

Approved: 12-18-2010

Date

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 12:05 p.m. on February 12, 2010, in Room 144-S of the Capitol.

All members were present except:

Representative Melany Barnes- excused  
Representative Bob Bethell- excused  
Representative Stan Frownfelter- excused  
Representative Tom Moxley- excused

Committee staff present:

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

Conferees appearing before the Committee:

Others attending:

See attached list.

**HB 2517 - Domestic violence offenses; special sentencing provision.**

Chairperson Colloton called the meeting to order and announced to the Committee they would be working **HB 2517.**

**Representative Brookens made a motion to pass the bill out favorably. Representative Brown seconded.**

Chairperson Colloton called on Jason Thompson, Office of the Revisor of Statutes, to explain the bill and all the balloons. Mr. Thompson explained the bill creates a domestic violence designation. If the trier of fact determines that the defendant committed a domestic violence offense, the court shall place a domestic violence designation on criminal cases. The bill assesses a fee against any defendant found to have committed a domestic violence offense. Offenders convicted for offenses that carry a domestic violence designation require assessment and completion recommended program. Law enforcement has the discretion to arrest all, none or any of the parties to the domestic violence issue after investigation as to the part of each.

Chairperson Colloton added that the two parts of the bill in question are the definition of "domestic violence" and "intimate relationship. She also stated the bill would not go into effect until 2011.

Mr. Thompson stated the first balloon, (Attachment 1) is changes in the bill offered by the Governor's Domestic Violence Fatality Review Board. The balloon added a new Sec. 2 stating "The attorney general shall promulgate rules and regulations necessary to carry out the provisions of (p) of KSA 21-4603d, and amendments thereto, on or before July 1, 2011. This will allow the Attorney General to have a year to do the rules and regs. The balloon also has the Governor's Domestic Violence Fatality Review Board's definition of domestic violence. Mr. Thompson took questions from the Committee while explaining the balloons.

A discussion followed. Representative Pauls requested the Attorney General's Office rules and regs be finished by the first of the year to bring before the Committee. The AG's office entered into the discussion stating that they would be working on rules and regs as soon as possible.

Mr. Thompson also called the Committee's attention to another balloon requested by the Governor's Domestic Violence Fatality Review Board. (Attachment 2) This is only technical clean up.

**Representative Roth made a motion to accept the balloons from the Governor's Domestic Violence Fatality Review Board. Representative Brookens seconded. Motion carried.**

CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on February 12, 2010, in Room 144-S of the Capitol.

Chairperson Colloton called on Jason Thompson, Office of the Revisor of Statutes, to explain the balloon proposed by KACP/KPO. (Attachment 3) Mr. Thompson stated the balloon deleted all of Section 6 and added © (1) When a law enforcement officer determines that there is probable cause to believe that a crime or offense involving domestic violence, as defined in KSA 21-3110, and amendments thereto, has been committed, the officer shall, without undue delay, arrest the person for which the officer has probable cause to believe the crime. (2) Nothing in this subsection shall be construed to require a law enforcement officer to: (A) Arrest either party involved in an alleged act of domestic violence when the law enforcement officer determines there is no probable cause to believe that a crime or offense has been committed; or (B) arrest both parties involved in an alleged act of domestic violence when both claim to have been victims of such domestic violence. (3) If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine if there is probable cause that each accused person committed a crime or offense and their actions were not an act of defense of a person or property as provided in K.S.A. 21-3211, 21-3212 or 21-3213, and amendments thereto.

A discussion followed.

**Representative Pauls made a motion to adopt the KACP/KPO balloon. Representative McCray-Miller seconded. Motion carried.**

Chairperson Colloton called on Jason Thompson, Office of the Revisor of Statutes, to explain the amendment referred to as the Domestic Violence Tagging Amendment. He stated that this would provide a new section that in all criminal cases the Court may place a Domestic Violence (DV) designation in the identifying case number. He also stated this would be optional.

A lengthy discussion followed. It was noted that the placing of the tag would be done at charging. There was also some concern if the tagging could be done at all.

**Representative Roth made a motion to accept the DV Tagging amendment with the Kinzer addition. Representative McCray-Miller seconded. Motion carried.**

Mr. Thompson referred the Committee to KCSDV-IR Definition balloon. (Attachment 4)

Chairperson Colloton explained that the Judicial Council felt the definition of domestic violence was too broad of language in the original bill and would make it too complicated. Therefore, there are three balloons with different language for the Committee to decide which would be best.

Chairperson Colloton called on Representative Kinzer to explain his language. (Attachment 5) Representative Kinzer stated his balloon would make the definition as follows: (Page 2, line 25) Domestic Violence means an act or threatened act of violence against a *“family or household member by a family or household member. Domestic violence also includes any other crime committed against a person or against property, or any municipal ordinance violation against a person or against property when directed against a family or household member by a family or household member. For the purpose of this definition, “family or household member” means persons 18 years of age or older who are spouses, former spouses, siblings, parents or stepparents and children or stepchildren, and who are presently together or have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.” Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.”* This balloon would also strike the language on Page 3, lines 4 through 9.

A discussion followed.

**Representative Kinzer moved his balloon be accepted. Representative Brookens seconded.**

A lengthy discussion followed during which Chairperson Colloton called on Sean Ostrow, Office of the Revisor of Statutes, to read the new language in the Kinzer balloon to the Committee. Representative Kinzer stated he left out the word “residing” between presently together.

CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on February 12, 2010, in Room 144-S of the Capitol.

**Chairperson Colloton called for a vote on the motion on the floor with Representative Kinzer's correction adding the word "residing" and adding on Page 2 line 33 the language "or a conviction of stalking". Motion carried.**

Chairperson Colloton called for any more amendments on **HB 2517**. Representative Spaulding asked to be recognized and stated she would like to add "dating relationship". Chairperson Colloton called the Committee's attention to the KCSDV Balloon (Attachment 6) stating the balloon contained language that would address Representative Spaulding's concerns.

**Representative Spaulding made a motion to accept the KCSDV Balloon including language which would include "dating relationship". Representative Roth seconded.**

A discussion followed.

**Chairperson called for a vote on the motion on the floor. Motion carried.**

**Representative Kinzer made a motion to adopt a substitute bill for HB 2517 with all the amends the Committee has approved and move it out favorably for passage. Representative McCray-Miller seconded. Motion carried.**

Chairperson Colloton thanked everyone for all the hard work on this bill and stated it covers a very serious area where the Justice System has failed.

She also stated that the tour to the Women's Correctional Facility scheduled for next Wednesday has to be cancelled because the Speaker has stated they will be on the floor all day.

Chairperson Colloton adjourned the meeting at 1:30 p.m. with the next scheduled meeting February 15, 2010 at 1:30 p.m. in room 144S.





# HOUSE BILL No. 2517

By Committee on Corrections and Juvenile Justice

1-22

Governor's Domestic Violence  
Fatality Review Board  
  
HB2517-Balloon2.pdf  
RS - JThompson - 02/11/10

Corrections and Juvenile Justice  
Date: 2/12/10  
Attachment # 1

9 AN ACT concerning crimes, punishment and criminal procedure; relat-  
10 ing to domestic violence; amending K.S.A. 20-369, 22-2307 and 22-  
11 2401 and K.S.A. 2009 Supp. 21-3110, 21-4603d and 75-712 and re-  
12 pealing the existing sections.  
13

,  
and 22-2908  
, 22-2909

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

15 New Section 1. (a) In all criminal cases, if there is evidence that the  
16 defendant committed a domestic violence offense, the trier of fact shall  
17 determine whether the defendant committed a domestic violence of-  
18 fense. If the trier of fact determines that the defendant committed a  
19 domestic violence offense, the court shall place a domestic violence des-  
20 ignation on the criminal case and the defendant shall be subject to the  
21 provisions of subsection (p) of K.S.A. 21-4603d, and amendments thereto.

22 (b) The term "domestic violence offense" shall have the meaning  
23 provided in K.S.A. 21-3110, and amendments thereto.

24 (c) This section shall be a part of and supplemental to the Kansas  
25 code for criminal procedure.

Sec. 3.

26 Sec. 2. K.S.A. 20-369 is hereby amended to read as follows: 20-369.

27 (a) If a judicial district creates a local fund ~~under this act~~, the court may  
28 impose a fee as provided in this section against any defendant for crimes  
29 involving a family or household member as provided in K.S.A. 21-3412a,  
30 and amendments thereto, *and against any defendant found to have com-*  
31 *mitted a domestic violence offense pursuant to section 1, and amendments*  
32 *thereto*. The chief judge of each judicial district where such fee is imposed  
33 shall set the amount of such fee by rules adopted in such judicial district  
34 in an amount not to exceed \$100 per case.

35 (b) Such fees shall be deposited into the local fund and disbursed  
36 pursuant to recommendations of the chief judge under this act. All mon-  
37 eys collected by this section shall be paid into the domestic violence spe-  
38 cial programs fund in the county where the fee is collected, as established  
39 by the judicial district ~~and as authorized by this act~~.

40 (c) Expenditures made in each judicial district shall be determined  
41 by the chief judge and shall be paid to domestic violence programs ad-  
42 ministered by the court and to local programs within the judicial district  
43 that enhance a coordinated community justice response to the issue of

New Sec. 2. The attorney general shall promulgate rules and regulations necessary to carry out the provisions of subsection (p) of K.S.A. 21-4603d, and amendments thereto, on or before July 1, 2011.  
  
\* And renumber remaining sections.

1-2

sec. 4.

1 domestic violence.

2 Sec. 3. K.S.A. 2009 Supp. 21-3110 is hereby amended to read as  
3 follows: 21-3110. The following definitions shall apply when the words  
4 and phrases defined are used in this code, except when a particular con-  
5 text clearly requires a different meaning.

6 (1) "Act" includes a failure or omission to take action.  
7 (2) "Another" means a person or persons as defined in this code other  
8 than the person whose act is claimed to be criminal.

9 (3) "Conduct" means an act or a series of acts, and the accompanying  
10 mental state.

11 (4) "Conviction" includes a judgment of guilt entered upon a plea of  
12 guilty.

13 (5) "Deception" means knowingly and willfully making a false state-  
14 ment or representation, express or implied, pertaining to a present or past  
15 existing fact.

16 (6) To "deprive permanently" means to:

17 (a) Take from the owner the possession, use or benefit of property,  
18 without an intent to restore the same; or

19 (b) Retain property without intent to restore the same or with intent  
20 to restore it to the owner only if the owner purchases or leases it back,  
21 or pays a reward or other compensation for its return; or

22 (c) Sell, give, pledge or otherwise dispose of any interest in property  
23 or subject it to the claim of a person other than the owner.

24 (7) *"Domestic violence" means an act or threatened act of violence*  
25 *against a person with whom the offender is involved or has been involved*  
26 *in an intimate relationship. Domestic violence also includes any other*  
27 *crime committed against a person or against property, or any municipal*  
28 *ordinance violation against a person or against property, when directed*  
29 *against a person with whom the offender is involved or has been involved*  
30 *in an intimate relationship. For the purposes of this definition, the of-*  
31 *fender shall be 18 years of age or older.* ←

32 (8) *"Domestic violence offense" means any crime committed whereby*  
33 *the underlying factual basis includes an act of domestic violence.*

34 ~~(7)~~ (9) "Dwelling" means a building or portion thereof, a tent, a ve-  
35 hicle or other enclosed space which is used or intended for use as a human  
36 habitation, home or residence.

37 ~~(8)~~ (10) "Firearm" means any weapon designed or having the capacity  
38 to propel a projectile by force of an explosion or combustion.

39 ~~(9)~~ (11) "Forcible felony" includes any treason, murder, voluntary  
40 manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated bat-  
41 tery, aggravated sodomy and any other felony which involves the use or  
42 threat of physical force or violence against any person.

43 ~~(10)~~ (12) "Intent to defraud" means an intention to deceive another

(8) "Domestic violence offender" means any person who has been convicted of or entered into a diversion agreement for any domestic violence offense.  
  
\* And renumber remaining.

1 person, and to induce such other person, in reliance upon such deception,  
2 to assume, create, transfer, alter or terminate a right, obligation or power  
3 with reference to property.

4 (13) *“Intimate relationship” means spouses, former spouses, persons*  
5 *who share the parentage of a child and persons who are or were involved*  
6 *in a dating relationship. Dating relationship means frequent, intimate*  
7 *associations primarily characterized by the expectation of affectional or*  
8 *sexual involvement. Sharing a residence, either past or present, is not*  
9 *required to qualify as an intimate relationship pursuant to this definition.*

10 ~~(11)~~ (14) “Law enforcement officer” means:

11 (a) Any person who by virtue of such person’s office or public em-  
12 ployment is vested by law with a duty to maintain public order or to make  
13 arrests for crimes, whether that duty extends to all crimes or is limited to  
14 specific crimes;

15 (b) any officer of the Kansas department of corrections or, for the  
16 purposes of K.S.A. 21-3409, 21-3411 and 21-3415, and amendments  
17 thereto, any employee of the Kansas department of corrections; or

18 (c) any university police officer or campus police officer, as defined  
19 in K.S.A. 22-2401a, and amendments thereto.

20 ~~(12)~~ (15) “Obtain” means to bring about a transfer of interest in or  
21 possession of property, whether to the offender or to another.

22 ~~(13)~~ (16) “Obtains or exerts control” over property includes but is not  
23 limited to, the taking, carrying away, or the sale, conveyance, or transfer  
24 of title to, interest in, or possession of property.

25 ~~(14)~~ (17) “Owner” means a person who has any interest in property.

26 ~~(15)~~ (18) “Person” means an individual, public or private corporation,  
27 government, partnership, or unincorporated association.

28 ~~(16)~~ (19) “Personal property” means goods, chattels, effects, evi-  
29 dences of rights in action and all written instruments by which any pe-  
30 cuniary obligation, or any right or title to property real or personal, shall  
31 be created, acknowledged, assigned, transferred, increased, defeated, dis-  
32 charged, or dismissed.

33 ~~(17)~~ (20) “Property” means anything of value, tangible or intangible,  
34 real or personal.

35 ~~(18)~~ (21) “Prosecution” means all legal proceedings by which a per-  
36 son’s liability for a crime is determined.

37 ~~(19)~~ (22) “Public employee” is a person employed by or acting for  
38 the state or by or for a county, municipality or other subdivision or gov-  
39 ernmental instrumentality of the state for the purpose of exercising their  
40 respective powers and performing their respective duties, and who is not  
41 a “public officer.”

42 ~~(20)~~ (23) “Public officer” includes the following, whether elected or  
43 appointed:

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1 (a) An executive or administrative officer of the state, or a county,  
2 municipality or other subdivision or governmental instrumentality of or  
3 within the state.

4 (b) A member of the legislature or of a governing board of a county,  
5 municipality, or other subdivision of or within the state.

6 (c) A judicial officer, which shall include a judge of the district court,  
7 juror, master or any other person appointed by a judge or court to hear  
8 or determine a cause or controversy.

9 (d) A hearing officer or presiding officer, which shall include any  
10 person authorized by law or private agreement, to hear or determine a  
11 cause or controversy and who is not a judicial officer.

12 (e) A law enforcement officer.

13 (f) Any other person exercising the functions of a public officer under  
14 color of right.

15 ~~(21)~~(24) "Real property" or "real estate" means every estate, interest,  
16 and right in lands, tenements and hereditaments.

17 ~~(22)~~(25) "Solicit" or "solicitation" means to command, authorize,  
18 urge, incite, request, or advise another to commit a crime.

19 ~~(23)~~(26) "State" or "this state" means the state of Kansas and all land  
20 and water in respect to which the state of Kansas has either exclusive or  
21 concurrent jurisdiction, and the air space above such land and water.  
22 "Other state" means any state or territory of the United States, the Dis-  
23 trict of Columbia and the Commonwealth of Puerto Rico.

24 ~~(24)~~(27) "Stolen property" means property over which control has  
25 been obtained by theft.

26 ~~(25)~~(28) "Threat" means a communicated intent to inflict physical  
27 or other harm on any person or on property.

28 ~~(26)~~(29) "Written instrument" means any paper, document or other  
29 instrument containing written or printed matter or the equivalent thereof,  
30 used for purposes of reciting, embodying, conveying or recording infor-  
31 mation, and any money, token, stamp, seal, badge, trademark, or other  
32 evidence or symbol of value, right, privilege or identification, which is  
33 capable of being used to the advantage or disadvantage of some person.

**Sec. 5.**

34 Sec. 4. K.S.A. 2009 Supp. 21-4603d is hereby amended to read as  
35 follows: 21-4603d. (a) Whenever any person has been found guilty of a  
36 crime, the court may adjudge any of the following:

37 (1) Commit the defendant to the custody of the secretary of correc-  
38 tions if the current crime of conviction is a felony and the sentence pre-  
39 sumes imprisonment, or the sentence imposed is a dispositional departure  
40 to imprisonment; or, if confinement is for a misdemeanor, to jail for the  
41 term provided by law;

42 (2) impose the fine applicable to the offense;

43 (3) release the defendant on probation if the current crime of con-



1 viction and criminal history fall within a presumptive nonprison category  
2 or through a departure for substantial and compelling reasons subject to  
3 such conditions as the court may deem appropriate. In felony cases except  
4 for violations of K.S.A. 8-1567, and amendments thereto, the court may  
5 include confinement in a county jail not to exceed 60 days, which need  
6 not be served consecutively, as a condition of an original probation sen-  
7 tence and up to 60 days in a county jail upon each revocation of the  
8 probation sentence, or community corrections placement;

9 (4) assign the defendant to a community correctional services pro-  
10 gram as provided in K.S.A. 75-5291, and amendments thereto, or through  
11 a departure for substantial and compelling reasons subject to such con-  
12 ditions as the court may deem appropriate, including orders requiring full  
13 or partial restitution;

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

19 (6) assign the defendant to a house arrest program pursuant to K.S.A.  
20 21-4603b and amendments thereto;

21 (7) order the defendant to attend and satisfactorily complete an al-  
22 cohol or drug education or training program as provided by subsection  
23 (3) of K.S.A. 21-4502, and amendments thereto;

24 (8) order the defendant to repay the amount of any reward paid by  
25 any crime stoppers chapter, individual, corporation or public entity which  
26 materially aided in the apprehension or conviction of the defendant; repay  
27 the amount of any costs and expenses incurred by any law enforcement  
28 agency in the apprehension of the defendant, if one of the current crimes  
29 of conviction of the defendant includes escape, as defined in K.S.A. 21-  
30 3809, and amendments thereto, or aggravated escape, as defined in K.S.A.  
31 21-3810, and amendments thereto; repay expenses incurred by a fire dis-  
32 trict, fire department or fire company responding to a fire which has been  
33 determined to be arson under K.S.A. 21-3718 or 21-3719, and amend-  
34 ments thereto, if the defendant is convicted of such crime; repay the  
35 amount of any public funds utilized by a law enforcement agency to pur-  
36 chase controlled substances from the defendant during the investigation  
37 which leads to the defendant's conviction; or repay the amount of any  
38 medical costs and expenses incurred by any law enforcement agency or  
39 county. Such repayment of the amount of any such costs and expenses  
40 incurred by a county, law enforcement agency, fire district, fire depart-  
41 ment or fire company or any public funds utilized by a law enforcement  
42 agency shall be deposited and credited to the same fund from which the  
43 public funds were credited to prior to use by the county, law enforcement

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1 agency, fire district, fire department or fire company;

2 (9) order the defendant to pay the administrative fee authorized by  
3 K.S.A. 22-4529, and amendments thereto, unless waived by the court;

4 (10) order the defendant to pay a domestic violence special program  
5 fee authorized by K.S.A. 20-369, and amendments thereto;

6 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6),  
7 (7), (8), (9) and (10); or

8 (12) suspend imposition of sentence in misdemeanor cases.

9 (b) (1) In addition to or in lieu of any of the above, the court shall  
10 order the defendant to pay restitution, which shall include, but not be  
11 limited to, damage or loss caused by the defendant's crime, unless the  
12 court finds compelling circumstances which would render a plan of res-  
13 titution unworkable. In regard to a violation of K.S.A. 21-4018, and  
14 amendments thereto, such damage or loss shall include, but not be limited  
15 to, attorney fees and costs incurred to repair the credit history or rating  
16 of the person whose personal identification documents were obtained and  
17 used in violation of such section, and to satisfy a debt, lien or other ob-  
18 ligation incurred by the person whose personal identification documents  
19 were obtained and used in violation of such section. If the court finds a  
20 plan of restitution unworkable, the court shall state on the record in detail  
21 the reasons therefor.

22 (2) If the court orders restitution, the restitution shall be a judgment  
23 against the defendant which may be collected by the court by garnishment  
24 or other execution as on judgments in civil cases. If, after 60 days from  
25 the date restitution is ordered by the court, a defendant is found to be in  
26 noncompliance with the plan established by the court for payment of  
27 restitution, and the victim to whom restitution is ordered paid has not  
28 initiated proceedings in accordance with K.S.A. 60-4301 et seq., and  
29 amendments thereto, the court shall assign an agent procured by the  
30 attorney general pursuant to K.S.A. 75-719, and amendments thereto, to  
31 collect the restitution on behalf of the victim. The administrative judge  
32 of each judicial district may assign such cases to an appropriate division  
33 of the court for the conduct of civil collection proceedings.

34 (c) In addition to or in lieu of any of the above, the court shall order  
35 the defendant to submit to and complete an alcohol and drug evaluation,  
36 and pay a fee therefor, when required by subsection (4) of K.S.A. 21-  
37 4502, and amendments thereto.

38 (d) In addition to any of the above, the court shall order the defend-  
39 ant to reimburse the county general fund for all or a part of the expend-  
40 itures by the county to provide counsel and other defense services to the  
41 defendant. Any such reimbursement to the county shall be paid only after  
42 any order for restitution has been paid in full. In determining the amount  
43 and method of payment of such sum, the court shall take account of the

1 financial resources of the defendant and the nature of the burden that  
2 payment of such sum will impose. A defendant who has been required  
3 to pay such sum and who is not willfully in default in the payment thereof  
4 may at any time petition the court which sentenced the defendant to  
5 waive payment of such sum or any unpaid portion thereof. If it appears  
6 to the satisfaction of the court that payment of the amount due will im-  
7 pose manifest hardship on the defendant or the defendant's immediate  
8 family, the court may waive payment of all or part of the amount due or  
9 modify the method of payment.

10 (e) In imposing a fine the court may authorize the payment thereof  
11 in installments. In releasing a defendant on probation, the court shall  
12 direct that the defendant be under the supervision of a court services  
13 officer. If the court commits the defendant to the custody of the secretary  
14 of corrections or to jail, the court may specify in its order the amount of  
15 restitution to be paid and the person to whom it shall be paid if restitution  
16 is later ordered as a condition of parole, conditional release or postrelease  
17 supervision.

18 (f) (1) When a new felony is committed while the offender is incar-  
19 cerated and serving a sentence for a felony, or while the offender is on  
20 probation, assignment to a community correctional services program, pa-  
21 role, conditional release, or postrelease supervision for a felony, a new  
22 sentence shall be imposed pursuant to the consecutive sentencing  
23 requirements of K.S.A. 21-4608, and amendments thereto, and the court  
24 may sentence the offender to imprisonment for the new conviction, even  
25 when the new crime of conviction otherwise presumes a nonprison sen-  
26 tence. In this event, imposition of a prison sentence for the new crime  
27 does not constitute a departure.

28 (2) When a new felony is committed while the offender is incarcer-  
29 ated in a juvenile correctional facility pursuant to K.S.A. 38-1671 prior to  
30 its repeal or K.S.A. 2009 Supp. 38-2373, and amendments thereto, for an  
31 offense, which if committed by an adult would constitute the commission  
32 of a felony, upon conviction, the court shall sentence the offender to  
33 imprisonment for the new conviction, even when the new crime of con-  
34 viction otherwise presumes a nonprison sentence. In this event, imposi-  
35 tion of a prison sentence for the new crime does not constitute a depart-  
36 ure. The conviction shall operate as a full and complete discharge from  
37 any obligations, except for an order of restitution, imposed on the of-  
38 fender arising from the offense for which the offender was committed to  
39 a juvenile correctional facility.

40 (3) When a new felony is committed while the offender is on release  
41 for a felony pursuant to the provisions of article 28 of chapter 22 of the  
42 Kansas Statutes Annotated, or similar provisions of the laws of another  
43 jurisdiction, a new sentence may be imposed pursuant to the consecutive

1 sentencing requirements of K.S.A. 21-4608, and amendments thereto,  
2 and the court may sentence the offender to imprisonment for the new  
3 conviction, even when the new crime of conviction otherwise presumes  
4 a nonprison sentence. In this event, imposition of a prison sentence for  
5 the new crime does not constitute a departure.

6 (g) Prior to imposing a dispositional departure for a defendant whose  
7 offense is classified in the presumptive nonprison grid block of either  
8 sentencing guideline grid, prior to sentencing a defendant to incarceration  
9 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing  
10 guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H  
11 or 3-I of the sentencing guidelines grid for drug crimes, prior to sen-  
12 tencing a defendant to incarceration whose offense is classified in grid  
13 blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and  
14 whose offense does not meet the requirements of K.S.A. 21-4729, and  
15 amendments thereto, prior to revocation of a nonprison sanction of a  
16 defendant whose offense is classified in grid blocks 4-E or 4-F of the  
17 sentencing guideline grid for drug crimes and whose offense does not  
18 meet the requirements of K.S.A. 21-4729, and amendments thereto, or  
19 prior to revocation of a nonprison sanction of a defendant whose offense  
20 is classified in the presumptive nonprison grid block of either sentencing  
21 guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines  
22 grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the  
23 sentencing guidelines grid for drug crimes, the court shall consider place-  
24 ment of the defendant in the Labette correctional conservation camp,  
25 conservation camps established by the secretary of corrections pursuant  
26 to K.S.A. 75-52,127, and amendment thereto or a community interme-  
27 diate sanction center. Pursuant to this paragraph the defendant shall not  
28 be sentenced to imprisonment if space is available in a conservation camp  
29 or a community intermediate sanction center and the defendant meets  
30 all of the conservation camp's or a community intermediate sanction cen-  
31 ter's placement criteria unless the court states on the record the reasons  
32 for not placing the defendant in a conservation camp or a community  
33 intermediate sanction center.

34 (h) The court in committing a defendant to the custody of the sec-  
35 retary of corrections shall fix a term of confinement within the limits  
36 provided by law. In those cases where the law does not fix a term of  
37 confinement for the crime for which the defendant was convicted, the  
38 court shall fix the term of such confinement.

39 (i) In addition to any of the above, the court shall order the defendant  
40 to reimburse the state general fund for all or a part of the expenditures  
41 by the state board of indigents' defense services to provide counsel and  
42 other defense services to the defendant. In determining the amount and  
43 method of payment of such sum, the court shall take account of the



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1 financial resources of the defendant and the nature of the burden that  
2 payment of such sum will impose. A defendant who has been required  
3 to pay such sum and who is not willfully in default in the payment thereof  
4 may at any time petition the court which sentenced the defendant to  
5 waive payment of such sum or any unpaid portion thereof. If it appears  
6 to the satisfaction of the court that payment of the amount due will im-  
7 pose manifest hardship on the defendant or the defendant's immediate  
8 family, the court may waive payment of all or part of the amount due or  
9 modify the method of payment. The amount of attorney fees to be in-  
10 cluded in the court order for reimbursement shall be the amount claimed  
11 by appointed counsel on the payment voucher for indigents' defense serv-  
12 ices or the amount prescribed by the board of indigents' defense services  
13 reimbursement tables as provided in K.S.A. 22-4522, and amendments  
14 thereto, whichever is less.

15 (j) This section shall not deprive the court of any authority conferred  
16 by any other Kansas statute to decree a forfeiture of property, suspend  
17 or cancel a license, remove a person from office, or impose any other civil  
18 penalty as a result of conviction of crime.

19 (k) An application for or acceptance of probation or assignment to a  
20 community correctional services program shall not constitute an acqui-  
21 escence in the judgment for purpose of appeal, and any convicted person  
22 may appeal from such conviction, as provided by law, without regard to  
23 whether such person has applied for probation, suspended sentence or  
24 assignment to a community correctional services program.

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

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1 authorized by K.S.A. 21-4611 and amendments thereto.

2 (m) When it is provided by law that a person shall be sentenced pur-  
3 suant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of  
4 this section shall not apply.

5 (n) Except as provided by subsection (f) of K.S.A. 21-4705, and  
6 amendments thereto, in addition to any of the above, for felony violations  
7 of K.S.A. 2009 Supp. 21-36a06, and amendments thereto, the court shall  
8 require the defendant who meets the requirements established in K.S.A.  
9 21-4729, and amendments thereto, to participate in a certified drug abuse  
10 treatment program, as provided in K.S.A. 2009 Supp. 75-52,144, and  
11 amendments thereto, including but not limited to, an approved after-care  
12 plan. If the defendant fails to participate in or has a pattern of intentional  
13 conduct that demonstrates the offender's refusal to comply with or par-  
14 ticipate in the treatment program, as established by judicial finding, the  
15 defendant shall be subject to revocation of probation and the defendant  
16 shall serve the underlying prison sentence as established in K.S.A. 21-  
17 4705, and amendments thereto. For those offenders who are convicted  
18 on or after the effective date of this act, upon completion of the under-  
19 lying prison sentence, the defendant shall not be subject to a period of  
20 postrelease supervision. The amount of time spent participating in such  
21 program shall not be credited as service on the underlying prison  
22 sentence.

23 (o) (1) Except as provided in paragraph (3), in addition to any other  
24 penalty or disposition imposed by law, upon a conviction for unlawful  
25 possession of a controlled substance or controlled substance analog in  
26 violation of K.S.A. 2009 Supp. 21-36a06, and amendments thereto, in  
27 which the trier of fact makes a finding that the unlawful possession oc-  
28 curred while transporting the controlled substance or controlled sub-  
29 stance analog in any vehicle upon a highway or street, the offender's  
30 driver's license or privilege to operate a motor vehicle on the streets and  
31 highways of this state shall be suspended for one year.

32 (2) Upon suspension of a license pursuant to this subsection, the  
33 court shall require the person to surrender the license to the court, which  
34 shall transmit the license to the division of motor vehicles of the depart-  
35 ment of revenue, to be retained until the period of suspension expires.  
36 At that time, the licensee may apply to the division for return of the  
37 license. If the license has expired, the person may apply for a new license,  
38 which shall be issued promptly upon payment of the proper fee and sat-  
39 isfaction of other conditions established by law for obtaining a license  
40 unless another suspension or revocation of the person's privilege to op-  
41 erate a motor vehicle is in effect.

42 (3) (A) In lieu of suspending the driver's license or privilege to op-  
43 erate a motor vehicle on the highways of this state of any person as pro-

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1 vided in paragraph (1), the judge of the court in which such person was  
 2 convicted may enter an order which places conditions on such person's  
 3 privilege of operating a motor vehicle on the highways of this state, a  
 4 certified copy of which such person shall be required to carry any time  
 5 such person is operating a motor vehicle on the highways of this state.  
 6 Any such order shall prescribe the duration of the conditions imposed,  
 7 which in no event shall be for a period of more than one year.

8 (B) Upon entering an order restricting a person's license hereunder,  
 9 the judge shall require such person to surrender such person's driver's  
 10 license to the judge who shall cause it to be transmitted to the division  
 11 of vehicles, together with a copy of the order. Upon receipt thereof, the  
 12 division of vehicles shall issue without charge a driver's license which shall  
 13 indicate on its face that conditions have been imposed on such person's  
 14 privilege of operating a motor vehicle and that a certified copy of the  
 15 order imposing such conditions is required to be carried by the person  
 16 for whom the license was issued any time such person is operating a motor  
 17 vehicle on the highways of this state. If the person convicted is a nonres-  
 18 ident, the judge shall cause a copy of the order to be transmitted to the  
 19 division and the division shall forward a copy of it to the motor vehicle  
 20 administrator, of such person's state of residence. Such judge shall furnish  
 21 to any person whose driver's license has had conditions imposed on it  
 22 under this paragraph a copy of the order, which shall be recognized as a  
 23 valid Kansas driver's license until such time as the division shall issue the  
 24 restricted license provided for in this paragraph.

25 (C) Upon expiration of the period of time for which conditions are  
 26 imposed pursuant to this subsection, the licensee may apply to the divi-  
 27 sion for the return of the license previously surrendered by such licensee.  
 28 In the event such license has expired, such person may apply to the di-  
 29 vision for a new license, which shall be issued immediately by the division  
 30 upon payment of the proper fee and satisfaction of the other conditions  
 31 established by law, unless such person's privilege to operate a motor ve-  
 32 hicle on the highways of this state has been suspended or revoked prior  
 33 thereto. If any person shall violate any of the conditions imposed under  
 34 this paragraph, such person's driver's license or privilege to operate a  
 35 motor vehicle on the highways of this state shall be revoked for a period  
 36 of not less than 60 days nor more than one year by the judge of the court  
 37 in which such person is convicted of violating such conditions.

38 (4) As used in this subsection, "highway" and "street" have the mean-  
 39 ings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto.

40 (p) *In addition to any of the above, for any criminal offense that*  
 41 *includes the domestic violence designation pursuant to section 1, and*  
 42 *amendments thereto, the court shall require the defendant to undergo a*  
 43 *domestic violence offender assessment and ~~complete all recommendations.~~*

follow all recommendations unless otherwise ordered by the court or the department of corrections
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and any other evaluation

or evaluation

The entity completing the assessment or evaluation shall provide the assessment or evaluation and recommendations to the court and the court shall provide the domestic violence assessment and any other evaluation to any entity responsible for supervising such defendant.

, unless otherwise ordered by the court or the department of corrections,

Sec. 6.

1 The court may order a domestic violence offender assessment prior to  
2 sentencing if the assessment would assist the court in determining an  
3 appropriate sentence. A defendant ordered to undergo a domestic violence  
4 offender assessment shall be required to pay for the assessment and for  
5 completion of all recommendations.

6 Sec. 5. K.S.A. 22-2307 is hereby amended to read as follows: 22-  
7 2307. (a) All law enforcement agencies in this state shall adopt written  
8 policies regarding domestic violence calls as provided in subsection (b).  
9 These policies shall be made available to all officers of such agency.

10 (b) Such written policies shall include, but not be limited to, the  
11 following:

12 (1) A statement directing that the officers shall make an arrest when  
13 they have probable cause to believe that a crime is being committed or  
14 has been committed in accordance with K.S.A. 22-2401, and amendments  
15 thereto;

16 (2) a statement defining domestic violence in accordance with K.S.A.  
17 21-3110, and amendments thereto;

18 (3) a statement describing the dispatchers' responsibilities;

19 (4) a statement describing the responding officers' responsibilities  
20 and procedures to follow when responding to a domestic violence call  
21 and the suspect is at the scene;

22 (5) a statement regarding procedures when the suspect has left the  
23 scene of the crime;

24 (6) procedures for both misdemeanor and felony cases;

25 (7) procedures for law enforcement officers to follow when handling  
26 domestic violence calls involving court orders, including protection from  
27 abuse orders, restraining orders and a protective order issued by a court  
28 of any state or Indian tribe;

29 (8) a statement that the law enforcement agency shall provide the  
30 following information to victims, in writing:

31 (A) Availability of emergency and medical telephone numbers, if  
32 needed;

33 (B) the law enforcement agency's report number;

34 (C) the address and telephone number of the prosecutor's office the  
35 victim should contact to obtain information about victims' rights pursuant  
36 to K.S.A. 74-7333 and 74-7335 and amendments thereto;

37 (D) the name and address of the crime victims' compensation board  
38 and information about possible compensation benefits;

39 (E) advise the victim that the details of the crime may be made  
40 public;

41 (F) advise the victim of such victims' rights under K.S.A. 74-7333 and  
42 74-7335 and amendments thereto; and

43 (G) advise the victim of known available resources which may assist



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1 the victim; and

2 (9) whether an arrest is made or not, a standard offense report shall  
3 be completed on all such incidents and sent to the Kansas bureau of  
4 investigation.

Sec. 7.

5 Sec. 6. K.S.A. 22-2401 is hereby amended to read as follows: 22-  
6 2401. (a) A law enforcement officer may arrest a person under any of the  
7 following circumstances:

8 ~~(a)~~ (1) The officer has a warrant commanding that the person be  
9 arrested.

10 ~~(b)~~ (2) The officer has probable cause to believe that a warrant for  
11 the person's arrest has been issued in this state or in another jurisdiction  
12 for a felony committed therein.

13 ~~(c)~~ (3) The officer has probable cause to believe that the person is  
14 committing or has committed:

15 ~~(1)~~ (A) A felony; or

16 ~~(2)~~ (B) a misdemeanor, and the law enforcement officer has probable  
17 cause to believe that:

18 ~~(A)~~ (i) The person will not be apprehended or evidence of the crime  
19 will be irretrievably lost unless the person is immediately arrested;

20 ~~(B)~~ (ii) the person may cause injury to self or others or damage to  
21 property unless immediately arrested; or

22 ~~(C)~~ (iii) the person has intentionally inflicted bodily harm to another  
23 person.

24 ~~(d)~~ (4) Any crime, except a traffic infraction or a cigarette or tobacco  
25 infraction, has been or is being committed by the person in the officer's  
26 view.

27 (b) (1) *When a law enforcement officer determines that there is prob-*  
28 *able cause to believe that a crime or offense involving domestic violence,*  
29 *as defined in K.S.A. 21-3110, and amendments thereto, has been com-*  
30 *mitted, the officer shall, without undue delay, arrest the person for which*  
31 *the officer has probable cause to believe committed the crime or offense.*

32 (2) *Nothing in this subsection shall be construed to require a law*  
33 *enforcement officer to:*

34 (A) *Arrest either party involved in an alleged act of domestic violence*  
35 *when the law enforcement officer determines there is no probable cause*  
36 *to believe that a crime or offense has been committed; or*

37 (B) *arrest both parties involved in an alleged act of domestic violence*  
38 *when both claim to have been victims of such domestic violence.*

39 (3) *If a law enforcement officer receives complaints of domestic vio-*  
40 *lence from two or more opposing persons, the officer shall evaluate each*  
41 *complaint separately to determine if there is probable cause that each*  
42 *accused person committed a crime or offense and their actions were not*  
43 *an act of defense of a person or property as provided in K.S.A. 21-3211,*

1-41

Sec. 10.

1 21-3212 or 21-3213, and amendments thereto.

2 Sec. 7. K.S.A. 2009 Supp. 75-712 is hereby amended to read as fol-  
3 lows: 75-712. (a) It is the duty of the members of the bureau to make full  
4 and complete investigations at the direction of the attorney general. Each  
5 member of the bureau shall possess all powers and privileges which are  
6 now or may be hereafter given to the sheriffs of Kansas.

7 (b) (1) The bureau shall acquire, collect, classify and preserve crim-  
8 inal identification and other crime records, and may exchange such crim-  
9 inal identification records with the duly authorized officials of govern-  
10 mental agencies, of states, cities and penal institutions.

11 (2) *The bureau shall make available to the governor's domestic vio-*  
12 *lence fatality review board crime record information related to domestic*  
13 *violence, including, but not limited to, type of offense, type of victim and*  
14 *victim relationship to offender, as found on the Kansas standard offense*  
15 *report. Such crime record information shall be made available only in a*  
16 *manner that does not identify individual offenders or victims.*

17 (c) For purposes of carrying out the powers and duties of the bureau,  
18 the director may request and accept grants or donations from any person,  
19 firm, association or corporation or from the federal government or any  
20 federal agency and may enter into contracts or other transactions with  
21 any federal agency in connection therewith.

22 (d) The bureau shall conduct background investigations of: (1) Ap-  
23 pointees to positions which are subject to confirmation by the senate of  
24 the state of Kansas; and (2) at the direction of the governor, all judicial  
25 appointments. The bureau shall require the appointee to be finger-  
26 printed. The fingerprints shall be submitted to the bureau and to the  
27 federal bureau of investigation for the identification of the appointee and  
28 to obtain criminal history record information, including arrest and non-  
29 conviction data. Background reports may include criminal intelligence  
30 information and information relating to criminal and background inves-  
31 tigation. Except as provided by this subsection, information received pur-  
32 suant to this subsection shall be confidential and shall not be disclosed  
33 except to the appointing authority or as provided by K.S.A. 2009 Supp.  
34 75-4315d, and amendments thereto. If the appointing authority is the  
35 governor, information received pursuant to this subsection also may be  
36 disclosed to the governor's staff as necessary to determine the appointee's  
37 qualifications.

38 (e) Reports of all investigations made by the members of the bureau  
39 shall be made to the attorney general of Kansas.

40 Sec. 8. K.S.A. 20-369, 22-2307 and 22-2401 and K.S.A. 2009 Supp.  
41 21-3110, 21-4603d and 75-712 are hereby repealed.

42 Sec. 9. This act shall take effect and be in force from and after its  
43 publication in the statute book.

Sec. 8. Amend K.S.A. 22-2908 (Attached).

Sec. 9. Amend K.S.A. 2009 Supp. 22-2909 (Attached).

\* And renumber remaining sections

Sec. 11.

Sec. 12.

and 22-2908

, 22-2909

**22-2908. Grant of diversion; factors to consider; when prohibited.** (a) In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the county or district attorney shall consider at least the following factors among all factors considered:

- (1) The nature of the crime charged and the circumstances surrounding it;
- (2) any special characteristics or circumstances of the defendant;
- (3) whether the defendant is a first-time offender and if the defendant has previously participated in diversion, according to the certification of the Kansas bureau of investigation or the division of vehicles of the department of revenue;
- (4) whether there is a probability that the defendant will cooperate with and benefit from diversion;
- (5) whether the available diversion program is appropriate to the needs of the defendant;
- (6) the impact of the diversion of the defendant upon the community;
- (7) recommendations, if any, of the involved law enforcement agency;
- (8) recommendations, if any, of the victim;
- (9) provisions for restitution; and
- (10) any mitigating circumstances.

(b) A county or district attorney shall not enter into a diversion agreement in lieu of further criminal proceedings on a complaint if:

(1) The complaint alleges a violation of K.S.A. 8-1567 and amendments thereto and the defendant: (A) Has previously participated in diversion upon a complaint alleging a violation of that statute or an ordinance of a city in this state which prohibits the acts prohibited by that statute; (B) has previously been convicted of or pleaded *nolo contendere* to a violation of that statute or a violation of a law of another state or of a political subdivision of this or any other state, which law prohibits the acts prohibited by that statute; or (C) during the time of the alleged violation was involved in a motor vehicle accident or collision resulting in personal injury or death; or

(2) the complaint alleges that the defendant committed a class A or B felony or for crimes committed on or after July 1, 1993, an off-grid crime, a severity level 1, 2 or 3 felony for nondrug crimes or drug severity level 1 or 2 felony for drug crimes; or

(3) the complaint alleges a domestic violence offense, as defined in K.S.A. 21-3110, and amendments thereto, and the defendant has participated in two or more diversions in the previous five year period upon complaints alleging a domestic violence offense.

(c) A county or district attorney may enter into a diversion agreement in lieu of further criminal proceedings on a complaint for violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto, if such diversion carries the same penalties as the conviction for the corresponding violations. If the defendant has previously participated in one or more diversions for violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto, then each subsequent diversion shall carry the same penalties as the conviction for the corresponding violations.

**22-2909. Diversion agreements; provisions; waiver of certain rights; stipulation of facts; stay of criminal proceedings; filing of agreements; alcohol and drug-related offenses, evaluation required, when.**

(a) A diversion agreement shall provide that if the defendant fulfills the obligations of the program described therein, as determined by the attorney general or county or district attorney, such attorney shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment, preliminary examinations and hearings, and a speedy trial, and in the case of diversion under subsection (c) waiver of the rights to counsel and trial by jury. The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services. If a county creates a local fund under the property crime restitution and compensation act, a county or district attorney may require in all diversion agreements as a condition of diversion the payment of a diversion fee in an amount not to exceed \$100. Such fees shall be deposited into the local fund and disbursed pursuant to recommendations of the local board under the property crime restitution and victims compensation act.

(b) The diversion agreement shall state: (1) The defendant's full name; (2) the defendant's full name at the time the complaint was filed, if different from the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime with which the defendant is charged; (5) the date the complaint was filed; and (6) the district court with which the agreement is filed.

(c) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567, and amendments thereto, the diversion agreement shall include a stipulation, agreed to by the defendant, the defendant's attorney if the defendant is represented by an attorney and the attorney general or county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:

(1) Pay a fine specified by the agreement in an amount equal to an amount authorized by K.S.A. 8-1567, and amendments thereto, for a first offense or, in lieu of payment of the fine, perform community service specified by the agreement, in accordance with K.S.A. 8-1567, and amendments thereto; and

(2) enroll in and successfully complete an alcohol and drug safety action program or a treatment program, or both, as provided in K.S.A. 8-1008, and amendments thereto, and specified by the agreement, and pay the assessment required by K.S.A. 8-1008, and amendments thereto.

(d) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a domestic violence offense, as defined in K.S.A. 21-3110, and amendments thereto, the diversion agreement shall include a requirement that the defendant undergo a domestic violence offender assessment and complete all recommendations. The defendant shall be required to pay for such assessment and recommendations.

~~(d)~~ (e) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation other than K.S.A. 8-1567 and amendments thereto, the diversion agreement may include a stipulation, agreed to by the defendant, the defendant's attorney if the



defendant is represented by an attorney and the attorney general or county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint.

(e) (f) If the person entering into a diversion agreement is a nonresident, the attorney general or county or district attorney shall transmit a copy of the diversion agreement to the division. The division shall forward a copy of the diversion agreement to the motor vehicle administrator of the person's state of residence.

(f) (g) If the attorney general or county or district attorney elects to offer diversion in lieu of further criminal proceedings on the complaint and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement shall be filed with the district court and the district court shall stay further proceedings on the complaint. If the defendant declines to accept diversion, the district court shall resume the criminal proceedings on the complaint.

(g) (h) Except as provided in subsection (h), if a diversion agreement is entered into in lieu of further criminal proceedings alleging commission of a misdemeanor by the defendant, while under 21 years of age, under K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, or K.S.A. 41-719, 41-727, 41-804, 41-2719 or 41-2720, and amendments thereto, the agreement shall require the defendant to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. If the attorney general or county or district attorney finds that the defendant is indigent, the fee may be waived.

(h) (i) If the defendant is 18 or more years of age but less than 21 years of age and allegedly committed a violation of K.S.A. 41-727, and amendments thereto, involving cereal malt beverage, the provisions of subsection (g) are permissive and not mandatory.

(i) (j) Except diversion agreements reported under subsection (j), the attorney general or county or district attorney shall forward to the Kansas bureau of investigation a copy of the diversion agreement at the time such agreement is filed with the district court. The copy of the agreement shall be made available upon request to the attorney general or any county, district or city attorney or court.

(j) (k) At the time of filing the diversion agreement with the district court, the attorney general or county or district attorney shall forward to the division of vehicles of the state department of revenue a copy of any diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567, and amendments thereto. The copy of the agreement shall be made available upon request to the attorney general or any county, district or city attorney or court.

# HOUSE BILL No. 2517

By Committee on Corrections and Juvenile Justice

1-22

Governor's Domestic Violence  
Fatality Review Board  
HB2517-Balloon2.pdf  
RS - JThompson - 02/10/10

Corrections and Juvenile Justice  
Date: 2-12-10  
Attachment # 2

9 AN ACT concerning crimes, punishment and criminal procedure; relat-  
10 ing to domestic violence; amending K.S.A. 20-369, 22-2307 and 22-  
11 2401 and K.S.A. 2009 Supp. 21-3110, 21-4603d and 75-712 and re-  
12 pealing the existing sections.

,  
and 22-2908  
, 22-2909

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. (a) In all criminal cases, if there is evidence that the  
16 defendant committed a domestic violence offense, the trier of fact shall  
17 determine whether the defendant committed a domestic violence of-  
18 fense. If the trier of fact determines that the defendant committed a  
19 domestic violence offense, the court shall place a domestic violence des-  
20 ignation on the criminal case and the defendant shall be subject to the  
21 provisions of subsection (p) of K.S.A. 21-4603d, and amendments thereto.

*any crime or attempted crime*

22 (b) The term "domestic violence offense" shall have the meaning  
23 provided in K.S.A. 21-3110, and amendments thereto.

24 (c) This section shall be a part of and supplemental to the Kansas  
25 code for criminal procedure.

26 Sec. 2. K.S.A. 20-369 is hereby amended to read as follows: 20-369.

27 (a) If a judicial district creates a local fund ~~under this act~~, the court may  
28 impose a fee as provided in this section against any defendant for crimes  
29 involving a family or household member as provided in K.S.A. 21-3412a,  
30 and amendments thereto, *and against any defendant found to have com-*  
31 *mitted a domestic violence offense pursuant to section 1, and amendments*  
32 *thereto*. The chief judge of each judicial district where such fee is imposed  
33 shall set the amount of such fee by rules adopted in such judicial district  
34 in an amount not to exceed \$100 per case.

35 (b) Such fees shall be deposited into the local fund and disbursed  
36 pursuant to recommendations of the chief judge under this act. All mon-  
37 eys collected by this section shall be paid into the domestic violence spe-  
38 cial programs fund in the county where the fee is collected, as established  
39 by the judicial district ~~and as authorized by this act~~.

40 (c) Expenditures made in each judicial district shall be determined  
41 by the chief judge and shall be paid to domestic violence programs ad-  
42 ministered by the court and to local programs within the judicial district  
43 that enhance a coordinated community justice response to the issue of

2-2

1 domestic violence.

2 Sec. 3. K.S.A. 2009 Supp. 21-3110 is hereby amended to read as  
3 follows: 21-3110. The following definitions shall apply when the words  
4 and phrases defined are used in this code, except when a particular con-  
5 text clearly requires a different meaning.

6 (1) "Act" includes a failure or omission to take action.

7 (2) "Another" means a person or persons as defined in this code other  
8 than the person whose act is claimed to be criminal.

9 (3) "Conduct" means an act or a series of acts, and the accompanying  
10 mental state.

11 (4) "Conviction" includes a judgment of guilt entered upon a plea of  
12 guilty.

13 (5) "Deception" means knowingly and willfully making a false state-  
14 ment or representation, express or implied, pertaining to a present or past  
15 existing fact.

16 (6) To "deprive permanently" means to:

17 (a) Take from the owner the possession, use or benefit of property,  
18 without an intent to restore the same; or

19 (b) Retain property without intent to restore the same or with intent  
20 to restore it to the owner only if the owner purchases or leases it back,  
21 or pays a reward or other compensation for its return; or

22 (c) Sell, give, pledge or otherwise dispose of any interest in property  
23 or subject it to the claim of a person other than the owner.

24 (7) *"Domestic violence" means an act or threatened act of violence*  
25 *against a person with whom the offender is involved or has been involved*  
26 *in an intimate relationship. Domestic violence also includes any other*  
27 *crime committed against a person or against property, or any municipal*  
28 *ordinance violation against a person or against property, when directed*  
29 *against a person with whom the offender is involved or has been involved*  
30 *in an intimate relationship. For the purposes of this definition, the of-*  
31 *fender shall be 18 years of age or older.* ←

32 (8) *"Domestic violence offense" means any crime committed whereby*  
33 *the underlying factual basis includes an act of domestic violence.*

34 ~~(7)~~ (9) "Dwelling" means a building or portion thereof, a tent, a ve-  
35 hicle or other enclosed space which is used or intended for use as a human  
36 habitation, home or residence.

37 ~~(8)~~ (10) "Firearm" means any weapon designed or having the capacity  
38 to propel a projectile by force of an explosion or combustion.

39 ~~(9)~~ (11) "Forcible felony" includes any treason, murder, voluntary  
40 manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated bat-  
41 tery, aggravated sodomy and any other felony which involves the use or  
42 threat of physical force or violence against any person.

43 ~~(10)~~ (12) "Intent to defraud" means an intention to deceive another

(8) "Domestic violence offender" means any person who has been convicted of or entered into a diversion agreement for any domestic violence offense.  
  
and re-number remaining

2-2

1 vided in paragraph (1), the judge of the court in which such person was  
 2 convicted may enter an order which places conditions on such person's  
 3 privilege of operating a motor vehicle on the highways of this state, a  
 4 certified copy of which such person shall be required to carry any time  
 5 such person is operating a motor vehicle on the highways of this state.  
 6 Any such order shall prescribe the duration of the conditions imposed,  
 7 which in no event shall be for a period of more than one year.

8 (B) Upon entering an order restricting a person's license hereunder,  
 9 the judge shall require such person to surrender such person's driver's  
 10 license to the judge who shall cause it to be transmitted to the division  
 11 of vehicles, together with a copy of the order. Upon receipt thereof, the  
 12 division of vehicles shall issue without charge a driver's license which shall  
 13 indicate on its face that conditions have been imposed on such person's  
 14 privilege of operating a motor vehicle and that a certified copy of the  
 15 order imposing such conditions is required to be carried by the person  
 16 for whom the license was issued any time such person is operating a motor  
 17 vehicle on the highways of this state. If the person convicted is a nonres-  
 18 ident, the judge shall cause a copy of the order to be transmitted to the  
 19 division and the division shall forward a copy of it to the motor vehicle  
 20 administrator, of such person's state of residence. Such judge shall furnish  
 21 to any person whose driver's license has had conditions imposed on it  
 22 under this paragraph a copy of the order, which shall be recognized as a  
 23 valid Kansas driver's license until such time as the division shall issue the  
 24 restricted license provided for in this paragraph.

25 (C) Upon expiration of the period of time for which conditions are  
 26 imposed pursuant to this subsection, the licensee may apply to the divi-  
 27 sion for the return of the license previously surrendered by such licensee.  
 28 In the event such license has expired, such person may apply to the di-  
 29 vision for a new license, which shall be issued immediately by the division  
 30 upon payment of the proper fee and satisfaction of the other conditions  
 31 established by law, unless such person's privilege to operate a motor ve-  
 32 hicle on the highways of this state has been suspended or revoked prior  
 33 thereto. If any person shall violate any of the conditions imposed under  
 34 this paragraph, such person's driver's license or privilege to operate a  
 35 motor vehicle on the highways of this state shall be revoked for a period  
 36 of not less than 60 days nor more than one year by the judge of the court  
 37 in which such person is convicted of violating such conditions.

38 (4) As used in this subsection, "highway" and "street" have the mean-  
 39 ings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto.

40 (p) *In addition to any of the above, for any criminal offense that*  
 41 *includes the domestic violence designation pursuant to section 1, and*  
 42 *amendments thereto, the court shall require the defendant to undergo a*  
 43 *domestic violence offender assessment and ~~complete all recommendations.~~*

follow all recommendations unless otherwise ordered by the court or the department of corrections
---

1 The court may order a domestic violence offender assessment prior to  
 2 sentencing if the assessment would assist the court in determining an  
 3 appropriate sentence. A defendant ordered to undergo a domestic violence  
 4 offender assessment shall be required to pay for the assessment and for  
 5 completion of all recommendations.

6 Sec. 5. K.S.A. 22-2307 is hereby amended to read as follows: 22-  
 7 2307. (a) All law enforcement agencies in this state shall adopt written  
 8 policies regarding domestic violence calls as provided in subsection (b).  
 9 These policies shall be made available to all officers of such agency.

10 (b) Such written policies shall include, but not be limited to, the  
 11 following:

12 (1) A statement directing that the officers shall make an arrest when  
 13 they have probable cause to believe that a crime is being committed or  
 14 has been committed in accordance with K.S.A. 22-2401, and amendments  
 15 thereto;

16 (2) a statement defining domestic violence in accordance with K.S.A.  
 17 21-3110, and amendments thereto;

18 (3) a statement describing the dispatchers' responsibilities;

19 (4) a statement describing the responding officers' responsibilities  
 20 and procedures to follow when responding to a domestic violence call  
 21 and the suspect is at the scene;

22 (5) a statement regarding procedures when the suspect has left the  
 23 scene of the crime;

24 (6) procedures for both misdemeanor and felony cases;

25 (7) procedures for law enforcement officers to follow when handling  
 26 domestic violence calls involving court orders, including protection from  
 27 abuse orders, restraining orders and a protective order issued by a court  
 28 of any state or Indian tribe;

29 (8) a statement that the law enforcement agency shall provide the  
 30 following information to victims, in writing:

31 (A) Availability of emergency and medical telephone numbers, if  
 32 needed;

33 (B) the law enforcement agency's report number;

34 (C) the address and telephone number of the prosecutor's office the  
 35 victim should contact to obtain information about victims' rights pursuant  
 36 to K.S.A. 74-7333 and 74-7335 and amendments thereto;

37 (D) the name and address of the crime victims' compensation board  
 38 and information about possible compensation benefits;

39 (E) advise the victim that the details of the crime may be made  
 40 public;

41 (F) advise the victim of such victims' rights under K.S.A. 74-7333 and  
 42 74-7335 and amendments thereto; and

43 (G) advise the victim of known available resources which may assist

and any other evaluation

or evaluation

The entity completing the assessment shall provide the assessment and recommendations to the court and the court shall provide the domestic violence assessment to any entity responsible for supervising such defendant.

, unless otherwise ordered by the court or the department of corrections,

\*Placeholder-not sure where this goes\*

The Attorney General shall adopt such rules and regulations necessary to carry out the provisions of subsection (p) of K.S.A. 21-4603d, and amendments thereto, no later than July 1, 2011.

*or evaluation*  
*2-4*



2-5

1 the victim; and

2 (9) whether an arrest is made or not, a standard offense report shall  
3 be completed on all such incidents and sent to the Kansas bureau of  
4 investigation.

5 Sec. 6. K.S.A. 22-2401 is hereby amended to read as follows: 22-  
6 2401. (a) A law enforcement officer may arrest a person under any of the  
7 following circumstances:

8 ~~(a)~~ (1) The officer has a warrant commanding that the person be  
9 arrested.

10 ~~(b)~~ (2) The officer has probable cause to believe that a warrant for  
11 the person's arrest has been issued in this state or in another jurisdiction  
12 for a felony committed therein.

13 ~~(c)~~ (3) The officer has probable cause to believe that the person is  
14 committing or has committed:

15 ~~(1)~~ (A) A felony; or

16 ~~(2)~~ (B) a misdemeanor, and the law enforcement officer has probable  
17 cause to believe that:

18 ~~(A)~~ (i) The person will not be apprehended or evidence of the crime  
19 will be irretrievably lost unless the person is immediately arrested;

20 ~~(B)~~ (ii) the person may cause injury to self or others or damage to  
21 property unless immediately arrested; or

22 ~~(C)~~ (iii) the person has intentionally inflicted bodily harm to another  
23 person.

24 ~~(4)~~ (4) Any crime, except a traffic infraction or a cigarette or tobacco  
25 infraction, has been or is being committed by the person in the officer's  
26 view.

27 (b) (1) *When a law enforcement officer determines that there is prob-*  
28 *able cause to believe that a crime or offense involving domestic violence,*  
29 *as defined in K.S.A. 21-3110, and amendments thereto, has been com-*  
30 *mitted, the officer shall, without undue delay, arrest the person for which*  
31 *the officer has probable cause to believe committed the crime or offense.*

32 (2) *Nothing in this subsection shall be construed to require a law*  
33 *enforcement officer to:*

34 (A) *Arrest either party involved in an alleged act of domestic violence*  
35 *when the law enforcement officer determines there is no probable cause*  
36 *to believe that a crime or offense has been committed; or*

37 (B) *arrest both parties involved in an alleged act of domestic violence*  
38 *when both claim to have been victims of such domestic violence.*

39 (3) *If a law enforcement officer receives complaints of domestic vio-*  
40 *lence from two or more opposing persons, the officer shall evaluate each*  
41 *complaint separately to determine if there is probable cause that each*  
42 *accused person committed a crime or offense and their actions were not*  
43 *an act of defense of a person or property as provided in K.S.A. 21-3211,*

2-6

1 21-3212 or 21-3213, and amendments thereto.

2 Sec. 7. K.S.A. 2009 Supp. 75-712 is hereby amended to read as fol-  
3 lows: 75-712. (a) It is the duty of the members of the bureau to make full  
4 and complete investigations at the direction of the attorney general. Each  
5 member of the bureau shall possess all powers and privileges which are  
6 now or may be hereafter given to the sheriffs of Kansas.

7 (b) (1) The bureau shall acquire, collect, classify and preserve crim-  
8 inal identification and other crime records, and may exchange such crim-  
9 inal identification records with the duly authorized officials of govern-  
10 mental agencies, of states, cities and penal institutions.

11 (2) The bureau shall make available to the governor's domestic vio-  
12 lence fatality review board crime record information related to domestic  
13 violence, including, but not limited to, type of offense, type of victim and  
14 victim relationship to offender, as found on the Kansas standard offense  
15 report. Such crime record information shall be made available only in a  
16 manner that does not identify individual offenders or victims.

17 (c) For purposes of carrying out the powers and duties of the bureau,  
18 the director may request and accept grants or donations from any person,  
19 firm, association or corporation or from the federal government or any  
20 federal agency and may enter into contracts or other transactions with  
21 any federal agency in connection therewith.

22 (d) The bureau shall conduct background investigations of: (1) Ap-  
23 pointees to positions which are subject to confirmation by the senate of  
24 the state of Kansas; and (2) at the direction of the governor, all judicial  
25 appointments. The bureau shall require the appointee to be finger-  
26 printed. The fingerprints shall be submitted to the bureau and to the  
27 federal bureau of investigation for the identification of the appointee and  
28 to obtain criminal history record information, including arrest and non-  
29 conviction data. Background reports may include criminal intelligence  
30 information and information relating to criminal and background inves-  
31 tigations. Except as provided by this subsection, information received pur-  
32 suant to this subsection shall be confidential and shall not be disclosed  
33 except to the appointing authority or as provided by K.S.A. 2009 Supp.  
34 75-4315d, and amendments thereto. If the appointing authority is the  
35 governor, information received pursuant to this subsection also may be  
36 disclosed to the governor's staff as necessary to determine the appointee's  
37 qualifications.

38 (e) Reports of all investigations made by the members of the bureau  
39 shall be made to the attorney general of Kansas.

40 Sec. 8. K.S.A. 20-369, 22-2307 and 22-2401 and K.S.A. 2009 Supp.  
41 21-3110, 21-4603d and 75-712 are hereby repealed.

42 Sec. 9. This act shall take effect and be in force from and after its  
43 publication in the statute book.

Sec. 7. Amend K.S.A. 22-2908 (Attached).  
Sec. 8. Amend K.S.A. 2009 Supp. 22-2909 (Attached).  
and re-number remaining sections

,

and 22-2908

, 22-2909

**HOUSE BILL No. 2517**

By Committee on Corrections and Juvenile Justice

1-22

KACP/KPOA (Klump)  
HB2517-Balloon3.pdf  
RS - JThompson - 02/10/10

Corrections and Juvenile Justice  
Date: 2-12-10  
Attachment # 3

9 AN ACT concerning crimes, punishment and criminal procedure; relat-  
10 ing to domestic violence; amending K.S.A. 20-369, ~~22-2307 and 22-~~  
11 ~~2401~~ and K.S.A. 2009 Supp. 21-3110, 21-4603d and 75-712 and re-  
12 pealing the existing sections.  
13

and

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

15 New Section 1. (a) In all criminal cases, if there is evidence that the  
16 defendant committed a domestic violence offense, the trier of fact shall  
17 determine whether the defendant committed a domestic violence of-  
18 fense. If the trier of fact determines that the defendant committed a  
19 domestic violence offense, the court shall place a domestic violence des-  
20 ignation on the criminal case and the defendant shall be subject to the  
21 provisions of subsection (p) of K.S.A. 21-4603d, and amendments thereto.

22 (b) The term "domestic violence offense" shall have the meaning  
23 provided in K.S.A. 21-3110, and amendments thereto.

24 (c) This section shall be a part of and supplemental to the Kansas  
25 code for criminal procedure.

26 Sec. 2. K.S.A. 20-369 is hereby amended to read as follows: 20-369.

27 (a) If a judicial district creates a local fund ~~under this act~~, the court may  
28 impose a fee as provided in this section against any defendant for crimes  
29 involving a family or household member as provided in K.S.A. 21-3412a,  
30 and amendments thereto, *and against any defendant found to have com-*  
31 *mitted a domestic violence offense pursuant to section 1, and amendments*  
32 *thereto*. The chief judge of each judicial district where such fee is imposed  
33 shall set the amount of such fee by rules adopted in such judicial district  
34 in an amount not to exceed \$100 per case.

35 (b) Such fees shall be deposited into the local fund and disbursed  
36 pursuant to recommendations of the chief judge under this act. All mon-  
37 eys collected by this section shall be paid into the domestic violence spe-  
38 cial programs fund in the county where the fee is collected, as established  
39 by the judicial district ~~and as authorized by this act~~.

40 (c) Expenditures made in each judicial district shall be determined  
41 by the chief judge and shall be paid to domestic violence programs ad-  
42 ministered by the court and to local programs within the judicial district  
43 that enhance a coordinated community justice response to the issue of

1 *The court may order a domestic violence offender assessment prior to*  
 2 *sentencing if the assessment would assist the court in determining an*  
 3 *appropriate sentence. A defendant ordered to undergo a domestic violence*  
 4 *offender assessment shall be required to pay for the assessment and for*  
 5 *completion of all recommendations.*

6 Sec. 5. K.S.A. 22-2307 is hereby amended to read as follows: 22-  
 7 2307. (a) All law enforcement agencies in this state shall adopt written  
 8 policies regarding domestic violence calls as provided in subsection (b).  
 9 These policies shall be made available to all officers of such agency.

10 (b) Such written policies shall include, but not be limited to, the  
 11 following:

12 (1) A statement directing that the officers shall make an arrest when  
 13 they have probable cause to believe that a crime is being committed or  
 14 has been committed *in accordance with K.S.A. 22-2401, and amendments*  
 15 *thereto;*

subsection (c)

16 (2) a statement defining domestic violence *in accordance with K.S.A.*  
 17 *21-3110, and amendments thereto;*

18 (3) a statement describing the dispatchers' responsibilities;

19 (4) a statement describing the responding officers' responsibilities  
 20 and procedures to follow when responding to a domestic violence call  
 21 and the suspect is at the scene;

22 (5) a statement regarding procedures when the suspect has left the  
 23 scene of the crime;

24 (6) procedures for both misdemeanor and felony cases;

25 (7) procedures for law enforcement officers to follow when handling  
 26 domestic violence calls involving court orders, including protection from  
 27 abuse orders, restraining orders and a protective order issued by a court  
 28 of any state or Indian tribe;

29 (8) a statement that the law enforcement agency shall provide the  
 30 following information to victims, in writing:

31 (A) Availability of emergency and medical telephone numbers, if  
 32 needed;

33 (B) the law enforcement agency's report number;

34 (C) the address and telephone number of the prosecutor's office the  
 35 victim should contact to obtain information about victims' rights pursuant  
 36 to K.S.A. 74-7333 and 74-7335 and amendments thereto;

37 (D) the name and address of the crime victims' compensation board  
 38 and information about possible compensation benefits;

39 (E) advise the victim that the details of the crime may be made  
 40 public;

41 (F) advise the victim of such victims' rights under K.S.A. 74-7333 and  
 42 74-7335 and amendments thereto; and

43 (G) advise the victim of known available resources which may assist

22

3-3

1 the victim; and

2 (9) whether an arrest is made or not, a standard offense report shall  
3 be completed on all such incidents and sent to the Kansas bureau of  
4 investigation.

5 ~~See 6. K.S.A. 22-2401 is hereby amended to read as follows: 22-~~  
6 ~~2401. (a) A law enforcement officer may arrest a person under any of the~~  
7 ~~following circumstances:~~

8 ~~(a) (1) that the person be~~  
9 ~~arrested.~~

Delete Section 6  
and renumber remaining sections

10 ~~(b) (2) that a warrant for~~  
11 ~~the person's arrest has been issued in this state or in another jurisdiction~~  
12 ~~for a felony committed therein.~~

13 ~~(c) (3) The officer has probable cause to believe that the person is~~  
14 ~~committing or has committed:~~

15 ~~(1) (A) A felony; or~~

16 ~~(2) (B) a misdemeanor, and the law enforcement officer has probable~~  
17 ~~cause to believe that:~~

18 ~~(A) (i) The person will not be apprehended or evidence of the crime~~  
19 ~~will be irretrievably lost unless the person is immediately arrested;~~

20 ~~(B) (ii) the person may cause injury to self or others or damage to~~  
21 ~~property unless immediately arrested; or~~

22 ~~(C) (iii) the person has intentionally inflicted bodily harm to another~~  
23 ~~person.~~

24 ~~(d) (4) Any crime, except a traffic infraction or a cigarette or tobacco~~  
25 ~~infraction, has been or is being committed by the person in the officer's~~  
26 ~~view.~~

27 ~~(b) (1) When a law enforcement officer determines that there is prob-~~  
28 ~~able cause to believe that a crime or offense involving domestic violence,~~  
29 ~~as defined in K.S.A. 21-3110, and amendments thereto, has been com-~~  
30 ~~mitted, the officer shall, without undue delay, arrest the person for which~~  
31 ~~the officer has probable cause to believe committed the crime or offense.~~

32 ~~(2) Nothing in this subsection shall be construed to require a law~~  
33 ~~enforcement officer to:~~

34 ~~(A) Arrest either party involved in an alleged act of domestic violence~~  
35 ~~when the law enforcement officer determines there is no probable cause~~  
36 ~~to believe that a crime or offense has been committed; or~~

37 ~~(B) arrest both parties involved in an alleged act of domestic violence~~  
38 ~~when both claim to have been victims of such domestic violence.~~

39 ~~(3) If a law enforcement officer receives complaints of domestic vio-~~  
40 ~~lence from two or more opposing persons, the officer shall evaluate each~~  
41 ~~complaint separately to determine if there is probable cause that each~~  
42 ~~accused person committed a crime or offense and their actions were not~~  
43 ~~an act of defense of a person or property as provided in K.S.A. 21-3211;~~

(c) (1) When a law enforcement officer determines that there is probable cause to believe that a crime or offense involving domestic violence, as defined in K.S.A. 21-3110, and amendments thereto, has been committed, the officer shall, without undue delay, arrest the person for which the officer has probable cause to believe committed the crime or offense.  
(2) Nothing in this subsection shall be construed to require a law enforcement officer to:  
(A) Arrest either party involved in an alleged act of domestic violence when the law enforcement officer determines there is no probable cause to believe that a crime or offense has been committed; or  
(B) arrest both parties involved in an alleged act of domestic violence when both claim to have been victims of such domestic violence.  
(3) If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine if there is probable cause that each accused person committed a crime or offense and their actions were not an act of defense of a person or property as provided in K.S.A. 21-3211, 21-3212 or 21-3213, and amendments thereto.



3-4

1 ~~21-3212 or 21-3213, and amendments thereto.~~

2 Sec. 7. K.S.A. 2009 Supp. 75-712 is hereby amended to read as fol-  
3 lows: 75-712. (a) It is the duty of the members of the bureau to make full  
4 and complete investigations at the direction of the attorney general. Each  
5 member of the bureau shall possess all powers and privileges which are  
6 now or may be hereafter given to the sheriffs of Kansas.

7 (b) (1) The bureau shall acquire, collect, classify and preserve crim-  
8 inal identification and other crime records, and may exchange such crim-  
9 inal identification records with the duly authorized officials of govern-  
10 mental agencies, of states, cities and penal institutions.

11 (2) *The bureau shall make available to the governor's domestic vio-*  
12 *lence fatality review board crime record information related to domestic*  
13 *violence, including, but not limited to, type of offense, type of victim and*  
14 *victim relationship to offender, as found on the Kansas standard offense*  
15 *report. Such crime record information shall be made available only in a*  
16 *manner that does not identify individual offenders or victims.*

17 (c) For purposes of carrying out the powers and duties of the bureau,  
18 the director may request and accept grants or donations from any person,  
19 firm, association or corporation or from the federal government or any  
20 federal agency and may enter into contracts or other transactions with  
21 any federal agency in connection therewith.

22 (d) The bureau shall conduct background investigations of: (1) Ap-  
23 pointees to positions which are subject to confirmation by the senate of  
24 the state of Kansas; and (2) at the direction of the governor, all judicial  
25 appointments. The bureau shall require the appointee to be finger-  
26 printed. The fingerprints shall be submitted to the bureau and to the  
27 federal bureau of investigation for the identification of the appointee and  
28 to obtain criminal history record information, including arrest and non-  
29 conviction data. Background reports may include criminal intelligence  
30 information and information relating to criminal and background inves-  
31 tigations. Except as provided by this subsection, information received pur-  
32 suant to this subsection shall be confidential and shall not be disclosed  
33 except to the appointing authority or as provided by K.S.A. 2009 Supp.  
34 75-4315d, and amendments thereto. If the appointing authority is the  
35 governor, information received pursuant to this subsection also may be  
36 disclosed to the governor's staff as necessary to determine the appointee's  
37 qualifications.

38 (e) Reports of all investigations made by the members of the bureau  
39 shall be made to the attorney general of Kansas.

40 Sec. 8. K.S.A. 20-369, ~~22-2307 and 22-2401~~ and K.S.A. 2009 Supp.  
41 21-3110, 21-4603d and 75-712 are hereby repealed.

42 Sec. 9. This act shall take effect and be in force from and after its  
43 publication in the statute book.

and

# HOUSE BILL No. 2517

By Committee on Corrections and Juvenile Justice

1-22

Governor's Domestic Violence  
Fatality Review Board  
HB2517-Balloon2.pdf  
RS - JThompson - 02/10/10

3-5

9 AN ACT concerning crimes, punishment and criminal procedure; relat-  
10 ing to domestic violence; amending K.S.A. 20-369, 22-2307 and 22-  
11 2401 and K.S.A. 2009 Supp. 21-3110, 21-4603d, and 75-712 and re-  
12 pealing the existing sections.

,  
and 22-2908  
, 22-2909

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. (a) In all criminal cases, if there is evidence that the  
16 defendant committed a domestic violence offense, the trier of fact shall  
17 determine whether the defendant committed a domestic violence of-  
18 fense. If the trier of fact determines that the defendant committed a  
19 domestic violence offense, the court shall place a domestic violence des-  
20 ignation on the criminal case and the defendant shall be subject to the  
21 provisions of subsection (p) of K.S.A. 21-4603d, and amendments thereto.

*any crime or attempted crime*

22 (b) The term "domestic violence offense" shall have the meaning  
23 provided in K.S.A. 21-3110, and amendments thereto.

24 (c) This section shall be a part of and supplemental to the Kansas  
25 code for criminal procedure.

26 Sec. 2. K.S.A. 20-369 is hereby amended to read as follows: 20-369.

27 (a) If a judicial district creates a local fund ~~under this act~~, the court may  
28 impose a fee as provided in this section against any defendant for crimes  
29 involving a family or household member as provided in K.S.A. 21-3412a,  
30 and amendments thereto, *and against any defendant found to have com-*  
31 *mitted a domestic violence offense pursuant to section 1, and amendments*  
32 *thereto*. The chief judge of each judicial district where such fee is imposed  
33 shall set the amount of such fee by rules adopted in such judicial district  
34 in an amount not to exceed \$100 per case.

35 (b) Such fees shall be deposited into the local fund and disbursed  
36 pursuant to recommendations of the chief judge under this act. All mon-  
37 eys collected by this section shall be paid into the domestic violence spe-  
38 cial programs fund in the county where the fee is collected, as established  
39 by the judicial district ~~and as authorized by this act~~.

40 (c) Expenditures made in each judicial district shall be determined  
41 by the chief judge and shall be paid to domestic violence programs ad-  
42 ministered by the court and to local programs within the judicial district  
43 that enhance a coordinated community justice response to the issue of

36

1 domestic violence.

2 Sec. 3. K.S.A. 2009 Supp. 21-3110 is hereby amended to read as  
3 follows: 21-3110. The following definitions shall apply when the words  
4 and phrases defined are used in this code, except when a particular con-  
5 text clearly requires a different meaning.

6 (1) "Act" includes a failure or omission to take action.

7 (2) "Another" means a person or persons as defined in this code other  
8 than the person whose act is claimed to be criminal.

9 (3) "Conduct" means an act or a series of acts, and the accompanying  
10 mental state.

11 (4) "Conviction" includes a judgment of guilt entered upon a plea of  
12 guilty.

13 (5) "Deception" means knowingly and willfully making a false state-  
14 ment or representation, express or implied, pertaining to a present or past  
15 existing fact.

16 (6) To "deprive permanently" means to:

17 (a) Take from the owner the possession, use or benefit of property,  
18 without an intent to restore the same; or

19 (b) Retain property without intent to restore the same or with intent  
20 to restore it to the owner only if the owner purchases or leases it back,  
21 or pays a reward or other compensation for its return; or

22 (c) Sell, give, pledge or otherwise dispose of any interest in property  
23 or subject it to the claim of a person other than the owner.

24 (7) *"Domestic violence" means an act or threatened act of violence*  
25 *against a person with whom the offender is involved or has been involved*  
26 *in an intimate relationship. Domestic violence also includes any other*  
27 *crime committed against a person or against property, or any municipal*  
28 *ordinance violation against a person or against property, when directed*  
29 *against a person with whom the offender is involved or has been involved*  
30 *in an intimate relationship. For the purposes of this definition, the of-*  
31 *fender shall be 18 years of age or older.* ←

32 (8) *"Domestic violence offense" means any crime committed whereby*  
33 *the underlying factual basis includes an act of domestic violence.*

34 (7) (9) "Dwelling" means a building or portion thereof, a tent, a ve-  
35 hicle or other enclosed space which is used or intended for use as a human  
36 habitation, home or residence.

37 (8) (10) "Firearm" means any weapon designed or having the capacity  
38 to propel a projectile by force of an explosion or combustion.

39 (9) (11) "Forcible felony" includes any treason, murder, voluntary  
40 manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated bat-  
41 tery, aggravated sodomy and any other felony which involves the use or  
42 threat of physical force or violence against any person.

43 (10) (12) "Intent to defraud" means an intention to deceive another

(8) "Domestic violence offender" means any person who has been convicted of or entered into a diversion agreement for any domestic violence offense.  
  
and re-number remaining

37

1 vided in paragraph (1), the judge of the court in which such person was  
 2 convicted may enter an order which places conditions on such person's  
 3 privilege of operating a motor vehicle on the highways of this state, a  
 4 certified copy of which such person shall be required to carry any time  
 5 such person is operating a motor vehicle on the highways of this state.  
 6 Any such order shall prescribe the duration of the conditions imposed,  
 7 which in no event shall be for a period of more than one year.

8 (B) Upon entering an order restricting a person's license hereunder,  
 9 the judge shall require such person to surrender such person's driver's  
 10 license to the judge who shall cause it to be transmitted to the division  
 11 of vehicles, together with a copy of the order. Upon receipt thereof, the  
 12 division of vehicles shall issue without charge a driver's license which shall  
 13 indicate on its face that conditions have been imposed on such person's  
 14 privilege of operating a motor vehicle and that a certified copy of the  
 15 order imposing such conditions is required to be carried by the person  
 16 for whom the license was issued any time such person is operating a motor  
 17 vehicle on the highways of this state. If the person convicted is a nonres-  
 18 ident, the judge shall cause a copy of the order to be transmitted to the  
 19 division and the division shall forward a copy of it to the motor vehicle  
 20 administrator, of such person's state of residence. Such judge shall furnish  
 21 to any person whose driver's license has had conditions imposed on it  
 22 under this paragraph a copy of the order, which shall be recognized as a  
 23 valid Kansas driver's license until such time as the division shall issue the  
 24 restricted license provided for in this paragraph.

25 (C) Upon expiration of the period of time for which conditions are  
 26 imposed pursuant to this subsection, the licensee may apply to the divi-  
 27 sion for the return of the license previously surrendered by such licensee.  
 28 In the event such license has expired, such person may apply to the divi-  
 29 sion for a new license, which shall be issued immediately by the division  
 30 upon payment of the proper fee and satisfaction of the other conditions  
 31 established by law, unless such person's privilege to operate a motor ve-  
 32 hicle on the highways of this state has been suspended or revoked prior  
 33 thereto. If any person shall violate any of the conditions imposed under  
 34 this paragraph, such person's driver's license or privilege to operate a  
 35 motor vehicle on the highways of this state shall be revoked for a period  
 36 of not less than 60 days nor more than one year by the judge of the court  
 37 in which such person is convicted of violating such conditions.

38 (4) As used in this subsection, "highway" and "street" have the mean-  
 39 ings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto.

40 (p) *In addition to any of the above, for any criminal offense that*  
 41 *includes the domestic violence designation pursuant to section 1, and*  
 42 *amendments thereto, the court shall require the defendant to undergo a*  
 43 *domestic violence offender assessment and complete all recommendations.*

follow all recommendations unless otherwise ordered by the court or the department of corrections
---

*or evaluation*  
3-8

1 *The court may order a domestic violence offender assessment prior to*  
2 *sentencing if the assessment would assist the court in determining an*  
3 *appropriate sentence. A defendant ordered to undergo a domestic violence*  
4 *offender assessment shall be required to pay for the assessment and for*  
5 *completion of all recommendations.*

and any other evaluation

or evaluation

The entity completing the assessment shall provide the assessment and recommendations to the court and the court shall provide the domestic violence assessment to any entity responsible for supervising such defendant.

6 Sec. 5. K.S.A. 22-2307 is hereby amended to read as follows: 22-  
7 2307. (a) All law enforcement agencies in this state shall adopt written  
8 policies regarding domestic violence calls as provided in subsection (b).  
9 These policies shall be made available to all officers of such agency.

10 (b) Such written policies shall include, but not be limited to, the  
11 following:

, unless otherwise ordered by the court or the department of corrections,

12 (1) A statement directing that the officers shall make an arrest when  
13 they have probable cause to believe that a crime is being committed or  
14 has been committed *in accordance with K.S.A. 22-2401, and amendments*  
15 *thereto;*

16 (2) a statement defining domestic violence *in accordance with K.S.A.*  
17 *21-3110, and amendments thereto;*

\*Placeholder-not sure where this goes\*  
  
The Attorney General shall adopt such rules and regulations necessary to carry out the provisions of subsection (p) of K.S.A. 21-4603d, and amendments thereto, no later than July 1, 2011.

18 (3) a statement describing the dispatchers' responsibilities;

19 (4) a statement describing the responding officers' responsibilities  
20 and procedures to follow when responding to a domestic violence call  
21 and the suspect is at the scene;

22 (5) a statement regarding procedures when the suspect has left the  
23 scene of the crime;

24 (6) procedures for both misdemeanor and felony cases;

25 (7) procedures for law enforcement officers to follow when handling  
26 domestic violence calls involving court orders, including protection from  
27 abuse orders, restraining orders and a protective order issued by a court  
28 of any state or Indian tribe;

29 (8) a statement that the law enforcement agency shall provide the  
30 following information to victims, in writing:

31 (A) Availability of emergency and medical telephone numbers, if  
32 needed;

33 (B) the law enforcement agency's report number;

34 (C) the address and telephone number of the prosecutor's office the  
35 victim should contact to obtain information about victims' rights pursuant  
36 to K.S.A. 74-7333 and 74-7335 and amendments thereto;

37 (D) the name and address of the crime victims' compensation board  
38 and information about possible compensation benefits;

39 (E) advise the victim that the details of the crime may be made  
40 public;

41 (F) advise the victim of such victims' rights under K.S.A. 74-7333 and  
42 74-7335 and amendments thereto; and

43 (G) advise the victim of known available resources which may assist



1 the victim; and

2 (9) whether an arrest is made or not, a standard offense report shall  
3 be completed on all such incidents and sent to the Kansas bureau of  
4 investigation.

5 Sec. 6. K.S.A. 22-2401 is hereby amended to read as follows: 22-  
6 2401. (a) A law enforcement officer may arrest a person under any of the  
7 following circumstances:

8 ~~(a)~~ (1) The officer has a warrant commanding that the person be  
9 arrested.

10 ~~(b)~~ (2) The officer has probable cause to believe that a warrant for  
11 the person's arrest has been issued in this state or in another jurisdiction  
12 for a felony committed therein.

13 ~~(c)~~ (3) The officer has probable cause to believe that the person is  
14 committing or has committed:

15 ~~(1)~~ (A) A felony; or

16 ~~(2)~~ (B) a misdemeanor, and the law enforcement officer has probable  
17 cause to believe that:

18 ~~(A)~~ (i) The person will not be apprehended or evidence of the crime  
19 will be irretrievably lost unless the person is immediately arrested;

20 ~~(B)~~ (ii) the person may cause injury to self or others or damage to  
21 property unless immediately arrested; or

22 ~~(C)~~ (iii) the person has intentionally inflicted bodily harm to another  
23 person.

24 ~~(d)~~ (4) Any crime, except a traffic infraction or a cigarette or tobacco  
25 infraction, has been or is being committed by the person in the officer's  
26 view.

27 (b) (1) *When a law enforcement officer determines that there is prob-*  
28 *able cause to believe that a crime or offense involving domestic violence,*  
29 *as defined in K.S.A. 21-3110, and amendments thereto, has been com-*  
30 *mitted, the officer shall, without undue delay, arrest the person for which*  
31 *the officer has probable cause to believe committed the crime or offense.*

32 (2) *Nothing in this subsection shall be construed to require a law*  
33 *enforcement officer to:*

34 (A) *Arrest either party involved in an alleged act of domestic violence*  
35 *when the law enforcement officer determines there is no probable cause*  
36 *to believe that a crime or offense has been committed; or*

37 (B) *arrest both parties involved in an alleged act of domestic violence*  
38 *when both claim to have been victims of such domestic violence.*

39 (3) *If a law enforcement officer receives complaints of domestic vio-*  
40 *lence from two or more opposing persons, the officer shall evaluate each*  
41 *complaint separately to determine if there is probable cause that each*  
42 *accused person committed a crime or offense and their actions were not*  
43 *an act of defense of a person or property as provided in K.S.A. 21-3211,*

21-8

1 21-3212 or 21-3213, and amendments thereto.

2 Sec. 7. K.S.A. 2009 Supp. 75-712 is hereby amended to read as fol-  
3 lows: 75-712. (a) It is the duty of the members of the bureau to make full  
4 and complete investigations at the direction of the attorney general. Each  
5 member of the bureau shall possess all powers and privileges which are  
6 now or may be hereafter given to the sheriffs of Kansas.

7 (b) (1) The bureau shall acquire, collect, classify and preserve crim-  
8 inal identification and other crime records, and may exchange such crim-  
9 inal identification records with the duly authorized officials of govern-  
10 mental agencies, of states, cities and penal institutions.

11 (2) The bureau shall make available to the governor's domestic vio-  
12 lence fatality review board crime record information related to domestic  
13 violence, including, but not limited to, type of offense, type of victim and  
14 victim relationship to offender, as found on the Kansas standard offense  
15 report. Such crime record information shall be made available only in a  
16 manner that does not identify individual offenders or victims.

17 (c) For purposes of carrying out the powers and duties of the bureau,  
18 the director may request and accept grants or donations from any person,  
19 firm, association or corporation or from the federal government or any  
20 federal agency and may enter into contracts or other transactions with  
21 any federal agency in connection therewith.

22 (d) The bureau shall conduct background investigations of: (1) Ap-  
23 pointees to positions which are subject to confirmation by the senate of  
24 the state of Kansas; and (2) at the direction of the governor, all judicial  
25 appointments. The bureau shall require the appointee to be finger-  
26 printed. The fingerprints shall be submitted to the bureau and to the  
27 federal bureau of investigation for the identification of the appointee and  
28 to obtain criminal history record information, including arrest and non-  
29 conviction data. Background reports may include criminal intelligence  
30 information and information relating to criminal and background inves-  
31 tigation. Except as provided by this subsection, information received pur-  
32 suant to this subsection shall be confidential and shall not be disclosed  
33 except to the appointing authority or as provided by K.S.A. 2009 Supp.  
34 75-4315d, and amendments thereto. If the appointing authority is the  
35 governor, information received pursuant to this subsection also may be  
36 disclosed to the governor's staff as necessary to determine the appointee's  
37 qualifications.

38 (e) Reports of all investigations made by the members of the bureau  
39 shall be made to the attorney general of Kansas.

40 Sec. 8. K.S.A. 20-369, 22-2307 and 22-2401 and K.S.A. 2009 Supp.  
41 21-3110, 21-4603d and 75-712 are hereby repealed.

42 Sec. 9. This act shall take effect and be in force from and after its  
43 publication in the statute book.

Sec. 7. Amend K.S.A. 22-2908 (Attached).

Sec. 8. Amend K.S.A. 2009 Supp. 22-2909 (Attached).

and re-number remaining sections

,

and 22-2908

, 22-2909

# HOUSE BILL No. 2517

By Committee on Corrections and Juvenile Justice

1-22

<p>KCSDV - IR Definition</p> <p>HB2517-Balloon6.pdf</p> <p>RS - JThompson - 02/12/10</p>
--

9 AN ACT concerning crimes, punishment and criminal procedure; relat-  
 10 ing to domestic violence; amending K.S.A. 20-369, 22-2307 and 22-  
 11 2401 and K.S.A. 2009 Supp. 21-3110, 21-4603d and 75-712 and re-  
 12 pealing the existing sections.

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

14 *Be it enacted by the Legislature of the State of Kansas:*  
 15 New Section 1. (a) In all criminal cases, if there is evidence that the  
 16 defendant committed a domestic violence offense, the trier of fact shall  
 17 determine whether the defendant committed a domestic violence of-  
 18 fense. If the trier of fact determines that the defendant committed a  
 19 domestic violence offense, the court shall place a domestic violence des-  
 20 ignation on the criminal case and the defendant shall be subject to the  
 21 provisions of subsection (p) of K.S.A. 21-4603d, and amendments thereto.

22 (b) The term "domestic violence offense" shall have the meaning  
 23 provided in K.S.A. 21-3110, and amendments thereto.

24 (c) This section shall be a part of and supplemental to the Kansas  
 25 code for criminal procedure.

26 Sec. 2. K.S.A. 20-369 is hereby amended to read as follows: 20-369.

27 (a) If a judicial district creates a local fund ~~under this act~~, the court may  
 28 impose a fee as provided in this section against any defendant for crimes  
 29 involving a family or household member as provided in K.S.A. 21-3412a,  
 30 and amendments thereto, *and against any defendant found to have com-*  
 31 *mitted a domestic violence offense pursuant to section 1, and amendments*  
 32 *thereto*. The chief judge of each judicial district where such fee is imposed  
 33 shall set the amount of such fee by rules adopted in such judicial district  
 34 in an amount not to exceed \$100 per case.

35 (b) Such fees shall be deposited into the local fund and disbursed  
 36 pursuant to recommendations of the chief judge under this act. All mon-  
 37 eys collected by this section shall be paid into the domestic violence spe-  
 38 cial programs fund in the county where the fee is collected, as established  
 39 by the judicial district ~~and as authorized by this act~~.

40 (c) Expenditures made in each judicial district shall be determined  
 41 by the chief judge and shall be paid to domestic violence programs ad-  
 42 ministered by the court and to local programs within the judicial district  
 43 that enhance a coordinated community justice response to the issue of

Corrections and Juvenile Justice

Date: 2-12-10

Attachment #

4-2

1 person, and to induce such other person, in reliance upon such deception,  
2 to assume, create, transfer, alter or terminate a right obligation or power  
3 with reference to property.

4 ~~(13) "Intimate relationship" means spouses former spouses persons~~  
5 ~~who share the parentage of a child and persons who are or were involved~~  
6 ~~in a dating relationship. Dating relationship means frequent intimate~~  
7 ~~associations primarily characterized by the expectation of affectional or~~  
8 ~~sexual involvement. Sharing a residence, either past or present, is not~~  
9 ~~required to qualify as an intimate relationship pursuant to this definition.~~

10 ~~(14)~~ (14) "Law enforcement officer" means:

11 (a) Any person who by virtue of such person's office or public em-  
12 ployment is vested by law with a duty to maintain public order or to make  
13 arrests for crimes, whether that duty extends to all crimes or is limited to  
14 specific crimes;

15 (b) any officer of the Kansas department of corrections or, for the  
16 purposes of K.S.A. 21-3409, 21-3411 and 21-3415, and amendments  
17 thereto, any employee of the Kansas department of corrections; or

18 (c) any university police officer or campus police officer, as defined  
19 in K.S.A. 22-2401a, and amendments thereto.

20 ~~(15)~~ (15) "Obtain" means to bring about a transfer of interest in or  
21 possession of property, whether to the offender or to another.

22 ~~(16)~~ (16) "Obtains or exerts control" over property includes but is not  
23 limited to, the taking, carrying away, or the sale, conveyance, or transfer  
24 of title to, interest in, or possession of property.

25 ~~(17)~~ (17) "Owner" means a person who has any interest in property.

26 ~~(18)~~ (18) "Person" means an individual, public or private corporation,  
27 government, partnership, or unincorporated association.

28 ~~(19)~~ (19) "Personal property" means goods, chattels, effects, evi-  
29 dences of rights in action and all written instruments by which any pe-  
30 cuniary obligation, or any right or title to property real or personal, shall  
31 be created, acknowledged, assigned, transferred, increased, defeated, dis-  
32 charged, or dismissed.

33 ~~(20)~~ (20) "Property" means anything of value, tangible or intangible,  
34 real or personal.

35 ~~(21)~~ (21) "Prosecution" means all legal proceedings by which a per-  
36 son's liability for a crime is determined.

37 ~~(22)~~ (22) "Public employee" is a person employed by or acting for  
38 the state or by or for a county, municipality or other subdivision or gov-  
39 ernmental instrumentality of the state for the purpose of exercising their  
40 respective powers and performing their respective duties, and who is not  
41 a "public officer."

42 ~~(23)~~ (23) "Public officer" includes the following, whether elected or  
43 appointed:

have a child in common, or persons who are or have been in a dating relationship. "Dating relationship" means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since termination of the relationship, if applicable.

## HOUSE BILL No. 2517

By Committee on Corrections and Juvenile Justice

1-22

9 AN ACT concerning crimes, punishment and criminal procedure; relat-  
10 ing to domestic violence; amending K.S.A. 20-369, 22-2307 and 22-  
11 2401 and K.S.A. 2009 Supp. 21-3110, 21-4603d and 75-712 and re-  
12 pealing the existing sections.

13

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

15 New Section 1. (a) In all criminal cases, if there is evidence that the  
16 defendant committed a domestic violence offense, the trier of fact shall  
17 determine whether the defendant committed a domestic violence of-  
18 fense. If the trier of fact determines that the defendant committed a  
19 domestic violence offense, the court shall place a domestic violence des-  
20 ignation on the criminal case and the defendant shall be subject to the  
21 provisions of subsection (p) of K.S.A. 21-4603d, and amendments thereto.

22 (b) The term "domestic violence offense" shall have the meaning  
23 provided in K.S.A. 21-3110, and amendments thereto.

24 (c) This section shall be a part of and supplemental to the Kansas  
25 code for criminal procedure.

26 Sec. 2. K.S.A. 20-369 is hereby amended to read as follows: 20-369.

27 (a) If a judicial district creates a local fund ~~under this act~~, the court may  
28 impose a fee as provided in this section against any defendant for crimes  
29 involving a family or household member as provided in K.S.A. 21-3412a,  
30 and amendments thereto, *and against any defendant found to have com-*  
31 *mitted a domestic violence offense pursuant to section 1, and amendments*  
32 *thereto*. The chief judge of each judicial district where such fee is imposed  
33 shall set the amount of such fee by rules adopted in such judicial district  
34 in an amount not to exceed \$100 per case.

35 (b) Such fees shall be deposited into the local fund and disbursed  
36 pursuant to recommendations of the chief judge under this act. All mon-  
37 eys collected by this section shall be paid into the domestic violence spe-  
38 cial programs fund in the county where the fee is collected, as established  
39 by the judicial district ~~and as authorized by this act~~.

40 (c) Expenditures made in each judicial district shall be determined  
41 by the chief judge and shall be paid to domestic violence programs ad-  
42 ministered by the court and to local programs within the judicial district  
43 that enhance a coordinated community justice response to the issue of

Rep. Kinzer - Definition

HB2517-Balloon-K1.pdf  
RS - JThompson - 02/12/10

Corrections and Juvenile Justice

Date: 2-17-10

Attachment # 3



5.2

1 domestic violence.

2 Sec. 3. K.S.A. 2009 Supp. 21-3110 is hereby amended to read as  
3 follows: 21-3110. The following definitions shall apply when the words  
4 and phrases defined are used in this code, except when a particular con-  
5 text clearly requires a different meaning.

6 (1) "Act" includes a failure or omission to take action.

7 (2) "Another" means a person or persons as defined in this code other  
8 than the person whose act is claimed to be criminal.

9 (3) "Conduct" means an act or a series of acts, and the accompanying  
10 mental state.

11 (4) "Conviction" includes a judgment of guilt entered upon a plea of  
12 guilty.

13 (5) "Deception" means knowingly and willfully making a false state-  
14 ment or representation, express or implied, pertaining to a present or past  
15 existing fact.

16 (6) To "deprive permanently" means to:

17 (a) Take from the owner the possession, use or benefit of property,  
18 without an intent to restore the same; or

19 (b) Retain property without intent to restore the same or with intent  
20 to restore it to the owner only if the owner purchases or leases it back,  
21 or pays a reward or other compensation for its return; or

22 (c) Sell, give, pledge or otherwise dispose of any interest in property  
23 or subject it to the claim of a person other than the owner.

24 (7) *"Domestic violence" means an act or threatened act of violence*  
25 *against a person with whom the offender is involved or has been involved*  
26 *in an intimate relationship. Domestic violence also includes any other*  
27 *crime committed against a person or against property, or any municipal*  
28 *ordinance violation against a person or against property, when directed*  
29 *against a person with whom the offender is involved or has been involved*  
30 *in an intimate relationship. For the purposes of this definition, the of-*  
31 *fender shall be 18 years of age or older.*

32 (8) "Domestic violence offense" means any crime committed whereby  
33 the underlying factual basis includes an act of domestic violence

34 (9) "Dwelling" means a building or portion thereof, a tent, a ve-  
35 hicle or other enclosed space which is used or intended for use as a human  
36 habitation, home or residence.

37 (10) "Firearm" means any weapon designed or having the capacity  
38 to propel a projectile by force of an explosion or combustion.

39 (11) "Forcible felony" includes any treason, murder, voluntary  
40 manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated bat-  
41 tery, aggravated sodomy and any other felony which involves the use or  
42 threat of physical force or violence against any person.

43 (12) "Intent to defraud" means an intention to deceive another

→ or a conviction of Stalking

family or household member by a family or household member. Domestic violence also includes any other crime committed against a person or against property, or any municipal ordinance violation against a person or against property when directed against a family or household member by a family or household member. For the purposes of this definition, "family or household member" means persons 18 years of age or older who are spouses, former spouses, siblings, parents or stepparents and children, or stepchildren, and who are presently <sup>residing</sup> together or have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

53

1 person, and to induce such other person, in reliance upon such deception,  
2 to assume, create, transfer, alter or terminate a right, obligation or power  
3 with reference to property.

4 ~~(13) "Intimate relationship" means spouses, former spouses, persons~~  
5 ~~who share the parentage of a child and persons who are or were involved~~  
6 ~~in a dating relationship. Dating relationship means frequent, intimate~~  
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8 ~~sexual involvement. Sharing a residence, either past or present, is not~~  
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10 ~~(11)~~ (14) "Law enforcement officer" means:

11 (a) Any person who by virtue of such person's office or public em-  
12 ployment is vested by law with a duty to maintain public order or to make  
13 arrests for crimes, whether that duty extends to all crimes or is limited to  
14 specific crimes;

15 (b) any officer of the Kansas department of corrections or, for the  
16 purposes of K.S.A. 21-3409, 21-3411 and 21-3415, and amendments  
17 thereto, any employee of the Kansas department of corrections; or

18 (c) any university police officer or campus police officer, as defined  
19 in K.S.A. 22-2401a, and amendments thereto.

20 ~~(12)~~ (15) "Obtain" means to bring about a transfer of interest in or  
21 possession of property, whether to the offender or to another.

22 ~~(13)~~ (16) "Obtains or exerts control" over property includes but is not  
23 limited to, the taking, carrying away, or the sale, conveyance, or transfer  
24 of title to, interest in, or possession of property.

25 ~~(14)~~ (17) "Owner" means a person who has any interest in property.

26 ~~(15)~~ (18) "Person" means an individual, public or private corporation,  
27 government, partnership, or unincorporated association.

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29 dences of rights in action and all written instruments by which any pe-  
30 cuniary obligation, or any right or title to property real or personal, shall  
31 be created, acknowledged, assigned, transferred, increased, defeated, dis-  
32 charged, or dismissed.

33 ~~(17)~~ (20) "Property" means anything of value, tangible or intangible,  
34 real or personal.

35 ~~(18)~~ (21) "Prosecution" means all legal proceedings by which a per-  
36 son's liability for a crime is determined.

37 ~~(19)~~ (22) "Public employee" is a person employed by or acting for  
38 the state or by or for a county, municipality or other subdivision or gov-  
39 ernmental instrumentality of the state for the purpose of exercising their  
40 respective powers and performing their respective duties, and who is not  
41 a "public officer."

42 ~~(20)~~ (23) "Public officer" includes the following, whether elected or  
43 appointed:

← Strike  
\* And renumber remaining

**HOUSE BILL No. 2517**

By Committee on Corrections and Juvenile Justice

1-22

KCSDV - IR Definition  
HB2517-Balloon6.pdf  
RS - JThompson - 02/12/10

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17 determine whether the defendant committed a domestic violence of-  
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19 domestic violence offense, the court shall place a domestic violence des-  
20 ignation on the criminal case and the defendant shall be subject to the  
21 provisions of subsection (p) of K.S.A. 21-4603d, and amendments thereto.

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25 code for criminal procedure.

26 Sec. 2. K.S.A. 20-369 is hereby amended to read as follows: 20-369.

27 (a) If a judicial district creates a local fund ~~under this act~~, the court may  
28 impose a fee as provided in this section against any defendant for crimes  
29 involving a family or household member as provided in K.S.A. 21-3412a,  
30 and amendments thereto, *and against any defendant found to have com-*  
31 *mitted a domestic violence offense pursuant to section 1, and amendments*  
32 *thereto*. The chief judge of each judicial district where such fee is imposed  
33 shall set the amount of such fee by rules adopted in such judicial district  
34 in an amount not to exceed \$100 per case.

35 (b) Such fees shall be deposited into the local fund and disbursed  
36 pursuant to recommendations of the chief judge under this act. All mon-  
37 eys collected by this section shall be paid into the domestic violence spe-  
38 cial programs fund in the county where the fee is collected, as established  
39 by the judicial district ~~and as authorized by this act~~.

40 (c) Expenditures made in each judicial district shall be determined  
41 by the chief judge and shall be paid to domestic violence programs ad-  
42 ministered by the court and to local programs within the judicial district  
43 that enhance a coordinated community justice response to the issue of

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1 person, and to induce such other person, in reliance upon such deception,  
2 to assume, create, transfer, alter or terminate a right, obligation or power  
3 with reference to property.

4 ~~(13)~~ *"Intimate relationship" means spouses, former spouses, persons*  
5 *who share the parentage of a child and persons who are or were involved*  
6 *in a dating relationship. Dating relationship means frequent, intimate*  
7 *associations primarily characterized by the expectation of affectional or*  
8 *sexual involvement. Sharing a residence, either past or present, is not*  
9 *required to qualify as an intimate relationship pursuant to this definition.*

10 ~~(14)~~ (14) "Law enforcement officer" means:

11 (a) Any person who by virtue of such person's office or public em-  
12 ployment is vested by law with a duty to maintain public order or to make  
13 arrests for crimes, whether that duty extends to all crimes or is limited to  
14 specific crimes;

15 (b) any officer of the Kansas department of corrections or, for the  
16 purposes of K.S.A. 21-3409, 21-3411 and 21-3415, and amendments  
17 thereto, any employee of the Kansas department of corrections; or

18 (c) any university police officer or campus police officer, as defined  
19 in K.S.A. 22-2401a, and amendments thereto.

20 ~~(15)~~ (15) "Obtain" means to bring about a transfer of interest in or  
21 possession of property, whether to the offender or to another.

22 ~~(16)~~ (16) "Obtains or exerts control" over property includes but is not  
23 limited to, the taking, carrying away, or the sale, conveyance, or transfer  
24 of title to, interest in, or possession of property.

25 ~~(17)~~ (17) "Owner" means a person who has any interest in property.

26 ~~(18)~~ (18) "Person" means an individual, public or private corporation,  
27 government, partnership, or unincorporated association.

28 ~~(19)~~ (19) "Personal property" means goods, chattels, effects, evi-  
29 dences of rights in action and all written instruments by which any pe-  
30 cuniary obligation, or any right or title to property real or personal, shall  
31 be created, acknowledged, assigned, transferred, increased, defeated, dis-  
32 charged, or dismissed.

33 ~~(20)~~ (20) "Property" means anything of value, tangible or intangible,  
34 real or personal.

35 ~~(21)~~ (21) "Prosecution" means all legal proceedings by which a per-  
36 son's liability for a crime is determined.

37 ~~(22)~~ (22) "Public employee" is a person employed by or acting for  
38 the state or by or for a county, municipality or other subdivision or gov-  
39 ernmental instrumentality of the state for the purpose of exercising their  
40 respective powers and performing their respective duties, and who is not  
41 a "public officer."

42 ~~(23)~~ (23) "Public officer" includes the following, whether elected or  
43 appointed:

have a child in common, or persons who are or have been in a dating relationship. "Dating relationship" means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since termination of the relationship, if applicable.