-6a40,

12-4104

40-247,

Sec 1

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.

72-1397,

75-5291,

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

HOUSE BILL No. 2332

By Committee on Federal and State Affairs

2-12

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

65-6a40,

21-4619d,

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

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

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

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

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

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

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

2010

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

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

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

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

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

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

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

(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]

CF

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.

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

1-20

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2
5

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

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

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

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

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

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

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

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

23 (c) As used in this section:

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

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

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

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

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

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1 tent to distribute or manufacture with intent to distribute any drug par-
2 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 ~~non~~ 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

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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

6-9

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 ~~non~~ 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

9-10
b-2

1 ~~misdemeanor~~. \$100,000 or more is guilty of a severity level 5, nonperson felony.

2 (2) At least \$75,000 but less than \$100,000 is guilty of a severity level
3 6, nonperson felony.

4 (3) At least \$50,000 but less than \$75,000 is guilty of a severity level
5 7, nonperson felony.

6 (4) At least \$25,000 but less than \$50,000 is guilty of a severity level
7 8, nonperson felony.

8 (5) At least \$2,000 but less than \$25,000 is guilty of a severity level
9 9, nonperson felony.

10 (6) At least \$1,000 but less than \$2,000 is guilty of a severity level 10,
11 nonperson felony.

12 (7) At least \$500 but less than \$1,000 is guilty of a class A nonperson
13 misdemeanor.

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

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

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

17 (a)(2) through (a)(4) ~~and (a)(3)~~, a conviction for an intentional violation

through (a)(4)

18 of ~~this~~ the Kansas uniform securities act, or a rule adopted or order issued

19 under this act, except K.S.A. 17-12a504, and amendments thereto, or the

20 notice filing requirements of K.S.A. 17-12a302 or 17-12a405, and amend-

8

21 ments thereto, is a severity level ~~7~~ 9, nonperson felony. An individual

22 convicted of violating a rule or order under this act may be fined, but

23 may not be imprisoned, if the individual did not have knowledge of the

24 rule or order.

25 (2) A conviction for an intentional violation of K.S.A. 17-12a501 or

26 17-12a502, and amendments thereto, is:

27 —(A) A severity level 4, nonperson felony if the violation resulted in a

28 loss of \$100,000 or more;

29 —(B) a severity level 5, nonperson felony if the violation resulted in a

30 loss of at least \$25,000 but less than \$100,000; or

31 —(C) a severity level 7, nonperson felony if the violation resulted in a

32 loss of less than \$25,000.

33 —(3) A conviction for an intentional violation of K.S.A. 17-12a301, 17-

34 12a401(a), ~~17-12a401(e)~~, 17-12a402(a), ~~17-12a402(d)~~, 17-12a403(a), ~~17-~~

35 ~~12a403(e)~~, ~~17-12a403(d)~~, 17-12a404(a), or ~~17-12a404(e)~~, ~~17-12a501 or~~

or

36 ~~17-12a502~~, and amendments thereto, is if the violation resulted in a loss

37 of an amount of:

38 (A) \$100,000 or more is a severity level 5, nonperson felony if the

39 violation resulted in a loss of \$100,000 or more;

40 (B) At least \$75,000 but less than \$100,000 is a severity level 6, non-

41 person felony if the violation resulted in a loss of at least \$25,000 but less

42 than \$100,000; or

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

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

11-2

1 person felony if the violation resulted in a loss of less than \$25,000.

2 (D) At least \$25,000 but less than \$50,000 is a severity level 8, non-
3 person felony.

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

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

Less

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

(A)

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

6

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

17-12a404 (e),

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

or an order to cease and desist issued by the administrator pursuant to K.S.A. 17-12a412(c) or 17-12a604(a), and amendments thereto,

(B) K.S.A. 17-12a401(c) or 17-12a403(c), and amendments thereto, is a severity level 7, nonperson felony.

\$25,000

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

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

5/1/20

1 levels below the appropriate level for the underlying or completed crime.
 2 The lowest severity level for criminal solicitation to commit a ~~non~~drug
 3 felony shall be level 10. The provisions of this subsection shall not apply
 4 to a violation of criminal solicitation to commit the crime of terrorism
 5 pursuant to K.S.A. 21-3449, and amendments thereto, or of illegal use of
 6 weapons of mass destruction pursuant to K.S.A. 21-3450, and amend-
 7 ments thereto.

8 ~~(c) Criminal solicitation to commit a felony which prescribes a sen-~~
 9 ~~tence on the drug grid shall reduce the prison term prescribed in the~~
 10 ~~drug grid block for an underlying or completed crime by six months.~~

11 Sec. 34. K.S.A. 21-3411 is hereby amended to read as follows: 21-
 12 3411. (a) Aggravated assault of a law enforcement officer is an aggravated
 13 assault, as defined in K.S.A. 21-3410 and amendments thereto:

14 (1) Committed against a uniformed or properly identified state,
 15 county or city law enforcement officer while such officer is engaged in
 16 the performance of such officer's duty; or

17 (2) committed against a uniformed or properly identified university
 18 or campus police officer while such officer is engaged in the performance
 19 of such officer's duty.

20 (b) Aggravated assault of a law enforcement officer is a severity level
 21 6, person felony. ~~A person convicted of aggravated assault of a law en-~~
 22 ~~forcement officer shall be subject to the provisions of subsection (g) of~~
 23 ~~K.S.A. 21-4704, and amendments thereto.~~

24 Sec. 35. K.S.A. 2008 Supp. 21-3412a is hereby amended to read as
 25 follows: 21-3412a. (a) Domestic battery is:

26 (1) Intentionally or recklessly causing bodily harm by a family or
 27 household member against a family or household member; or

28 (2) intentionally causing physical contact with a family or household
 29 member by a family or household member when done in a rude, insulting
 30 or angry manner.

31 (b) (1) Upon a first conviction of a violation of domestic battery, a
 32 person shall be guilty of a class B person misdemeanor and sentenced to
 33 not less than 48 consecutive hours nor more than six months' imprison-
 34 ment and fined not less than \$200, nor more than \$500 or in the court's
 35 discretion the court may enter an order which requires the person enroll
 36 in and successfully complete a ~~domestic violence prevention program.~~

behavior modification treatment program for

37 (2) ~~If, within five years immediately preceding commission of the~~
 38 ~~crime, a person is convicted of a violation of domestic battery a second~~
 39 ~~time, such~~ Upon a second conviction of a violation of domestic battery, a
 40 person shall be guilty of a class A person misdemeanor and sentenced to
 41 not less than 90 days nor more than one year's imprisonment and fined
 42 not less than \$500 nor more than \$1,000. The five days' imprisonment
 43 mandated by this subsection may be served in a work release program

2-13

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.

Such probation or parole shall be supervised by court services.

behavior modification

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.

serve

and is sentenced to probation

serve

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.

as a condition of probation

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.

serve

and is sentenced to probation

as a condition of probation

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 conse-
 41 cutive 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.

(B) If the offender is sentenced to probation pursuant to this paragraph, such offender shall be supervised by community correctional services upon release.

behavior modification

the underlying prison sentence

probation or

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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 (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.

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-

Renumber remaining sections accordingly.

91.2

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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A-2

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

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

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

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

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

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

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

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

29 (c) As used in this section:

30 (1) "Manufacture" shall have the meaning ascribed to that term in
 31 ~~K.S.A. 65-4101~~ section 1, and amendments thereto; and

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

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

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

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

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

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

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

21-4704

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

If an offender, who is convicted of a class A misdemeanor, is placed

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

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

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

23-2

1 time; or
2 ~~(3)~~ (iii) the nonprison sanction will serve community safety interests
3 by promoting offender reformation.

4 (B) Any party requesting the nonprison sentence be served by at-
5 tending and successfully completing a treatment or behavioral modifica-
6 tion program shall notify the court and opposing counsel ~~20 days~~ prior
7 to sentencing of the proposed program. The presentence investigation re-
8 port by the court services officer shall verify the availability of the pro-
9 gram and the adequacy of the provider of such program and the treatment
10 or behavioral modification plan.

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

6-E, 6-F, 6-G, 6-H, 6-I, 7-C, 7-D, 7-E, 7-F, 8-C, 8-D, 8-E, 8-F, 9-C, 9-D or 9-E,

15 ~~(g) The sentence for the violation of K.S.A. 21-3415, and amend-~~
16 ~~ments thereto, aggravated battery against a law enforcement officer com-~~
17 ~~mitted prior to July 1, 2006, or K.S.A. 21-3411, and amendments thereto,~~
18 ~~aggravated assault against a law enforcement officer, which places the~~
19 ~~defendant's sentence in grid block 6-H or 6-I shall be presumed impris-~~
20 ~~onment. The court may impose an optional nonprison sentence upon~~
21 ~~making a finding on the record that the nonprison sanction will serve~~
22 ~~community safety interests by promoting offender reformation. Any de-~~
23 ~~cision made by the court regarding the imposition of the optional non-~~
24 ~~prison sentence, if the offense is classified in grid block 6-H or 6-I, shall~~
25 ~~not be considered departure and shall not be subject to appeal.~~

26 ~~(h)~~ When a firearm is used to commit any person felony, the of-
27 fender's sentence shall be presumed imprisonment. The court may im-
28 pose an optional nonprison sentence upon making a finding on the record
29 that the nonprison sanction will serve community safety interests by pro-
30 moting offender reformation. Any decision made by the court regarding
31 the imposition of the optional nonprison sentence shall not be considered
32 a departure and shall not be subject to appeal.

33 ~~(i)~~ (h) The sentence for the violation of the felony provision of K.S.A.
34 8-1567, subsection (b)(3) of K.S.A. 21-3412a, ~~subsections (b)(3) and sub-~~
35 ~~section (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and~~
36 ~~amendments thereto, shall be as provided by the specific mandatory sen-~~
37 ~~tencing requirements of that section and shall not be subject to the pro-~~
38 ~~visions of this section or K.S.A. 21-4707, and amendments thereto. If~~
39 ~~because of the offender's criminal history classification the offender is~~
40 ~~subject to presumptive imprisonment or if the judge departs from a pre-~~
41 ~~sumptive probation sentence and the offender is subject to imprisonment,~~
42 ~~the provisions of this section and K.S.A. 21-4707, and amendments~~
43 ~~thereto, shall apply and the offender shall not be subject to the mandatory~~

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1 sentence as provided in K.S.A. 21-3412a, 21-3710, 21-4310 or 21-4318,
 2 and amendments thereto. Notwithstanding the provisions of any other
 3 section, the term of imprisonment imposed for the violation of the felony
 4 provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a, ~~subsec-~~
 5 ~~tions (b)(3) and subsection (b)(4)~~ of K.S.A. 21-3710, K.S.A. 21-4310 and
 6 K.S.A. 21-4318, and amendments thereto, shall not be served in a state
 7 facility in the custody of the secretary of corrections, except that the term
 8 of imprisonment for felony violations of K.S.A. 8-1567, and amendments
 9 thereto, may be served in a state correctional facility designated by the
 10 secretary of corrections if the secretary determines that substance abuse
 11 treatment resources and facility capacity is available. The secretary's de-
 12 termination regarding the availability of treatment resources and facility
 13 capacity shall not be subject to review.

(A)(i)

14 ~~(j)~~ (i) (1) The sentence for any persistent sex offender whose current
 15 convicted crime carries a presumptive term of imprisonment shall be
 16 double the maximum duration of the presumptive imprisonment term.
 17 The sentence for any persistent sex offender whose current conviction
 18 carries a presumptive nonprison term shall be presumed imprisonment
 19 and shall be double the maximum duration of the presumptive impris-
 20 onment term.

21 (2) Except as otherwise provided in this subsection, as used in this
 22 subsection, "persistent sex offender" means a person who: (A) (i) Has
 23 been convicted in this state of a sexually violent crime, as defined in K.S.A.
 24 22-3717 and amendments thereto; and (ii) at the time of the conviction
 25 under paragraph (A) (i) has at least one conviction for a sexually violent
 26 crime, as defined in K.S.A. 22-3717 and amendments thereto in this state
 27 or comparable felony under the laws of another state, the federal gov-
 28 ernment or a foreign government; or (B) (i) has been convicted of rape,
 29 K.S.A. 21-3502, and amendments thereto; and (ii) at the time of the
 30 conviction under paragraph (B) (i) has at least one conviction for rape in
 31 this state or comparable felony under the laws of another state, the federal
 32 government or a foreign government.

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

36 ~~(k)~~ (j) If it is shown at sentencing that the offender committed any
 37 felony violation for the benefit of, at the direction of, or in association
 38 with any criminal street gang, with the specific intent to promote, further
 39 or assist in any criminal conduct by gang members, the offender's sen-
 40 tence shall be presumed imprisonment. Any decision made by the court
 41 regarding the imposition of the optional nonprison sentence shall not be
 42 considered a departure and shall not be subject to appeal. As used in this
 43 subsection, "criminal street gang" means any organization, association or

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

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

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

level's

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

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

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

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

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

g.f. 2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

level's

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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, proc-
5 essing, preservation, quality control, storage, transportation, implantation,
6 or disposal of a part.

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

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

or possessing with the intent to distribute

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

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

35 (8) Less than \$500 is a class B nonperson misdemeanor.
36 (c) A pharmacy which is inadvertently in possession of counterfeit
37 drugs may return those drugs to the supplier who provided the drugs to
38 the pharmacy.

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

5-2-0

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

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

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

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

section's

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

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

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

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

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

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

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

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

nonperson

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

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

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

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

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

12-6

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

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

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

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

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

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

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

65-6a40,

12-4104

40-247,

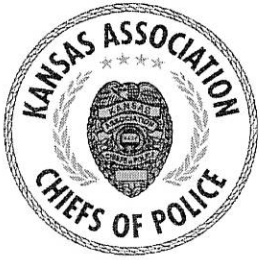
82-8

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.

72-1397,

75-5291,

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



Kansas Association of Chiefs of Police
PO Box 780603, Wichita, KS 67278 (316)733-7301

Kansas Peace Officers Association
PO Box 2592, Wichita, KS 67201 (316)722-8433



March 10, 2009

Testimony to the House Corrections and Juvenile Justice Committee
In Support Of Substitute SB 28
Sanctions For The Transportation Of Illegal Drugs

Madam Chair and Committee members,

We are usually reluctant to support additional reasons for suspending driver's licenses. However, this proposal seems to just make good sense. In light of the long standing sanction against drivers who transport open alcohol in the passenger compartment of a motor vehicle, it only makes sense to include in that sanction the transportation of illegal drugs in the same manner.

DUI offences are not only perpetrated by offenders being intoxicated by alcohol. Many DUI offenders are using both alcohol and illegal drugs at the time of their arrests. Some are impaired solely by the use of illegal drugs. Some offenders actually use those drugs inside the motor vehicles as they travel our roadways. They pose the same risks to us, our families, and other users of the roadway as alcohol abusers.

The suspension of the driver's license for transporting open alcohol was designed to address the availability for consumption by vehicle occupants while traveling our roadways. Most, if not all, experienced Kansas law enforcement officers can easily relate car stops revealing drug use within the vehicle. This proposal provides the same sanctions to address the availability of illegal drugs for ingestion by vehicle occupants while traveling our roadways.

We encourage you to report this bill favorably for passage to the House.

A handwritten signature in black ink, appearing to read "Ed Klumpp".

Ed Klumpp
Legislative Committee Chair
eklumpp@cox.net
785-640-1102

Corrections and Juvenile Justice
Date: 3-10-09
Attachment # 3

NEODESHA POLICE DEPARTMENT

108 South 4th Street
Neodesha, Kansas 66757

Phone 620-325-3031

Fax 620-325-5176

My name is Danny Thayer. I have been with the Neodesha Police Department for the last 24 years and have been the Chief for the last 10. Over the years that I have been involved in law enforcement the drug culture has changed and the use of drugs has increased. It is not uncommon for law enforcement officers to initiate a traffic stop on a vehicle and find that there is small to large amounts of marijuana, methamphetamine, cocaine, illegally possessed prescription drugs and other narcotics. The state has already demonstrated its concern of those drivers who are under the influence of either intoxicating liquor or drugs by making the DUI law K.S.A. 08-1567. The state has also shown concern for the drivers and passengers of vehicles using the roads of Kansas that posse open containers of alcohol or cereal malt beverages. In the current law the first offense of someone caught transporting an open container calls for a fine. Any second or subsequent convictions will lead to the suspension of the persons driving privileges for one year. Currently the State of Kansas has no laws that affect a person license who is transporting illegal or illegally possessed drugs and their analogs.

With Senate Bill No. 28 those same driving sanctions would be extending to the transportation of controlled substances or controlled substance analog. A large number of the individuals that Neodesha Police Department deals with have very little or no concern for the laws of Kansas. It is not unusual for us to have repeat offenders on drug and driving offenses. There will be individuals who continue to transport illegal drugs and drive after they are suspended. As an example to that in the past year Neodesha Police Department had 16 traffic stops in which drugs were found in the vehicles and 44 traffic stops that involved suspended or revoked drivers licenses. Once these offenders have their licenses suspended and continue to operate a motor vehicle officers can at that point make a traffic stop because of the knowledge that they are driving while suspended. I am sure that these stops will lead to additional seizures of controlled substances. I fully support Senate Bill No. 28 and although it is a small step it is a large step in the right direction.

Corrections and Juvenile Justice

Date: 3-10-09

Attachment # 4