

CHAPTER 183
HOUSE BILL No. 2707

AN ACT relating to crimes, punishment and criminal procedure; concerning sentencing; relating to substance abuse and the treatment thereof; amending K.S.A. 21-3702, 21-3705, 21-4608, 21-4704, 21-4705, 21-4714, 21-4719 and 22-3716 and K.S.A. 2007 Supp. 74-9501, 75-5210, 75-5217 and 75-5220 and repealing the existing sections; also repealing K.S.A. 21-4704b.

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

Section 1. K.S.A. 21-3702 is hereby amended to read as follows: 21-3702. (a) In any prosecution under this article, the following shall be prima facie evidence of intent to permanently deprive the owner or lessor of property of the possession, use or benefit thereof:

(1) The giving of a false identification or fictitious name, address or place of employment at the time of obtaining control over the property;

(2) the failure of a person who leases or rents personal property to return the same within 10 days after the date set forth in the lease or rental agreement for the return of the property, if notice is given to the person renting or leasing the property to return the property within seven days after receipt of the notice, in which case the subsequent return of the property within the seven-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section;

(3) destroying, breaking or opening a lock, chain, key switch, enclosure or other device used to secure the property in order to obtain control over the property; ~~or~~

(4) destruction of or substantially damaging or altering the property so as to make the property unusable or unrecognizable in order to obtain control over the property;

(5) *the failure of a person who leases or rents from a commercial renter a motor vehicle under a written agreement that provides for the return of the motor vehicle to a particular place at a particular time, if notice has been given to the person renting or leasing the motor vehicle to return such vehicle within three calendar days from the date of the receipt or refusal of the demand. In addition, if such vehicle has not been returned after demand, the lessor may notify the local law enforcement agency of the failure of the lessee to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles; or*

(6) *the failure of a person who is provided with a use of a vehicle by the owner of the vehicle to return it to the owner pursuant to a written instruction specifying: (A) The time and place to return the vehicle; and (B) that failure to comply may be prosecuted as theft, and such instructions are delivered to the person by the owner at the time the person is provided with possession of the vehicle. In addition, if such vehicle has not been returned pursuant to the specifications in such instructions, the owner may notify the local law enforcement agency of the failure of the person to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles.*

(b) In any prosecution for a misdemeanor under K.S.A. 21-3701 and amendments thereto in which the object of the alleged theft is a book or other material borrowed from a library, it shall be prima facie evidence of intent to permanently deprive the owner of the possession, use or benefit thereof if the defendant failed to return such book or material within 30 days after receiving notice from the library requesting its return, in which case the subsequent return of the book or material within the 30-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section.

(c) The word “notice” as used herein shall be construed to mean notice in writing and such notice in writing will be presumed to have been given three days following deposit of the notice as registered or certified matter in the United States mail, addressed to such person who has leased or rented the personal property or borrowed the library material at the address as it appears in the information supplied by such person at the time of such leasing, renting or borrowing, or to such person’s last known address.

Sec. 2. K.S.A. 21-3705 is hereby amended to read as follows: 21-

3705. (a) Criminal deprivation of property is obtaining or exerting unauthorized control over property, with intent to deprive the owner of the temporary use thereof, without the owner's consent but not with the intent of depriving the owner permanently of the possession, use or benefit of such owner's property.

(b) Criminal deprivation of property that is a motor vehicle, as defined in K.S.A. 8-1437, and amendments thereto:

(1) *Upon a first or second conviction* is a class A nonperson misdemeanor. Upon a first conviction of this ~~subsection~~ *paragraph*, a person shall be sentenced to not less than 30 days nor more than one year's imprisonment and fined not less than \$100. Upon a second ~~or subsequent conviction of this subsection~~ *paragraph*, a person shall be sentenced to not less than 60 days nor more than one year's imprisonment and fined not less than \$200. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the minimum mandatory sentence as provided herein. The mandatory provisions of this subsection shall not apply to any person where such application would result in a manifest injustice; *and*

(2) *upon a third or subsequent conviction is a severity level 9, non-person felony.*

(c) Criminal deprivation of property other than a motor vehicle, as defined in K.S.A. 8-1437, and amendments thereto, is a class A nonperson misdemeanor. Upon a second or subsequent conviction of this subsection, a person shall be sentenced to not less than 30 days imprisonment and fined not less than \$100, except that the provisions of this subsection relating to a second or subsequent conviction shall not apply to any person where such application would result in a manifest injustice.

Sec. 3. K.S.A. 21-4608 is hereby amended to read as follows: 21-4608. (a) When separate sentences of imprisonment for different crimes are imposed on a defendant on the same date, including sentences for crimes for which suspended sentences, probation or assignment to a community correctional services program have been revoked, such sentences shall run concurrently or consecutively as the court directs. Whenever the record is silent as to the manner in which two or more sentences imposed at the same time shall be served, they shall be served concurrently, except as provided in subsections (c), (d) and (e).

(b) Any person who is convicted and sentenced for a crime committed while on probation, assignment to a community correctional services program, parole or conditional release for a misdemeanor shall serve the sentence concurrently with or consecutively to the term or terms under which the person was on probation, assigned to a community correctional services program or on parole or conditional release, as the court directs.

(c) Any person who is convicted and sentenced for a crime committed while on probation, assigned to a community correctional services program, on parole, on conditional release or on postrelease supervision for a felony shall serve the sentence consecutively to the term or terms under which the person was on probation, assigned to a community correctional services program or on parole or conditional release.

(d) Any person who is convicted and sentenced for a crime committed while on release for a felony pursuant to article 28 of chapter 22 of the Kansas Statutes Annotated shall serve the sentence consecutively to the term or terms under which the person was released.

(e) (1) Any person who is convicted and sentenced for a crime committed while such person is incarcerated and serving a sentence for a felony in any place of incarceration shall serve the sentence consecutively to the term or terms under which the person was incarcerated.

(2) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while the person was imprisoned for an offense committed prior to July 1, 1993, and the person is not eligible for the retroactive application of the sentencing guidelines act, the new sentence shall not be aggregated with the old sentence but shall begin when the person is paroled or reaches the conditional release date on the old sentence, whichever is earlier. If the offender was past the offender's conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the Kansas parole board or reaches the maximum sentence date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of ~~postrelease~~ *post incarceration* supervision shall be based on the

~~new sentence~~ longest term of post incarceration supervision imposed for all crimes upon which sentence was imposed or until discharged from supervision by the Kansas parole board. The term of post incarceration supervision imposed by this paragraph shall apply retroactively to crimes committed prior to the effective date of this act.

(3) As used in this subsection, "post incarceration supervision" includes parole and postrelease supervision.

(f) The provisions of this subsection relating to parole eligibility shall be applicable to persons convicted of crimes committed prior to January 1, 1979, but shall be applicable to persons convicted of crimes committed on or after that date only to the extent that the terms of this subsection are not in conflict with the provisions of K.S.A. 22-3717 and amendments thereto. In calculating the time to be served on concurrent and consecutive sentences, the following rules shall apply:

(1) When indeterminate terms run concurrently, the shorter minimum terms merge in and are satisfied by serving the longest minimum term and the shorter maximum terms merge in and are satisfied by conditional release or discharge on the longest maximum term if the terms are imposed on the same date.

(2) When concurrent terms are imposed on different dates, computation will be made to determine which term or terms require the longest period of imprisonment to reach parole eligibility, conditional release and maximum dates, and that sentence will be considered the controlling sentence. The parole eligibility date may be computed and projected on one sentence and the conditional release date and maximum may be computed and projected from another to determine the controlling sentence.

(3) When indeterminate terms imposed on the same date are to be served consecutively, the minimum terms are added to arrive at an aggregate minimum to be served equal to the sum of all minimum terms and the maximum terms are added to arrive at an aggregate maximum equal to the sum of all maximum terms.

(4) When indeterminate sentences are imposed to be served consecutively to sentences previously imposed in any other court or the sentencing court, the aggregated minimums and maximums shall be computed from the effective date of the subsequent sentences which have been imposed as consecutive. For the purpose of determining the sentence begins date and the parole eligibility and conditional release dates, the inmate shall be given credit on the aggregate sentence for time spent imprisoned on the previous sentences, but not exceeding an amount equal to the previous minimum sentence less the maximum amount of good time credit that could have been earned on the minimum sentence. For the purpose of computing the maximum date, the inmate shall be given credit for all time spent imprisoned on the previous sentence. This method for computation of the maximum sentence shall be utilized for all sentences computed pursuant to this subsection after July 1, 1983.

Nothing in this subsection (f)(4) shall affect the authority of the Kansas parole board to determine the parole eligibility of inmates pursuant to subsection (d) of K.S.A. 22-3717 and amendments thereto.

(5) When consecutive sentences are imposed which are to be served consecutive to sentences for which a prisoner has been on probation, assigned to a community correctional services program, on parole or on conditional release, the amount of time served on probation, on assignment to a community correctional services program, on parole or on conditional release shall not be credited as service on the aggregate sentence in determining the parole eligibility, conditional release and maximum dates, except that credit shall be given for any amount of time spent in a residential facility while on probation or assignment to a community correctional residential services program.

(g) When a definite and an indefinite term run consecutively, the period of the definite term is added to both the minimum and maximum of the indeterminate term and both sentences are satisfied by serving the indeterminate term. The provisions of this subsection shall not apply to crimes committed on or after July 1, 1993.

(h) When a defendant is sentenced in a state court and is also under sentence from a federal court or other state court or is subject to sentence in a federal court or other state court for an offense committed prior to the defendant's sentence in a Kansas state court, the court may direct that custody of the defendant may be relinquished to federal or other state authorities and that such state sentences as are imposed may run

concurrently with any federal or other state sentence imposed.

Sec. 4. K.S.A. 21-4704 is hereby amended to read as follows: 21-4704. (a) For purposes of sentencing, the following sentencing guidelines grid for nondrug crimes shall be applied in felony cases for crimes committed on or after July 1, 1993:

SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 30
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	28 26 25	27 25 23	25 23 21
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	6 5 5

LEGEND
Presumptive Probation
Presumptive Imprisonment

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

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

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

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

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

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

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence upon making the following findings on the record:

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

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

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

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

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

(h) When a firearm is used to commit any person felony, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal.

(i) The sentence for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of

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

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

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

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

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

(l) ~~(1)~~ Except as provided in subsection (o), the sentence for a violation of subsection (a) of K.S.A. 21-3715 and amendments thereto when such person being sentenced has a prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-3716 and amendments thereto shall be presumed imprisonment.

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

ered a departure and shall not be subject to appeal.

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

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

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

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

(n) *The sentence for a third or subsequent violation of subsection (b) of K.S.A. 21-3705, and amendments thereto, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.*

(o) *The sentence for a felony violation of K.S.A. 21-3701 or 21-3715, and amendments thereto, when such person being sentenced has no prior convictions for a violation of K.S.A. 21-3701 or 21-3715, and amendments thereto; or the sentence for a felony violation of K.S.A. 21-3701, and amendments thereto, when such person being sentenced has one or two prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, and amendments thereto; or the sentence for a felony violation of K.S.A. 21-3715, and amendments thereto, when such person being sentenced has one prior felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, and amendments thereto, shall be the sentence as provided by this section, except that the court may order an optional nonprison sentence for a defendant to participate in a drug treatment program, including, but not limited to, an approved after-care plan, if the court makes the following findings on the record:*

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

(2) *substance abuse treatment in the community is likely to be more effective than a prison term in reducing the risk of offender recidivism; and*

(3) *participation in an intensive substance abuse treatment program will serve community safety interests.*

A defendant sentenced to an optional nonprison sentence under this subsection shall be supervised by community correctional services. The provisions of subsection (f)(1) of K.S.A. 21-4729, and amendments thereto, shall apply to a defendant sentenced under this subsection.

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

(p) *The sentence for a felony violation of K.S.A. 21-3701, and amendments thereto, when such person being sentenced has any combination of three or more prior felony convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716 and amendments thereto, or the sentence for a violation of K.S.A. 21-3715, and amendments thereto, when such person being sentenced has any combination of two or more prior convictions for violations of K.S.A. 21-3701, 21-3715 and 21-3716, and amendments thereto, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section, except that the court may recommend that an offender be placed in the custody of the secretary of corrections, in a facility designated by the secretary to participate in an intensive substance abuse treatment program, upon making the following findings on the record:*

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

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

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

The intensive substance abuse treatment program shall be determined by the secretary of corrections, but shall be for a period of at least four

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

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

Sec. 5. K.S.A. 21-4705 is hereby amended to read as follows: 21-4705. (a) For the purpose of sentencing, the following sentencing guidelines grid for drug crimes shall be applied in felony cases under the uniform controlled substances act for crimes committed on or after July 1, 1993:

SENTENCING RANGE - DRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor No. Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
III	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	30 24 23	23 22 21	19 18 17	15 15 14
IV	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
Presumptive Imprisonment

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

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

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

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

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

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

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

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

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

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

(f) (1) The sentence for a third or subsequent felony conviction of K.S.A. 65-4160 or 65-4162, and amendments thereto, shall be a presumptive term of imprisonment and the defendant shall be sentenced to prison as provided by this section; *Such term of imprisonment shall be served in a facility designated by the secretary of corrections in the custody of the secretary of corrections to participate in an intensive substance abuse treatment program. The intensive substance abuse treatment program shall be determined by the secretary of corrections, but shall be for a period of at least four months. Upon the successful completion of such intensive treatment program, the offender shall be returned to the court and the court may modify the sentence by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits. If the offender's term of imprisonment expires, the offender shall be placed under the applicable period of postrelease supervision.*

(2) If the defendant has previously completed a certified drug abuse treatment program, as provided in K.S.A. 2007 Supp. 75-52,144, and

amendments thereto, ~~or~~ has been discharged or refused to participate in a certified drug abuse treatment program, as provided in K.S.A. 2007 Supp. 75-52,144, and amendments thereto, *has completed an intensive substance abuse treatment program under paragraph (1) or has been discharged or refused to participate in an intensive substance abuse treatment program under paragraph (1), such defendant's term of imprisonment shall not be subject to modification under paragraph (1).*

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

Sec. 6. K.S.A. 21-4714 is hereby amended to read as follows: 21-4714. (a) The court shall order the preparation of the presentence investigation report by the court services officer as soon as possible after conviction of the defendant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 7. K.S.A. 21-4719 is hereby amended to read as follows: 21-4719. (a) When a departure sentence is appropriate, the sentencing judge may depart from the sentencing guidelines as provided in this section. *The sentencing judge shall not impose a downward dispositional departure sentence for any crime of extreme sexual violence, as defined in K.S.A. 21-4716, and amendments thereto. The sentencing judge shall not impose a downward durational departure sentence for any crime of extreme sexual violence, as defined in K.S.A. 21-4716, and amendments thereto, to less than 50% of the center of the range of the sentence for such crime.*

(b) When a sentencing judge departs in setting the duration of a presumptive term of imprisonment: (1) The judge shall consider and apply the enacted purposes and principles of sentencing guidelines to impose a sentence which is proportionate to the severity of the crime of conviction and the offender's criminal history; and

(2) the presumptive term of imprisonment set in such departure shall not total more than double the maximum duration of the presumptive imprisonment term.

(c) When a sentencing judge imposes a prison term as a dispositional departure: (1) The judge shall consider and apply the enacted purposes and principles of sentencing guidelines to impose a sentence which is proportionate to the severity of the crime of conviction; and

(2) the term of imprisonment shall not exceed the maximum duration of the presumptive imprisonment term listed within the sentencing grid. Any sentence inconsistent with the provisions of this section shall constitute an additional departure and shall require substantial and compelling reasons independent of the reasons given for the dispositional departure.

(d) If the sentencing judge imposes a nonprison sentence as a dispositional departure from the guidelines, the recommended duration shall be as provided in subsection (c) of K.S.A. 21-4611 and amendments thereto.

Sec. 8. K.S.A. 22-3716 is hereby amended to read as follows: 22-3716. (a) At any time during probation, assignment to a community correctional services program, suspension of sentence or pursuant to subsection (d) for defendants who committed a crime prior to July 1, 1993, and at any time during which a defendant is serving a nonprison sanction for a crime committed on or after July 1, 1993, or pursuant to subsection (d), the court may issue a warrant for the arrest of a defendant for violation of any of the conditions of release or assignment, a notice to appear to answer to a charge of violation or a violation of the defendant's nonprison sanction. The notice shall be personally served upon the defendant. The warrant shall authorize all officers named in the warrant to return the defendant to the custody of the court or to any certified detention facility designated by the court. Any court services officer or community correctional services officer may arrest the defendant without a warrant or may deputize any other officer with power of arrest to do so by giving the officer a written *or verbal* statement setting forth that the defendant has, in the judgment of the court services officer or community correctional services officer, violated the conditions of the defendant's release or a nonprison sanction. ~~The A written statement delivered with the defendant by the arresting officer~~ to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the defendant. After making an arrest, the court services officer or community correctional services officer shall present to the detaining authorities a similar statement of the circumstances of violation. Provisions regarding release on bail of persons charged with a crime shall be applicable to defendants arrested under these provisions.

(b) Upon arrest and detention pursuant to subsection (a), the court services officer or community correctional services officer shall immediately notify the court and shall submit in writing a report showing in what manner the defendant has violated the conditions of release or assignment or a nonprison sanction. Thereupon, or upon an arrest by warrant as provided in this section, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing shall be in open court and the state shall have the burden of establishing the violation. The defendant shall have the right to be represented by counsel and shall be informed by the judge that, if the defendant is financially unable to obtain counsel, an attorney will be appointed to represent the defendant. The defendant shall have the right to present the testimony of witnesses and other evidence on the defendant's behalf. Relevant written statements made under oath may be admitted and considered by the court along with other evidence presented at the hearing. Except as otherwise provided, if the violation is established, the court may continue or revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction and may require the defendant to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed. Except as otherwise provided, no offender for whom a violation of conditions of release or assignment or a nonprison sanction has been established as provided in this section shall be required to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections for such violation, unless such person has already at least one prior assignment to a community correctional services program related to the crime for which the original sentence was imposed, except these provisions shall not apply to offenders who violate a condition of release or assignment or a nonprison sanction by committing a new misdemeanor or felony offense. The provisions of this subsection shall not apply to adult felony offenders as described in subsection (a)(3) of K.S.A. 75-5291, and amendments thereto. The court may require an offender for whom a violation of conditions of release or assignment or a nonprison sanction has been established as provided in this section to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections without a prior assignment to a community correctional services program if the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will be jeopardized or that the welfare of the inmate will not be served by such assignment to a community correctional services program. When a new felony is committed while the offender is on probation or assignment to a community correctional services program, the new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608 and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

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

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

(e) Notwithstanding the provisions of any other law to the contrary, an offender whose nonprison sanction is revoked and a term of impris-

onment imposed pursuant to either the sentencing guidelines grid for nondrug or drug crimes shall not serve a period of postrelease supervision upon the completion of the prison portion of that sentence. The provisions of this subsection shall not apply to offenders sentenced to a nonprison sanction pursuant to a dispositional departure, whose offense falls within a border box of either the sentencing guidelines grid for nondrug or drug crimes, offenders sentenced for a "sexually violent crime" as defined by K.S.A. 22-3717, and amendments thereto, or whose nonprison sanction was revoked as a result of a conviction for a new misdemeanor or felony offense. The provisions of this subsection shall not apply to offenders who are serving or are to begin serving a sentence for any other felony offense that is not excluded from postrelease supervision by this subsection on the effective date of this subsection. The provisions of this subsection shall be applied retroactively. The department of corrections shall conduct a review of all persons who are in the custody of the department as a result of only a revocation of a nonprison sanction. On or before September 1, 2000, the department shall have discharged from postrelease supervision those offenders as required by this subsection.

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

Sec. 9. K.S.A. 2007 Supp. 74-9501 is hereby amended to read as follows: 74-9501. (a) There is hereby established the Kansas criminal justice coordinating council.

(b) The council shall consist of the governor or designee, the chief justice of the supreme court or designee, the attorney general or designee, the secretary of corrections, the superintendent of the highway patrol, the commissioner of juvenile justice and the director of the Kansas bureau of investigation.

(c) The governor shall designate staff to the Kansas criminal justice coordinating council. The staff shall attend all meetings of the council, be responsible for keeping a record of council meetings, prepare reports of the council and perform such other duties as directed by the council.

(d) The council shall elect a chairperson and vice-chairperson from among the members of the council.

(e) The council shall:

(1) Appoint a standing local government advisory group to consult and advise the council concerning local government criminal justice issues and the impact of state criminal justice policy and decisions on local units of government. The advisory group shall consist of a sheriff, chief of police, county or district attorney, a member of a city governing body and a county commissioner. Appointees to such advisory group shall serve without compensation or reimbursement for travel and subsistence or any other expenses;

(2) Define and analyze issues and processes in the criminal justice system, identify alternative solutions and make recommendations for improvements;

(3) Perform such criminal justice studies or tasks as requested by the governor, the attorney general, the legislature or the chief justice, as deemed appropriate or feasible by the council;

(4) Oversee development and management of a criminal justice database. All criminal justice agencies as defined in subsection (c) of K.S.A. 22-4701 and amendments thereto and the juvenile justice authority shall provide any data or information, including juvenile offender information which is requested by the council, in a form and manner established by the council, in order to facilitate the development and management of the criminal justice council database;

(5) Develop and oversee reporting of all criminal justice federal funding available to the state or local units of government including assuming the designation and functions of administering the United States bureau of justice assistance grants;

(6) Form such task groups as necessary and appoint individuals who appropriately represent law enforcement, the judiciary, legal profession, state, local, or federal government, the public, or other professions or groups as determined by the council, to represent the various aspects of

the issue being analyzed or studied, when analyzing criminal justice issues and performing criminal justice studies. Members of the legislature may be appointed ex officio members to such task groups. A member of the council shall serve as the chairperson of each task group appointed by the council. The council may appoint other members of the council to any task group formed by the council.

(7) Review reports submitted by each task group named by the council and shall submit the report with the council's recommendations pertaining thereto to the governor, the attorney general, the chief justice of the supreme court, the chief clerk of the house of representatives and the secretary of the senate, ~~and~~.

(8) (A) Establish the sex offender policy board to consult and advise the council concerning issues and policies pertaining to the treatment, sentencing, rehabilitation, reintegration and supervision of sex offenders.

(B) The sex offender policy board shall consist of the secretary of corrections, the commissioner of juvenile justice, the secretary of social and rehabilitation services, the director of the Kansas bureau of investigation and the chief justice of the supreme court or the chief justice's designee and two persons appointed by the criminal justice coordinating council. Of the persons appointed by the criminal justice coordinating council, one shall be a mental health service provider and the other shall be engaged in the provision of services involving child welfare or crime victims.

(C) Each member of the board shall receive compensation, subsistence allowances, mileage and other expenses as provided for in K.S.A. 75-3223, and amendments thereto, except that the public members of the board shall receive compensation in the amount provided for legislators pursuant to K.S.A. 75-3212, and amendments thereto, for each day or part thereof actually spent on board activities. No per diem compensation shall be paid under this subsection to salaried state, county or city officers or employees.

(D) The sex offender policy board shall elect a chairperson from its membership and shall meet upon the call of its chairperson as necessary to carry out its duties.

(E) Each appointed member of the sex offender policy board shall be appointed for a term of two years and shall continue to serve during that time as long as the member occupies the position which made the member eligible for the appointment. Each member shall continue in office until a successor is appointed and qualifies. Members shall be eligible for reappointment, and appointment may be made to fill an unexpired term.

(F) The board shall submit its reports to the criminal justice coordinating council and to the governor, the attorney general, the chief justice of the supreme court, the chief clerk of the house of representatives and the secretary of the senate.

(i) The board shall submit a report regarding public notification pertaining to sex offenders, restrictions on the residence of released sex offenders, utilization of electronic monitoring, and the management of juvenile sex offenders by the first day of the 2007 legislative session.

(ii) The board shall submit a report regarding treatment and supervision standards for sex offenders, suitability of lifetime release supervision and safety education and prevention strategies for the public by the first day of the 2008 legislative session.

(iii) The board shall submit reports regarding any other studies, issues or policy recommendations as completed.

(G) The sex offender policy board established pursuant to subsection (e)(8) of this section shall expire on June 30, ~~2008~~ 2011.

(9) (A) *Establish the substance abuse policy board to consult and advise the council concerning issues and policies pertaining to the treatment, sentencing, rehabilitation and supervision of substance abuse offenders. The board shall specifically analyze and study driving under the influence and the use of drug courts by other states.*

(B) *The substance abuse policy board shall consist of the secretary of corrections, the commissioner of juvenile justice, the secretary of social and rehabilitation services, the director of the Kansas bureau of investigation, the chief justice of the supreme court or the chief justice's designee, a member of the Kansas sentencing commission, a prosecutor appointed by the Kansas county and district attorneys association, and two persons appointed by the Kansas association of addiction professionals. Of the*

persons appointed by the Kansas association of addiction professionals, one shall be an addiction counselor and the other shall be a professional program administrator.

(C) Each member of the board shall receive compensation, subsistence allowances, mileage and other expenses as provided for in K.S.A. 75-3223, and amendments thereto, except that the public members of the board shall receive compensation in the amount provided for legislators pursuant to K.S.A. 75-3212, and amendments thereto, for each day or part thereof actually spent on board activities. No per diem compensation shall be paid under this subsection to salaried state, county or city officers or employees.

(D) The substance abuse policy board shall elect a chairperson from its membership and shall meet upon the call of its chairperson as necessary to carry out its duties.

(E) Each appointed member of the substance abuse policy board shall be appointed for a term of two years and shall continue to serve during that time as long as the member occupies the position which made the member eligible for the appointment. Each member shall continue in office until a successor is appointed and qualifies. Members shall be eligible for reappointment, and appointment may be made to fill an unexpired term.

(F) The board shall submit its reports to the criminal justice coordinating council and to the governor, the attorney general, the chief justice of the supreme court, the chief clerk of the house of representatives and the secretary of the senate.

Sec. 10. K.S.A. 2007 Supp. 75-5210 is hereby amended to read as follows: 75-5210. (a) Persons committed to the institutional care of the secretary of corrections shall be dealt with humanely, with efforts directed to their rehabilitation and return to the community as safely and promptly as practicable. For these purposes, the secretary shall establish programs of classification and diagnosis, education, casework, mental health, counseling and psychotherapy, chemical dependency counseling and treatment, sexual offender counseling, prerelease programs which emphasize re-entry skills, adjustment counseling and job placement, vocational training and guidance, work, library, physical education and other rehabilitation and recreation services; the secretary may establish facilities for religious worship; and the secretary shall institute procedures for the study and classification of inmates. The secretary shall maintain a comprehensive record of the behavior of each inmate reflecting accomplishments and progress toward rehabilitation as well as charges of infractions of rules and regulations, punishments imposed and medical inspections made.

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

(c) The secretary, with the cooperation of the department of health and environment, shall adopt rules and regulations establishing and pre-

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

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

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

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

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

(g) A copy of the rules and regulations adopted pursuant to subsection (f) shall be provided to each inmate. Other rules and regulations of the secretary which are required to be published pursuant to K.S.A. 77-415 through 77-437, and amendments thereto, shall be made available to inmates by placing a copy in the inmate library at the institution or by some other means providing reasonable accessibility to inmates.

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

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

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

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

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

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

Sec. 11. K.S.A. 2007 Supp. 75-5217 is hereby amended to read as follows: 75-5217. (a) At any time during release on parole, conditional release or postrelease supervision, the secretary of corrections may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the released inmate. The warrant shall authorize any law enforcement officer to arrest and deliver the released inmate to a place as provided by subsection (g). Any parole officer may arrest such released inmate without a warrant, or may

deputize any other officer with power of arrest to do so by giving such officer a written *or verbal* arrest and detain order setting forth that the released inmate, in the judgment of the parole officer, has violated the conditions of the inmate's release. ~~The A written arrest and detain order delivered with the released inmate by the arresting officer~~ to the official in charge of the institution or place to which the released inmate is brought for detention shall be sufficient warrant for detaining the inmate. After making an arrest the parole officer shall present to the detaining authorities a similar arrest and detain order and statement of the circumstances of violation. Pending a hearing, as provided in this section, upon any charge of violation the released inmate shall remain incarcerated in the institution or place to which the inmate is taken for detention.

(b) Upon such arrest and detention, the parole officer shall notify the secretary of corrections, or the secretary's designee, within five days and shall submit in writing a report showing in what manner the released inmate had violated the conditions of release. After such notification is given to the secretary of corrections, or upon an arrest by warrant as herein provided, and the finding of probable cause pursuant to procedures established by the secretary of a violation of the released inmate's conditions of release, the secretary or the secretary's designee may cause the released inmate to be brought before the Kansas parole board, its designee or designees, for a hearing on the violation charged, under such rules and regulations as the board may adopt, or may dismiss the charges that the released inmate has violated the conditions of release and order the released inmate to remain on parole, conditional release or post release supervision. It is within the discretion of the Kansas parole board whether such hearing requires the released inmate to appear personally before the board when such inmate's violation results from a conviction for a new felony or misdemeanor. An offender under determinative sentencing whose violation does not result from a conviction of a new felony or misdemeanor may waive the right to a final revocation hearing before the Kansas parole board under such conditions and terms as may be prescribed by rules and regulations promulgated by the Kansas parole board. Relevant written statements made under oath shall be admitted and considered by the Kansas parole board, its designee or designees, along with other evidence presented at the hearing. If the violation is established to the satisfaction of the Kansas parole board, the board may continue or revoke the parole or conditional release, or enter such other order as the board may see fit. The revocation of release of inmates who are on a specified period of postrelease supervision shall be for a six-month period of confinement from the date of the revocation hearing before the board or the effective date of waiver of such hearing by the offender pursuant to rules and regulations promulgated by the Kansas parole board, if the violation does not result from a conviction for a new felony or misdemeanor. Such period of confinement may be reduced by not more than three months based on the inmate's conduct, work and program participation during the incarceration period. The reduction in the incarceration period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(c) If the violation results from a conviction for a new felony, upon revocation, the inmate shall serve the entire remaining balance of the period of postrelease supervision even if the new conviction did not result in the imposition of a new term of imprisonment.

(d) If the violation results from a conviction for a new misdemeanor, upon revocation, the inmate shall serve a period of confinement, to be determined by the Kansas parole board, which shall not exceed the remaining balance of the period of postrelease supervision.

(e) In the event the released inmate reaches conditional release date as provided by K.S.A. 22-3718 and amendments thereto after a finding of probable cause, pursuant to procedures established by the secretary of corrections of a violation of the released inmate's conditions of release, but prior to a hearing before the Kansas parole board, the secretary of corrections shall be authorized to detain the inmate until the hearing by the Kansas parole board. The secretary shall then enforce the order issued by the Kansas parole board.

(f) If the secretary of corrections issues a warrant for the arrest of a released inmate for violation of any of the conditions of release and the released inmate is subsequently arrested in the state of Kansas, either pursuant to the warrant issued by the secretary of corrections or for any

other reason, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the secretary's warrant to the date of the released inmate's arrest.

If a released inmate for whom a warrant has been issued by the secretary of corrections for violation of the conditions of release is subsequently arrested in another state, and the released inmate has been authorized as a condition of such inmate's release to reside in or travel to the state in which the released inmate was arrested, and the released inmate has not absconded from supervision, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the warrant to the date of the released inmate's arrest. If the released inmate for whom a warrant has been issued by the secretary of corrections for violation of the conditions of release is subsequently arrested in another state for reasons other than the secretary's warrant and the released inmate does not have authorization to be in the other state or if authorized to be in the other state has been charged by the secretary with having absconded from supervision, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the warrant by the secretary to the date the released inmate is first available to be returned to the state of Kansas. If the released inmate for whom a warrant has been issued by the secretary of corrections for violation of a condition of release is subsequently arrested in another state pursuant only to the secretary's warrant, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the secretary's warrant to the date of the released inmate's arrest, regardless of whether the released inmate's presence in the other state was authorized or the released inmate had absconded from supervision.

The secretary may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release and may direct that all reasonable means to serve the warrant and detain such released inmate be employed including but not limited to notifying the federal bureau of investigation of such violation and issuance of warrant and requesting from the federal bureau of investigation any pertinent information it may possess concerning the whereabouts of the released inmate.

(g) Law enforcement officers shall execute warrants issued by the secretary of corrections, and shall deliver the inmate named in the warrant to the jail used by the county where the inmate is arrested unless some other place is designated by the secretary, in the same manner as for the execution of any arrest warrant.

(h) For the purposes of this section, an inmate or released inmate is an individual under the supervision of the secretary of corrections, including, but not limited to, an individual on parole, conditional release, postrelease supervision, probation granted by another state or an individual supervised under any interstate compact in accordance with the provisions of the uniform act for out-of-state parolee supervision, K.S.A. 22-4101 et seq. and amendments thereto.

Sec. 12. K.S.A. 2007 Supp. 75-5220 is hereby amended to read as follows: 75-5220. (a) Except as provided in subsection (d), within three business days of receipt of the notice provided for in K.S.A. 75-5218 and amendments thereto, the secretary of corrections shall notify the sheriff having such offender in custody to convey such offender immediately to the department of corrections reception and diagnostic unit or if space is not available at such facility, then to some other state correctional institution until space at the facility is available, except that, in the case of first offenders who are conveyed to a state correctional institution other than the reception and diagnostic unit, such offenders shall be segregated from the inmates of such correctional institution who are not being held in custody at such institution pending transfer to the reception and diagnostic unit when space is available therein. The expenses of any such conveyance shall be charged against and paid out of the general fund of the county whose sheriff conveys the offender to the institution as provided in this subsection.

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

to such institution.

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

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

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

Sec. 13. K.S.A. 21-3702, 21-3705, 21-4608, 21-4704, 21-4704b, 21-4705, 21-4714, 21-4719 and 22-3716 and K.S.A. 2007 Supp. 74-9501, 75-5210, 75-5217 and 75-5220 are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 22, 2008.
