

As Amended by House Committee

Session of 2011

HOUSE BILL No. 2319

By Committee on Corrections and Juvenile Justice

2-11

1 AN ACT concerning crimes, criminal procedure and punishment;
2 relating to house arrest; amending **K.S.A. 2010 Supp. 12-4509 and**
3 sections 249 and 285 of chapter 136 of the 2010 Sessions Laws of
4 Kansas and repealing the existing sections; **also repealing K.S.A.**
5 **2010 Supp. 21-4704.**
6

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

8 **Section 1. K.S.A. 2010 Supp. 12-4509 is hereby amended to**
9 **read as follows: 12-4509. (a) Whenever a person is found guilty of**
10 **the violation of an ordinance, the municipal judge may:**

11 **(1) Release the person without imposition of sentence;**

12 **(2) release the person on probation after the imposition of**
13 **sentence, without imprisonment or the payment of a fine or a**
14 **portion thereof, subject to conditions imposed by the court as**
15 **provided in subsection (e); or**

16 **(3) impose such sentence of fine or imprisonment, or both, as**
17 **authorized for the ordinance violation; or**

18 *(4) impose a sentence of house arrest as provided in section 249 of*
19 *chapter 136 of the 2010 Session Laws of Kansas, and amendments*
20 *thereto.*

21 **(b) In addition to or in lieu of any other sentence authorized by**
22 **law, whenever a person is found guilty of the violation of an**
23 **ordinance and there is evidence that the act constituting the**
24 **violation of the ordinance was substantially related to the**
25 **possession, use or ingestion of cereal malt beverage or alcoholic**
26 **liquor by such person, the judge may order such person to attend**
27 **and satisfactorily complete an alcohol or drug education or**
28 **training program certified by the chief judge of the judicial district**
29 **or licensed by the secretary of social and rehabilitation services.**

30 **(c) Except as provided in subsection (d), in addition to or in**
31 **lieu of any other sentence authorized by law, whenever a person is**
32 **convicted of having violated, while under 21 years of age, an**
33 **ordinance prohibiting an act prohibited by K.S.A. 2010 Supp. 21-**

1 36a01 through 21-36a17, and amendments thereto, or K.S.A. 8-
2 1599, 41-719 or 41-727, and amendments thereto, the municipal
3 judge shall order such person to submit to and complete an alcohol
4 and drug evaluation by a community-based alcohol and drug safety
5 action program certified pursuant to K.S.A. 8-1008, and
6 amendments thereto, and to pay a fee not to exceed the fee
7 established by that statute for such evaluation. If the judge finds
8 that the person is indigent, the fee may be waived.

9 (d) If the person is 18 or more years of age but less than 21
10 years of age and is convicted of a violation of K.S.A. 41-727, and
11 amendments thereto, involving cereal malt beverage, the provisions
12 of subsection (c) are permissive and not mandatory.

13 (e) The court may impose any conditions of probation or
14 suspension of sentence that the court deems proper, including, but
15 not limited to, requiring that the defendant:

16 (1) Avoid such injurious or vicious habits, as directed by the
17 court or the probation officer;

18 (2) avoid such persons or places of disreputable or harmful
19 character, as directed by the court or the probation officer;

20 (3) report to the probation officer as directed;

21 (4) permit the probation officer to visit the defendant at home
22 or elsewhere;

23 (5) work faithfully at suitable employment insofar as possible;

24 (6) remain within the state unless the court grants permission
25 to leave;

26 (7) pay a fine or costs, applicable to the ordinance violation, in
27 one or several sums and in the manner as directed by the court;

28 (8) support the defendant's dependents;

29 (9) reside in a residential facility located in the community and
30 participate in educational counseling, work and other correctional
31 or rehabilitative programs;

32 (10) perform community or public service work for local
33 governmental agencies, private corporations organized not for
34 profit, or charitable or social service organizations performing
35 services for the community;

36 (11) perform services under a system of day fines whereby the
37 defendant is required to satisfy fines, costs or reparation or
38 restitution obligations by performing services for a period of days
39 determined by the court on the basis of ability to pay, standard of

- 1 **living, support obligations and other factors;**
2 **(12) make reparation or restitution to the aggrieved party for**
3 **the damage or loss caused by the defendant's crime, in an amount**
4 **and manner determined by the court and to the person specified by**
5 **the court; or**
6 **(13) reimburse the city, in accordance with any order made**
7 **under subsection (f), for all or a part of the reasonable expenditures**
8 **by the city to provide counsel and other defense services to the**
9 **defendant.**
10 **(f) In addition to or in lieu of any other sentence authorized by**
11 **law, whenever a person is found guilty of the violation of an**
12 **ordinance the judge may order such person to reimburse the city**
13 **for all or a part of the reasonable expenditures by the city to**
14 **provide counsel and other defense services to the defendant. In**
15 **determining the amount and method of payment of such sum, the**
16 **court shall take account of the financial resources of the defendant**
17 **and the nature of the burden that payment of such sum will**
18 **impose. A defendant who has been required to pay such sum and**
19 **who is not willfully in default in the payment thereof may at any**
20 **time petition the court which sentenced the defendant to waive**
21 **payment of such sum or of any unpaid portion thereof. If it appears**
22 **to the satisfaction of the court that payment of the amount due will**
23 **impose manifest hardship on the defendant or the defendant's**
24 **immediate family, the court may waive payment of all or part of**
25 **the amount due or modify the method of payment.**
26 ~~Section 1.~~ **Sec. 2.** Section 249 of chapter 136 of the 2010 Session
27 Laws of Kansas is hereby amended to read as follows: Sec. 249.
28 (a) The court or the secretary of corrections may implement
29 a house arrest program for defendants or inmates being
30 sentenced by the court or in the custody of the secretary of
31 corrections, except:
32 (1) No defendant shall be placed by the court under house arrest if
33 found guilty of:
34 (A) Any crime designated as a class A or B felony in article 34 or
35 35 of the Kansas Statutes Annotated, prior to their repeal;
36 (B) subsection (b) of section 81 *of chapter 136 of the 2010 Session*
37 *Laws of Kansas*, and amendments thereto; ~~or~~
38 (C) section 79 *of chapter 136 of the 2010 Session Laws of Kansas*,

1 and amendments thereto; or

2 **(D) an off-grid felony or any nondrug crime ranked in**
3 **severity levels 1 through 5 or any felony ranked in severity levels 1**
4 **through 3 of the drug grid;**

5 (2) no inmate shall be placed under house arrest if such inmate's
6 security status is greater than minimum security; or

7 (3) no inmate shall be placed under house arrest who has been
8 denied parole by the parole board within the last 6 months. Any inmate
9 who, while participating in the house arrest program, is denied parole
10 by the parole board shall be allowed to remain under house arrest until
11 the completion of the sentence or until the inmate is otherwise removed
12 from the program.

13 (b) Prior to the placement of an inmate under house arrest, the
14 court or secretary shall provide written notification to the sheriff and
15 district or county attorney of the county in which any person under
16 house arrest is to be placed and to the chief law enforcement officer of
17 any incorporated city or town in which such person is to be placed of
18 the placement of the person under house arrest within the county or
19 incorporated city or town.

20 (c) House arrest sanctions shall be administered by the court and
21 the secretary of corrections, respectively, through rules and regulations,
22 and may include, but are not limited to, rehabilitative restitution in
23 money or in kind, curfew, revocation or suspension of the driver's
24 license, community service, deprivation of nonessential activities or
25 privileges, or other appropriate restraints on the inmate's liberty.

26 (d) *The court shall inform the offender, and any other people*
27 *residing with such offender at the time the order of house arrest is*
28 *entered, of the nature and extent of such house arrest monitoring, and*
29 *shall obtain the written agreement of such offender to comply with all*
30 *requirements of the program.*

31 (e) *The offender shall remain within the property boundaries of*
32 *the offender's residence at all times during the term of house arrest,*
33 *except as provided under the house arrest agreement with such*
34 *offender.*

35 (f) *The offender shall allow any law enforcement officer,*
36 *community corrections officer, court services officer or duly authorized*
37 *agent of the department of corrections, to enter such offender's*
38 *residence at any time to verify the offender's compliance with the*
39 *conditions of the house release.*

1 (g) **(1)** *The offender shall consent to be monitored by:*
2 ~~(A)~~ **(A)** *An electronic monitoring device on such offender's person;*
3 ~~(B)~~ **(B)** *an electronic monitoring device in such offender's home;*
4 ~~(C)~~ **(C)** *a remote blood alcohol monitoring device;*
5 ~~(D)~~ **(D)** *a home telephone verification procedure;*
6 ~~(E)~~ **(E)** *radio frequency devices; or*
7 ~~(F)~~ **(F)** *any combination of monitoring methods as the court finds*
8 *necessary.*

9 **(2) Radio frequency devices shall only be used if there is no**
10 **available means of global positioning system technology in such**
11 **location at such time.**

12 *(h) The secretary or the court may contract for independent*
13 *monitoring services. Such independent monitoring service shall be*
14 *able to provide monitoring 24 hours a day, every day of the year, and*
15 *any other services as determined by the secretary.*

16 *(i) As used in this section:*

17 *(1) "Electronic monitoring device" means an active global*
18 *positioning system-enabled device capable of recording and*
19 *transmitting an offender's location at all times. Such monitoring*
20 *device may record or transmit sound, visual images or other*
21 *information regarding such offender's location, via wireless*
22 *communication; and*

23 *(2) "remote alcohol monitoring device" means a device capable of*
24 *continuously monitoring an offender's blood alcohol content via micro*
25 *fuel cell or deep lung tissue sample. Such monitoring devices shall be*
26 *of comparable accuracy to roadside breath alcohol testing devices*
27 *utilized by law enforcement, and shall have wireless transmission*
28 *capabilities. Such device may be used in conjunction with an alcohol*
29 *and drug sensing bracelet to monitor such offender's compliance with*
30 *the terms of house arrest.*

31 **Sec. 2. 3.** Section 285 of chapter 136 of the 2010 Session Laws of
32 Kansas is hereby amended to read as follows: Sec. 285. (a) The
33 provisions of this section shall be applicable to the sentencing
34 guidelines grid for nondrug crimes. The following sentencing
35 guidelines grid shall be applicable to nondrug felony crimes:

36 (b) Sentences expressed in the sentencing guidelines grid for
37 nondrug crimes represent months of imprisonment.

38 (c) The sentencing guidelines grid is a two-dimensional crime
39 severity and criminal history classification tool. The grid's vertical axis

1 is the crime severity scale which classifies current crimes of conviction.
2 The grid's horizontal axis is the criminal history scale which classifies
3 criminal histories.

4 (d) The sentencing guidelines grid for nondrug crimes as provided
5 in this section defines presumptive punishments for felony convictions,
6 subject to the sentencing court's discretion to enter a departure
7 sentence. The appropriate punishment for a felony conviction should
8 depend on the severity of the crime of conviction when compared to all
9 other crimes and the offender's criminal history.

10 (e) (1) The sentencing court has discretion to sentence at any
11 place within the sentencing range. In the usual case it is recommended
12 that the sentencing judge select the center of the range and reserve the
13 upper and lower limits for aggravating and mitigating factors
14 insufficient to warrant a departure.

15 (2) In presumptive imprisonment cases, the sentencing court shall
16 pronounce the complete sentence which shall include the:

17 (A) Prison sentence;

18 (B) maximum potential reduction to such sentence as a result of
19 good time; and

20 (C) period of postrelease supervision at the sentencing hearing.
21 Failure to pronounce the period of postrelease supervision shall not
22 negate the existence of such period of postrelease supervision.

23 (3) In presumptive nonprison cases, the sentencing court shall
24 pronounce the:

25 (A) Prison sentence; and

26 (B) duration of the nonprison sanction at the sentencing hearing.

27 (f) Each grid block states the presumptive sentencing range for an
28 offender whose crime of conviction and criminal history place such
29 offender in that grid block. If an offense is classified in a grid block
30 below the dispositional line, the presumptive disposition shall be
31 nonimprisonment. If an offense is classified in a grid block above the
32 dispositional line, the presumptive disposition shall be imprisonment. If
33 an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may
34 impose an optional nonprison sentence as provided in subsection (q).

35 (g) The sentence for a violation of ~~section 48, and amendments~~
36 ~~thereto, K.S.A. 21-3415, prior to its repeal~~, aggravated battery against a
37 law enforcement officer committed prior to July 1, 2006, or a violation
38 of *subsection (d) of section 47 of chapter 136 of the 2010 Session Laws*
39 *of Kansas*, and amendments thereto, aggravated assault against a law

1 enforcement officer, which places the defendant's sentence in grid
2 block 6-H or 6-I shall be presumed imprisonment. The court may
3 impose an optional nonprison sentence as provided in subsection (q).

4 (h) When a firearm is used to commit any person felony, the
5 offender's sentence shall be presumed imprisonment. The court may
6 impose an optional nonprison sentence as provided in subsection (q).

7 (i) (l) The sentence for the violation of the felony provision of
8 K.S.A. 8-1567, subsection (b)(3) of section 49 *of chapter 136 of the*
9 *2010 Session Laws of Kansas*, subsections (b)(3) and (b)(4) of section
10 *109 of chapter 136 of the 2010 Session Laws of Kansas*, section 223 *of*
11 *chapter 136 of the 2010 Session Laws of Kansas* and section 227 *of*
12 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
13 thereto, shall be as provided by the specific mandatory sentencing
14 requirements of that section and shall not be subject to the provisions of
15 this section or section 288 *of chapter 136 of the 2010 Session Laws of*
16 *Kansas*, and amendments thereto.

17 (2) If because of the offender's criminal history classification the
18 offender is subject to presumptive imprisonment or if the judge departs
19 from a presumptive probation sentence and the offender is subject to
20 imprisonment, the provisions of this section and section 288 *of chapter*
21 *136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall
22 apply and the offender shall not be subject to the mandatory sentence as
23 provided in section 109 *of chapter 136 of the 2010 Session Laws of*
24 *Kansas*, and amendments thereto.

25 (3) Notwithstanding the provisions of any other section, the term
26 of imprisonment imposed for the violation of the felony provision of
27 K.S.A. 8-1567, subsection (b)(3) of section 49 *of chapter 136 of the*
28 *2010 Session Laws of Kansas*, subsections (b)(3) and (b)(4) of section
29 *109 of chapter 136 of the 2010 Session Laws of Kansas*, section 223
30 and section 227 *of chapter 136 of the 2010 Session Laws of Kansas*,
31 and amendments thereto, shall not be served in a state facility in the
32 custody of the secretary of corrections, except that the term of
33 imprisonment for felony violations of K.S.A. 8-1567, and amendments
34 thereto, may be served in a state correctional facility designated by the
35 secretary of corrections if the secretary determines that substance abuse
36 treatment resources and facility capacity is available. The secretary's
37 determination regarding the availability of treatment resources and
38 facility capacity shall not be subject to review. *Prior to imposing any*
39 *sentence pursuant to this subsection, the court shall may consider*

1 *assigning the defendant to a house arrest program pursuant to section*
2 *249 of the 2010 Session Laws of Kansas, and amendments thereto.*

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

10 (2) Except as otherwise provided in this subsection, as used in this
11 subsection, "persistent sex offender" means a person who:

12 (A) (i) Has been convicted in this state of a sexually violent
13 crime, as defined in K.S.A. 22-3717, and amendments thereto; and

14 (ii) at the time of the conviction under ~~paragraph~~ *subsection (j)(2)*
15 (A)(i) has at least one conviction for a sexually violent crime, as
16 defined in K.S.A. 22-3717, and amendments thereto, in this state or
17 comparable felony under the laws of another state, the federal
18 government or a foreign government; or

19 (B) (i) has been convicted of rape, as defined in K.S.A. 21-3502,
20 prior to its repeal, or section 67 of chapter 136 of the 2010 Session
21 *Laws of Kansas*, and amendments thereto; and

22 (ii) at the time of the conviction under ~~paragraph~~ *subsection (j)(2)*
23 (B)(i) has at least one conviction for rape in this state or comparable
24 felony under the laws of another state, the federal government or a
25 foreign government.

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

29 (k) (1) If it is shown at sentencing that the offender committed
30 any felony violation for the benefit of, at the direction of, or in
31 association with any criminal street gang, with the specific intent to
32 promote, further or assist in any criminal conduct by gang members,
33 the offender's sentence shall be presumed imprisonment. The court may
34 impose an optional nonprison sentence as provided in subsection (q).

35 (2) As used in this subsection, "criminal street gang" means any
36 organization, association or group of three or more persons, whether
37 formal or informal, having as one of its primary activities:

38 (A) The commission of one or more person felonies; or

39 (B) the commission of felony violations of K.S.A. ~~2009~~ 2010

1 Supp. 21-36a01 through 21-36a17, and amendments thereto; and
2 (C) its members have a common name or common identifying
3 sign or symbol; and

4 (D) its members, individually or collectively, engage in or have
5 engaged in the commission, attempted commission, conspiracy to
6 commit or solicitation of two or more person felonies or felony
7 violations of K.S.A. ~~2009~~ 2010 Supp. 21-36a01 through 21-36a17, and
8 amendments thereto, or any substantially similar offense from another
9 jurisdiction.

10 (l) Except as provided in subsection (o), the sentence for a
11 violation of subsection (a)(1) of section 93 *of chapter 136 of the 2010*
12 *Session Laws of Kansas*, and amendments thereto, *or any attempt or*
13 *conspiracy, as defined in sections 33 and 34 of chapter 136 of the 2010*
14 *Session Laws of Kansas, and amendments thereto, to commit such*
15 *offense*, when such person being sentenced has a prior conviction for a
16 violation of subsection (a) or (b) of K.S.A. 21-3715, prior to its repeal,
17 21-3716, prior to its repeal, subsection (a)(1) or (a)(2) of section 93 *of*
18 *chapter 136 of the 2010 Session Laws of Kansas*, or subsection (b) of
19 section 93 *of chapter 136 of the 2010 Session Laws of Kansas*, and
20 amendments thereto, *or any attempt or conspiracy to commit such*
21 *offense*, shall be ~~presumed~~ *presumptive* imprisonment.

22 (m) The sentence for a violation of K.S.A 22-4903 or subsection
23 (a)(2) of section 138 *of chapter 136 of the 2010 Session Laws of*
24 *Kansas*, and amendments thereto, shall be presumptive imprisonment.
25 If an offense under such sections is classified in grid blocks 5-E, 5-F, 5-
26 G, 5-H or 5-I, the court may impose an optional nonprison sentence as
27 provided in subsection (q).

28 (n) The sentence for a violation of criminal deprivation of
29 property, as defined in section 89 *of chapter 136 of the 2010 Session*
30 *Laws of Kansas*, and amendments thereto, when such property is a
31 motor vehicle, and when such person being sentenced has any
32 combination of two or more prior convictions of subsection (b) of
33 K.S.A. 21-3705, prior to its repeal, or of criminal deprivation of
34 property, as defined in section 89 *of chapter 136 of the 2010 Session*
35 *Laws of Kansas*, and amendments thereto, when such property is a
36 motor vehicle, shall be presumptive imprisonment. Such sentence shall
37 not be considered a departure and shall not be subject to appeal.

38 (o) The sentence for a felony violation of theft of property as
39 defined in section 87 *of chapter 136 of the 2010 Session Laws of*

1 *Kansas*, and amendments thereto, or burglary as defined in subsection
2 (a) of section 93 of chapter 136 of the 2010 Session Laws of Kansas,
3 and amendments thereto, when such person being sentenced has no
4 prior convictions for a violation of K.S.A. 21-3701 or 21-3715, prior to
5 their repeal, or theft of property as defined in section 87 of chapter 136
6 of the 2010 Session Laws of Kansas, and amendments thereto, or
7 burglary as defined in subsection (a) of section 93 of chapter 136 of the
8 2010 Session Laws of Kansas, and amendments thereto; or the sentence
9 for a felony violation of theft of property as defined in section 87 of
10 chapter 136 of the 2010 Session Laws of Kansas, and amendments
11 thereto, when such person being sentenced has one or two prior felony
12 convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-3716,
13 prior to their repeal, or theft of property as defined in section 87 of
14 chapter 136 of the 2010 Session Laws of Kansas, and amendments
15 thereto, or burglary or aggravated burglary as defined in section 93 of
16 chapter 136 of the 2010 Session Laws of Kansas, and amendments
17 thereto; or the sentence for a felony violation of burglary as defined in
18 subsection (a) of section 93 of chapter 136 of the 2010 Session Laws of
19 Kansas, and amendments thereto, when such person being sentenced
20 has one prior felony conviction for a violation of K.S.A. 21-3701, 21-
21 3715 or 21-3716, prior to their repeal, or theft of property as defined in
22 section 87 of chapter 136 of the 2010 Session Laws of Kansas, and
23 amendments thereto, or burglary or aggravated burglary as defined in
24 section 93 of chapter 136 of the 2010 Session Laws of Kansas, and
25 amendments thereto, shall be the sentence as provided by this section,
26 except that the court may order an optional nonprison sentence for a
27 defendant to participate in a drug treatment program, including, but not
28 limited to, an approved after-care plan, if the court makes the following
29 findings on the record:

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

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

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

37 A defendant sentenced to an optional nonprison sentence under this
38 subsection shall be supervised by community correctional services. The
39 provisions of subsection (f)(1) of section 305 of chapter 136 of the

1 2010 Session Laws of Kansas, and amendments thereto, shall apply to a
2 defendant sentenced under this subsection. The sentence under this
3 subsection shall not be considered a departure and shall not be subject
4 to appeal.

5 (p) The sentence for a felony violation of theft of property as
6 defined in section 87 of chapter 136 of the 2010 Session Laws of
7 Kansas, and amendments thereto, when such person being sentenced
8 has any combination of three or more prior felony convictions for
9 violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal,
10 or theft of property as defined in section 87 of chapter 136 of the 2010
11 Session Laws of Kansas, and amendments thereto, or burglary or
12 aggravated burglary as defined in section 93 of chapter 136 of the
13 2010 Session Laws of Kansas; or the sentence for a violation of
14 burglary as defined in subsection (a) of section 93 of chapter 136 of the
15 2010 Session Laws of Kansas, and amendments thereto, when such
16 person being sentenced has any combination of two or more prior
17 convictions for violations of K.S.A. 21-3701, 21-3715 and 21-3716,
18 prior to their repeal, or theft of property as defined in section 87 of
19 chapter 136 of the 2010 Session Laws of Kansas, and amendments
20 thereto, or burglary or aggravated burglary as defined in section 93 of
21 chapter 136 of the 2010 Session Laws of Kansas, and amendments
22 thereto, shall be presumed imprisonment and the defendant shall be
23 sentenced to prison as provided by this section, except that the court
24 may recommend that an offender be placed in the custody of the
25 secretary of corrections, in a facility designated by the secretary to
26 participate in an intensive substance abuse treatment program, upon
27 making the following findings on the record:

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

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

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

36 The intensive substance abuse treatment program shall be
37 determined by the secretary of corrections, but shall be for a period of
38 at least four months. Upon the successful completion of such intensive
39 treatment program, the offender shall be returned to the court and the

1 court may modify the sentence by directing that a less severe penalty be
2 imposed in lieu of that originally adjudged within statutory limits. If the
3 offender's term of imprisonment expires, the offender shall be placed
4 under the applicable period of postrelease supervision. The sentence
5 under this subsection shall not be considered a departure and shall not
6 be subject to appeal.

7 (q) As used in this section, an "optional nonprison sentence" is a
8 sentence which the court may impose, in lieu of the presumptive
9 sentence, upon making the following findings on the record:

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

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

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

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

21 (r) The sentence for a violation of subsection (c)(2) of section 48
22 of chapter 136 of the 2010 Session Laws of Kansas, and amendments
23 thereto, shall be presumptive imprisonment and shall be served
24 consecutively to any other term or terms of imprisonment imposed.
25 Such sentence shall not be considered a departure and shall not be
26 subject to appeal.

27 (s) *The sentence for a violation of section 76 of chapter 136 of the*
28 *2010 Session Laws of Kansas, and amendments thereto, shall be*
29 *presumptive imprisonment. Such sentence shall not be considered a*
30 *departure and shall not be subject to appeal.*

31 (t) (1) *If the trier of fact makes a finding that an offender wore*
32 *or used ballistic resistant material in the commission of, or attempt to*
33 *commit, or flight from any felony, in addition to the sentence imposed*
34 *pursuant to the Kansas sentencing guidelines act, the offender shall be*
35 *sentenced to an additional 30 months' imprisonment.*

36 (2) *The sentence imposed pursuant to subsection (t)(1) shall be*
37 *presumptive imprisonment and shall be served consecutively to any*
38 *other term or terms of imprisonment imposed. Such sentence shall not*
39 *be considered a departure and shall not be subject to appeal.*

1 (3) *As used in this subsection, "ballistic resistant material" means:*
2 *(A) Any commercially produced material designed with the purpose of*
3 *providing ballistic and trauma protection, including, but not limited to,*
4 *bulletproof vests and kevlar vests; and (B) any homemade or fabricated*
5 *substance or item designed with the purpose of providing ballistic and*
6 *trauma protection.*

7 Sec. ~~3~~ **4. K.S.A. 2010 Supp. 12-4509 and 21-4704 and** sections
8 249 and 285 of chapter 136 of the 2010 Sessions Laws of Kansas are
9 hereby repealed.

10 Sec. ~~4~~ **5.** This act shall take effect and be in force from and after
11 its publication in the statute book.

12