

SENATE BILL No. 39

By Senator Olson

1-20

1 AN ACT concerning criminal procedure; relating to sex offenders;
2 amending K.S.A. 22-4903 and K.S.A. 2010 Supp. 8-243, 8-255, 22-
3 4902, 22-4904 and 22-4913 and sections 285 and 299 of chapter 136
4 of the 2010 Session Laws of Kansas and repealing the existing
5 sections.
6

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

8 Section 1. K.S.A. 2010 Supp. 8-243 is hereby amended to read as
9 follows: 8-243. (a) Upon payment of the required fee, the division shall
10 issue to every applicant qualifying under the provisions of this act the
11 driver's license as applied for by the applicant. Such license shall bear the
12 class or classes of motor vehicles which the licensee is entitled to drive, a
13 distinguishing number assigned to the licensee, the full legal name, date
14 of birth, gender, address of principal residence and a brief description of
15 the licensee, a colored digital photograph of the licensee, a facsimile of
16 the signature of the licensee and the statement provided for in subsection
17 (b). No driver's license shall be valid until it has been signed by the
18 licensee. All drivers' licenses issued to persons under the age of 21 years
19 shall be readily distinguishable from licenses issued to persons age 21
20 years or older. In addition, all drivers' licenses issued to persons under the
21 age of 18 years shall also be readily distinguishable from licenses issued
22 to persons age 18 years or older. The secretary of revenue shall
23 implement a vertical format to make drivers' licenses issued to persons
24 under the age of 21 more readily distinguishable. Except as otherwise
25 provided, no driver's license issued by the division shall be valid until a
26 colored digital photograph of such licensee has been taken and verified
27 before being placed on the driver's license. The secretary of revenue shall
28 prescribe a fee of not more than \$8 and upon the payment of such fee, the
29 division shall cause a colored digital photograph of such applicant to be
30 placed on the driver's license. Upon payment of such fee prescribed by
31 the secretary of revenue, plus payment of the fee required by K.S.A. 8-
32 246, and amendments thereto, for issuance of a new license, the division
33 shall issue to such licensee a new license containing a colored digital
34 photograph of such licensee. A driver's license which does not contain the
35 principal address as required may be issued to persons who are program
36 participants pursuant to K.S.A. 2010 Supp. 75-455, and amendments

1 thereto, upon payment of the fee required by K.S.A. 8-246, and
2 amendments thereto. All Kansas drivers' licenses and identification cards
3 shall have physical security features designed to prevent tampering,
4 counterfeiting or duplication of the document for fraudulent purposes.
5 The secretary of revenue shall incorporate common machine-readable
6 technology into all Kansas drivers' licenses and identification cards.

7 (b) All Kansas drivers' licenses issued to any person 16 years of age
8 or older shall contain a form which provides a statement for making a gift
9 of all or any part of the body of the licensee in accordance with the
10 revised uniform anatomical gift act, K.S.A. 2010 Supp. 65-3220 through
11 65-3244, and amendments thereto, except as otherwise provided by this
12 subsection. The statement to be effective shall be signed by the licensee
13 in the presence of two witnesses who shall sign the statement in the
14 presence of the donor. The gift becomes effective upon the death of the
15 donor. Delivery of the license during the donor's lifetime is not necessary
16 to make a valid gift. Any valid gift statement executed prior to July 1,
17 1994, shall remain effective until invalidated. The word "Donor" shall be
18 placed on the front of a licensee's driver's license, indicating that the
19 statement for making an anatomical gift under this subsection has been
20 executed by such licensee.

21 (c) Any person who is deaf or hard of hearing may request that the
22 division issue to such person a driver's license which is readily
23 distinguishable from drivers' licenses issued to other drivers and upon
24 such request the division shall issue such license. Drivers' licenses issued
25 to persons who are deaf or hard of hearing and under the age of 21 years
26 shall be readily distinguishable from drivers' licenses issued to persons
27 who are deaf or hard of hearing and 21 years of age or older. Upon
28 satisfaction of subsection (a), the division shall issue a receipt of
29 application permitting the operation of a vehicle consistent with the
30 requested class, if there are no other restrictions or limitations, pending
31 the division's verification of the information and production of a driver's
32 license.

33 (d) (1) A driver's license issued to a person required to be
34 registered under K.S.A. 22-4901 et seq., and amendments thereto, shall
35 be assigned a distinguishing number by the division which will readily
36 indicate to law enforcement officers that such person is a registered
37 offender. The division shall develop a numbering system to implement
38 the provisions of this subsection.

39 (2) *A driver's license issued to a person defined as an aggravated*
40 *sex offender under subsection (b) of K.S.A. 22-4902, and amendments*
41 *thereto, shall also include an "aggravated sex offender" label.*

42 Sec. 2. K.S.A. 2010 Supp. 8-255 is hereby amended to read as
43 follows: 8-255. (a) The division is authorized to restrict, suspend or

1 revoke a person's driving privileges upon a showing by its records or
2 other sufficient evidence the person:

3 (1) Has been convicted with such frequency of serious offenses
4 against traffic regulations governing the movement of vehicles as to
5 indicate a disrespect for traffic laws and a disregard for the safety of other
6 persons on the highways;

7 (2) has been convicted of three or more moving traffic violations
8 committed on separate occasions within a 12-month period;

9 (3) is incompetent to drive a motor vehicle;

10 (4) has been convicted of a moving traffic violation, committed at a
11 time when the person's driving privileges were restricted, suspended or
12 revoked; or

13 (5) is a member of the armed forces of the United States stationed at
14 a military installation located in the state of Kansas, and the authorities of
15 the military establishment certify that such person's on-base driving
16 privileges have been suspended, by action of the proper military
17 authorities, for violating the rules and regulations of the military
18 installation governing the movement of vehicular traffic or for any other
19 reason relating to the person's inability to exercise ordinary and
20 reasonable control in the operation of a motor vehicle.

21 (b) The division shall suspend a person's driving privileges when
22 required by K.S.A. 8-262, 8-1014, ~~21-3765~~ *subsection (a)(5) of section 87*
23 *of chapter 136 of the 2010 Session Laws of Kansas, 22-4903 or 41-727,*
24 *and amendments thereto, and shall disqualify a person's privilege to drive*
25 *commercial motor vehicles when required by K.S.A. 8-2,142, and*
26 *amendments thereto. The division shall restrict a person's driving*
27 *privileges when required by K.S.A. 2010 Supp. 39-7,155, and*
28 *amendments thereto.*

29 (c) When the action by the division restricting, suspending, revoking
30 or disqualifying a person's driving privileges is based upon a report of a
31 conviction or convictions from a convicting court, the person may not
32 request a hearing but, within 30 days after notice of restriction,
33 suspension, revocation or disqualification is mailed, may submit a written
34 request for administrative review and provide evidence to the division to
35 show the person whose driving privileges have been restricted,
36 suspended, revoked or disqualified by the division was not convicted of
37 the offense upon which the restriction, suspension, revocation or
38 disqualification is based. Within 30 days of its receipt of the request for
39 administrative review, the division shall notify the person whether the
40 restriction, suspension, revocation or disqualification has been affirmed
41 or set aside. The request for administrative review shall not stay any
42 action taken by the division.

43 (d) Upon restricting, suspending, revoking or disqualifying the

1 driving privileges of any person as authorized by this act, the division
2 shall immediately notify the person in writing. Except as provided by
3 K.S.A. 8-1002 and 8-2,145, and amendments thereto, and subsections (c)
4 and (g), if the person makes a written request for hearing within 30 days
5 after such notice of restriction, suspension or revocation is mailed, the
6 division shall afford the person an opportunity for a hearing as early as
7 practical not sooner than five days nor more than 30 days after such
8 request is mailed. If the division has not revoked or suspended the
9 person's driving privileges or vehicle registration prior to the hearing, the
10 hearing may be held within not to exceed 45 days. Except as provided by
11 K.S.A. 8-1002 and 8-2,145, and amendments thereto, the hearing shall be
12 held in the person's county of residence or a county adjacent thereto,
13 unless the division and the person agree that the hearing may be held in
14 some other county. Upon the hearing, the director or the director's duly
15 authorized agent may administer oaths and may issue subpoenas for the
16 attendance of witnesses and the production of relevant books and papers
17 and may require an examination or reexamination of the person. When
18 the action proposed or taken by the division is authorized but not
19 required, the division, upon the hearing, shall either rescind or affirm its
20 order of restriction, suspension or revocation or, good cause appearing
21 therefor, extend the restriction or suspension of the person's driving
22 privileges, modify the terms of the restriction or suspension or revoke the
23 person's driving privileges. When the action proposed or taken by the
24 division is required, the division, upon the hearing, shall either affirm its
25 order of restriction, suspension, revocation or disqualification, or, good
26 cause appearing therefor, dismiss the administrative action. If the person
27 fails to request a hearing within the time prescribed or if, after a hearing,
28 the order of restriction, suspension, revocation or disqualification is
29 upheld, the person shall surrender to the division, upon proper demand,
30 any driver's license in the person's possession.

31 (e) In case of failure on the part of any person to comply with any
32 subpoena issued *on behalf* of the division or the refusal of any witness to
33 testify to any matters regarding which the witness may be lawfully
34 interrogated, the district court of any county, on application of the
35 division, may compel obedience by proceedings for contempt, as in the
36 case of disobedience of the requirements of a subpoena issued from the
37 court or a refusal to testify in the court. Each witness who appears before
38 the director or the director's duly authorized agent by order or subpoena,
39 other than an officer or employee of the state or of a political subdivision
40 of the state, shall receive for the witness' attendance the fees and mileage
41 provided for witnesses in civil cases in courts of record, which shall be
42 audited and paid upon the presentation of proper vouchers sworn to by
43 the witness.

1 (f) The division, in the interest of traffic and safety, may establish or
2 contract with a private individual, corporation, partnership or association
3 for the services of driver improvement clinics throughout the state and,
4 upon reviewing the driving record of a person whose driving privileges
5 are subject to suspension under subsection (a)(2), may permit the person
6 to retain such person's driving privileges by attending a driver
7 improvement clinic. Any person other than a person issued a commercial
8 driver's license under K.S.A. 8-2,125 et seq., and amendments thereto,
9 desiring to attend a driver improvement clinic shall make application to
10 the division and such application shall be accompanied by the required
11 fee. The secretary of revenue shall adopt rules and regulations prescribing
12 a driver's improvement clinic fee which shall not exceed \$500 and such
13 rules and regulations deemed necessary for carrying out the provisions of
14 this section, including the development of standards and criteria to be
15 utilized by such driver improvement clinics. Amounts received under this
16 subsection shall be remitted to the state treasurer in accordance with the
17 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
18 each such remittance, the state treasurer shall deposit the same in the state
19 treasury as prescribed by subsection (f) of K.S.A. 8-267, and amendments
20 thereto.

21 (g) When the action by the division restricting a person's driving
22 privileges is based upon certification by the secretary of social and
23 rehabilitation services pursuant to K.S.A. 2010 Supp. 39-7,155, and
24 amendments thereto, the person may not request a hearing but, within 30
25 days after notice of restriction is mailed, may submit a written request for
26 administrative review and provide evidence to the division to show the
27 person whose driving privileges have been restricted by the division is
28 not the person certified by the secretary of social and rehabilitation
29 services, did not receive timely notice of the proposed restriction from the
30 secretary of social and rehabilitation services or has been decertified by
31 the secretary of social and rehabilitation services. Within 30 days of its
32 receipt of the request for administrative review, the division shall notify
33 the person whether the restriction has been affirmed or set aside. The
34 request for administrative review shall not stay any action taken by the
35 division.

36 New Sec. 3. (a) On October 31 of each year, any person required
37 to register as a sex offender pursuant to the Kansas offender registration
38 act shall:

- 39 (1) Avoid all Halloween-related contact with children;
- 40 (2) remain inside the person's residence between the hours of 5:00
41 p.m. and 11:00 p.m.;
- 42 (3) post a sign at the person's residence stating "No candy at this
43 residence"; and

1 (4) turn off all outdoor residential lighting after 5:00 p.m.

2 (b) Violation of this section is a class A nonperson misdemeanor.

3 Sec. 4. K.S.A. 2010 Supp. 22-4902 is hereby amended to read as
4 follows: 22-4902. As used in the Kansas offender registration act, unless
5 the context otherwise requires:

6 (a) "Offender" means: (1) A sex offender as defined in subsection
7 (b);

8 (2) a violent offender as defined in subsection (d);

9 (3) a sexually violent predator as defined in subsection (f);

10 (4) any person who, on and after May 29, 1997, is convicted of any
11 of the following crimes when the victim is less than 18 years of age:

12 (A) Kidnapping as defined in K.S.A. 21-3420, *prior to its repeal, or*
13 *subsection (a) of section 43 of chapter 136 of the 2010 Session Laws of*
14 *Kansas*, and amendments thereto, except by a parent;

15 (B) aggravated kidnapping as defined in K.S.A. 21-3421, *prior to its*
16 *repeal, or subsection (b) of section 43 of chapter 136 of the 2010 Session*
17 *Laws of Kansas*, and amendments thereto; or

18 (C) criminal restraint as defined in K.S.A. 21-3424, *prior to its*
19 *repeal, or section 46 of chapter 136 of the 2010 Session Laws of Kansas*,
20 and amendments thereto, except by a parent;

21 (5) any person convicted of any of the following criminal sexual
22 conduct if one of the parties involved is less than 18 years of age:

23 (A) Adultery as defined by K.S.A. 21-3507, *prior to its repeal, or*
24 *section 75 of chapter 136 of the 2010 Session Laws of Kansas*, and
25 amendments thereto;

26 (B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-
27 3505, *prior to its repeal, or subsection (a) of section 68 of chapter 136 of*
28 *the 2010 Session Laws of Kansas*, and amendments thereto;

29 (C) promoting prostitution as defined by K.S.A. 21-3513, *prior to*
30 *its repeal, or section 230 of chapter 136 of the 2010 Session Laws of*
31 *Kansas*, and amendments thereto;

32 (D) patronizing a prostitute as defined by K.S.A. 21-3515, *prior to*
33 *its repeal, or section 231 of chapter 136 of the 2010 Session Laws of*
34 *Kansas*, and amendments thereto; or

35 (E) lewd and lascivious behavior as defined by K.S.A. 21-3508,
36 *prior to its repeal, or section 77 of chapter 136 of the 2010 Session Laws*
37 *of Kansas*, and amendments thereto;

38 (6) any person who has been required to register under any federal,
39 military or other state's law or is otherwise required to be registered;

40 (7) any person who, on or after July 1, 2006, is convicted of any
41 person felony and the court makes a finding on the record that a deadly
42 weapon was used in the commission of such person felony;

43 (8) any person who has been convicted of an offense in effect at any

1 time prior to May 29, 1997, that is comparable to any crime defined in
2 subsection (4), (5), (7) or (11), or any federal, military or other state
3 conviction for an offense that under the laws of this state would be an
4 offense defined in subsection (4), (5), (7) or (11);

5 (9) any person who has been convicted of an attempt, conspiracy or
6 criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303,
7 *prior to their repeal, or sections 33, 34 or 35 of chapter 136 of the*
8 *2010 Session Laws of Kansas*, and amendments thereto, of an offense
9 defined in subsection (4), (5), (7) or (10);

10 (10) any person who has been convicted of aggravated human
11 trafficking as defined in K.S.A. 21-3447, *prior to its repeal, or subsection*
12 *(b) of section 61 of chapter 136 of the 2010 Session Laws of Kansas*, and
13 amendments thereto; or

14 (11) any person who has been convicted of: (A) Unlawful
15 manufacture or attempting such of any controlled substance or controlled
16 substance analog as defined by K.S.A. 65-4159, prior to its repeal, or
17 K.S.A. 2010 Supp. 21-36a03, and amendments thereto, unless the court
18 makes a finding on the record that the manufacturing or attempting to
19 manufacture such controlled substance was for such person's personal
20 use;

21 (B) possession of ephedrine, pseudoephedrine, red phosphorus,
22 lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized
23 ammonia or phenylpropanolamine, or their salts, isomers or salts of
24 isomers with intent to use the product to manufacture a controlled
25 substance as defined by subsection (a) of K.S.A. 65-7006, prior to its
26 repeal, or subsection (a) of K.S.A. 2010 Supp. 21-36a09, and
27 amendments thereto, unless the court makes a finding on the record that
28 the possession of such product was intended to be used to manufacture a
29 controlled substance for such person's personal use; or

30 (C) K.S.A. 65-4161, prior to its repeal, or subsection (a)(1) of
31 K.S.A. 2010 Supp. 21-36a05, and amendments thereto. The provisions of
32 this paragraph shall not apply to violations of subsections (a)(2) through
33 (a)(6) or (b) of K.S.A. 2010 Supp. 21-36a05, and amendments thereto,
34 which occurred on and after July 1, 2009, through ~~the effective date of~~
35 ~~this act.~~ *April 15, 2010.*

36 Convictions which result from or are connected with the same act, or
37 result from crimes committed at the same time, shall be counted for the
38 purpose of this section as one conviction. Any conviction set aside
39 pursuant to law is not a conviction for purposes of this section. A
40 conviction from another state shall constitute a conviction for purposes of
41 this section.

42 (b) (1) "Sex offender" includes any person who:;

43 (A) On or after April 14, 1994, and prior to July 1, 2011, is

1 convicted of any sexually violent crime set forth in subsection (c) or is
2 adjudicated as a juvenile offender for an act which if committed by an
3 adult would constitute the commission of a sexually violent crime set
4 forth in subsection (c);-

5 *(B) on or after July 1, 2011, is convicted of any sexually violent*
6 *crime set forth in subsection (c), or is adjudicated as a juvenile offender*
7 *for an act which if committed by an adult would constitute the*
8 *commission of a sexually violent crime set forth in subsection (c), if none*
9 *of the parties involved is less than 16 years of age.*

10 *(2) "Aggravated sex offender" includes any person who, on or after*
11 *July 1, 2011, is convicted of any sexually violent crime set forth in*
12 *subsection (c), or is adjudicated as a juvenile offender for an act which if*
13 *committed by an adult would constitute the commission of a sexually*
14 *violent crime set forth in subsection (c), if one of the parties involved is*
15 *less than 16 years of age.*

16 (c) "Sexually violent crime" means:

17 (1) Rape as defined in K.S.A. 21-3502, *prior to its repeal, or section*
18 *67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments*
19 *thereto;*

20 (2) indecent liberties with a child as defined in K.S.A. 21-3503,
21 *prior to its repeal, or subsection (a) of section 70 of chapter 136 of the*
22 *2010 Session Laws of Kansas, and amendments thereto;*

23 (3) aggravated indecent liberties with a child as defined in K.S.A.
24 21-3504, *prior to its repeal, or subsection (b) of section 70 of chapter*
25 *136 of the 2010 Session Laws of Kansas, and amendments thereto;*

26 (4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of
27 K.S.A. 21-3505, *prior to its repeal, or subsection (a) of section 68 of*
28 *chapter 136 of the 2010 Session Laws of Kansas, and amendments*
29 *thereto;*

30 (5) aggravated criminal sodomy as defined in K.S.A. 21-3506, *prior*
31 *to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010*
32 *Session Laws of Kansas, and amendments thereto;*

33 (6) indecent solicitation of a child as defined by K.S.A. 21-3510,
34 *prior to its repeal, or subsection (a) of section 72 of chapter 136 of the*
35 *2010 Session Laws of Kansas, and amendments thereto;*

36 (7) aggravated indecent solicitation of a child as defined by K.S.A.
37 21-3511, *prior to its repeal, or subsection (b) of section 72 of chapter 136*
38 *of the 2010 Session Laws of Kansas, and amendments thereto;*

39 (8) sexual exploitation of a child as defined by K.S.A. 21-3516,
40 *prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws*
41 *of Kansas, and amendments thereto;*

42 (9) sexual battery as defined by K.S.A. 21-3517, *prior to its repeal,*
43 *or subsection (a) of section 69 of chapter 136 of the 2010 Session Laws*

- 1 *of Kansas, and amendments thereto;*
2 (10) *aggravated sexual battery as defined by K.S.A. 21-3518, prior*
3 *to its repeal, or subsection (b) of section 69 of chapter 136 of the 2010*
4 *Session Laws of Kansas, and amendments thereto;*
5 (11) *aggravated incest as defined by K.S.A. 21-3603, prior to its*
6 *repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session*
7 *Laws of Kansas, and amendments thereto;*
8 (12) *electronic solicitation as defined by K.S.A. 21-3523, prior to its*
9 *repeal, or section 73 of chapter 136 of the 2010 Session Laws of Kansas,*
10 *and amendments thereto, committed on or after April 17, 2008;*
11 (13) *unlawful sexual relations as defined by K.S.A. 21-3520, prior*
12 *to its repeal, or section 76 of chapter 136 of the 2010 Session Laws of*
13 *Kansas, and amendments thereto, committed on or after July 1, 2010;*
14 (14) *any conviction for an offense in effect at any time prior to April*
15 *29, 1993, that is comparable to a sexually violent crime as defined in*
16 *subparagraphs (1) through (11), or any federal, military or other state*
17 *conviction for an offense that under the laws of this state would be a*
18 *sexually violent crime as defined in this section;*
19 (15) *an attempt, conspiracy or criminal solicitation, as defined in*
20 *K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or sections*
21 *33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas, and*
22 *amendments thereto, of a sexually violent crime, as defined in this*
23 *section; or*
24 (16) *any act which at the time of sentencing for the offense has been*
25 *determined beyond a reasonable doubt to have been sexually motivated.*
26 *As used in this subparagraph, "sexually motivated" means that one of the*
27 *purposes for which the defendant committed the crime was for the*
28 *purpose of the defendant's sexual gratification.*
29 (d) *"Violent offender" includes any person who, on or after May 29,*
30 *1997, is convicted of any of the following crimes:*
31 (1) *Capital murder as defined by K.S.A. 21-3439, prior to its repeal,*
32 *or section 36 of chapter 136 of the 2010 Session Laws of Kansas, and*
33 *amendments thereto;*
34 (2) *murder in the first degree as defined by K.S.A. 21-3401, prior to*
35 *its repeal, or section 37 of chapter 136 of the 2010 Session Laws of*
36 *Kansas, and amendments thereto;*
37 (3) *murder in the second degree as defined by K.S.A. 21-3402, prior*
38 *to its repeal, or section 38 of chapter 136 of the 2010 Session Laws of*
39 *Kansas, and amendments thereto;*
40 (4) *voluntary manslaughter as defined by K.S.A. 21-3403, prior to*
41 *its repeal, or section 39 of chapter 136 of the 2010 Session Laws of*
42 *Kansas, and amendments thereto;*
43 (5) *involuntary manslaughter as defined by K.S.A. 21-3404, prior to*

1 *its repeal, or section 40 of chapter 136 of the 2010 Session Laws of*
2 *Kansas, and amendments thereto;*

3 (6) any conviction for an offense in effect at any time prior to May
4 29, 1997, that is comparable to any crime defined in this subsection, or
5 any federal, military or other state conviction for an offense that under the
6 laws of this state would be an offense defined in this subsection; or

7 (7) an attempt, conspiracy or criminal solicitation, as defined in
8 K.S.A. 21-3301, 21-3302 or 21-3303, *prior to their repeal, or sections*
9 *33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas, and*
10 *amendments thereto, of an offense defined in this subsection.*

11 (e) "Law enforcement agency having jurisdiction" means the sheriff
12 of the county in which the offender expects to reside upon the offender's
13 discharge, parole or release.

14 (f) "Sexually violent predator" means any person who, on or after
15 July 1, 2001, is found to be a sexually violent predator pursuant to K.S.A.
16 59-29a01 et seq., and amendments thereto.

17 (g) "Nonresident student or worker" includes any offender who
18 crosses into the state or county for more than 14 days, or for an aggregate
19 period exceeding 30 days in a calendar year, for the purposes of
20 employment, with or without compensation, or to attend school as a
21 student.

22 (h) "Aggravated offenses" means engaging in sexual acts involving
23 penetration with victims of any age through the use of force or the threat
24 of serious violence, or engaging in sexual acts involving penetration with
25 victims less than 14 years of age, and includes the following offenses:

26 (1) Rape as defined in subsection (a)(1)(A) ~~and subsection (a)(2)~~
27 *of K.S.A. 21-3502, prior to its repeal, or subsection (a)(1)(A) or (a)(3) of*
28 *section 67 of chapter 136 of the 2010 Session Laws of Kansas, and*
29 *amendments thereto;*

30 (2) aggravated criminal sodomy as defined in subsection (a)(1) ~~and~~
31 ~~subsection (a)(3)(A)~~ of K.S.A. 21-3506, *prior to its repeal, or*
32 *subsection (b)(1) or (b)(3)(A) of section 68 of chapter 136 of the 2010*
33 *Session Laws of Kansas, and amendments thereto; and*

34 (3) any attempt, conspiracy or criminal solicitation, as defined in
35 K.S.A. 21-3301, 21-3302 or 21-3303, *prior to their repeal, or sections*
36 *33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas, and*
37 *amendments thereto, of an offense defined in this subsection.*

38 (i) "Institution of higher education" means any ~~post-~~
39 ~~secondary~~ *postsecondary* school under the supervision of the Kansas
40 board of regents.

41 Sec. 5. K.S.A. 22-4903 is hereby amended to read as follows: 22-
42 4903. (a)(1) Any person who is required to register as provided in the
43 Kansas offender registration act who violates any of the provisions of

1 such act, including all duties set out in K.S.A. 22-4904 through 22-4907,
2 and amendments thereto, is guilty of a severity level 5, person felony.

3 (2) Any violation of any provision of such act, including a violation
4 of the duties set forth in K.S.A. 22-4904 through K.S.A. 22-4907, and
5 amendments thereto, which continues for more than 30 consecutive days
6 shall, upon the 31st consecutive day, constitute a new and separate
7 offense and shall continue to constitute a new and separate offense upon
8 completion of every 30 days thereafter for as long as the offense
9 continues.

10 (3) *In addition to any other sentence imposed, the court shall order*
11 *the division of vehicles to suspend the driving privilege of such offender*
12 *for six months. Upon receipt of the court order, the division shall notify*
13 *the violator and suspend the driving privileges of the violator for six*
14 *months whether or not that person has a driver's license.*

15 (b) Prosecution of violations under subsection (a), shall be held: (1)
16 In the county in which the offender resides; (2) if the offender is
17 temporarily domiciled in a county and is required to be registered; in such
18 county; or (3) in the county in which the offender is required to be
19 registered under this act.

20 Sec. 6. K.S.A. 2010 Supp. 22-4904 is hereby amended to read as
21 follows: 22-4904. (a) (1) Except as provided in subsection (a)(2), within
22 14 days of the offender coming into any county in which the offender
23 resides or is temporarily domiciled for more than 14 days, the offender
24 shall register with the sheriff of the county.

25 (2) Within 14 days of the offender coming into any county in which
26 the offender resides or temporarily resides for more than 14 days, any
27 offender who has provided the information and completed and signed the
28 registration form as required in K.S.A. 22-4905, and amendments thereto,
29 shall verify with the sheriff of the county that the sheriff has received
30 such offender's information and registration form.

31 (3) Upon registration with a school or educational institution, a
32 nonresident student attending such school or educational institution shall
33 register with the sheriff within 14 days of the commencement of the
34 school term.

35 (4) Upon commencement of employment, a nonresident worker
36 shall register with the sheriff within 14 days of the commencement date
37 of employment.

38 (5) For persons required to register as provided in subsections (a)(1),
39 (a)(3) and (a)(4), the sheriff shall: (A) Explain the duty to register and the
40 procedure for registration;

41 (B) obtain the information required for registration as provided in
42 K.S.A. 22-4907, and amendments thereto;

43 (C) inform the offender that the offender must give written notice of

1 any change of address within 14 days of a change in residence to the law
2 enforcement agency where last registered and the Kansas bureau of
3 investigation;

4 (D) inform the nonresident student offender that the offender must
5 give written notice to the sheriff and the Kansas bureau of investigation
6 of any change or termination of attendance at the school or educational
7 institution the offender is attending, within 14 days of such change or
8 termination;

9 (E) inform the nonresident worker offender that the offender must
10 give written notice to the sheriff and the Kansas bureau of investigation
11 of any termination of employment at the offender's place of employment,
12 within 14 days of such termination;

13 (F) inform the offender that if the offender changes residence to
14 another state, the offender must inform the law enforcement agency
15 where last registered and the Kansas bureau of investigation of such
16 change in residence and must register in the new state within 14 days of
17 such change in residence;

18 (G) inform the offender that the offender must also register in any
19 state or county where the offender is employed, carries on a vocation or is
20 a student;

21 (H) inform the offender that if the offender expects to or
22 subsequently becomes enrolled in any institution of higher education in
23 the state of Kansas on a full-time or part-time basis or ~~have~~has any full-
24 time or part-time employment at an institution of higher education in the
25 state of Kansas, with or without compensation, for more than 14 days, or
26 for an aggregate period exceeding 30 days in one calendar year, the
27 offender must provide written notice to the Kansas bureau of
28 investigation within 14 days upon commencement of enrollment or
29 employment;

30 (I) inform the offender that if there is any change or termination in
31 attendance or employment at an institution of higher education, the
32 offender must provide written notice to the Kansas bureau of
33 investigation within 14 days of the change or termination;

34 (J) inform the offender of the requirement of an annual driver's
35 license renewal pursuant to K.S.A. 8-247, and amendments thereto, and
36 an annual identification card renewal pursuant to K.S.A. 8-1325a, and
37 amendments thereto; and

38 (K) require the offender to read and sign the registration form which
39 shall include a statement that the requirements provided in this subsection
40 have been explained to the offender.

41 (6) Such sheriff, within seven days of receipt of the initial
42 registration shall forward this information to the Kansas bureau of
43 investigation.

1 (7) Notwithstanding any other provision of law, if a diversionary
2 agreement or probation order, either adult or juvenile, or a juvenile
3 offender sentencing order, requires registration under the Kansas offender
4 registration act then all provisions of that act shall apply, except that the
5 term of registration shall be controlled by such diversionary agreement,
6 probation order or juvenile offender sentencing order.

7 (b) (1) *Except as provided in paragraph (2), if any person required*
8 *to register as provided in this act changes the address of the person's*
9 *residence, the offender, within 14 days, shall inform in writing the law*
10 *enforcement agency where such offender last registered and the Kansas*
11 *bureau of investigation of the new address.*

12 (2) *If an aggravated sex offender, as defined by subsection (b) of*
13 *K.S.A. 22-4902, and amendments thereto, required to register as provided*
14 *in this act, changes the address of the person's residence, the offender,*
15 *within 24 hours, shall inform in writing the law enforcement agency*
16 *where such offender last registered and the Kansas bureau of*
17 *investigation of the new address.*

18 (c) Any person who is required to register under this act shall report
19 in person three times each year to the sheriff's office in the county in
20 which the person resides or is otherwise located. The person shall be
21 required to report once during the month of the person's birthday and
22 every four months thereafter. The sheriff's office may determine the
23 appropriate times and days for reporting by the person, consistent with
24 this subsection. The person shall verify:

25 (1) Whether the person still resides at the address last reported;

26 (2) whether the person still attends the school or educational
27 institution last reported;

28 (3) whether the person is still employed at the place of employment
29 last reported; and

30 (4) whether the person's vehicle registration information is the same
31 as last reported.

32 Nothing contained in this subsection shall be construed to alleviate
33 any person required to register as provided in this act from meeting the
34 requirements prescribed in subsections (a)(1), (a)(2) and (b).

35 The sheriff's office shall forward any updated information and current
36 photograph required under subsection (d), to the Kansas bureau of
37 investigation.

38 (d) Every person who is required to register under this act shall
39 submit to the taking of an updated photograph by the sheriff's office on
40 each occasion when the person reports to the sheriff's office in the county
41 in which the person resides or is otherwise located.

42 (e) Every person who is required to register under this act shall remit
43 payment to the sheriff in the amount of \$20 on each occasion when the

1 person reports to the sheriff's office in the county in which the person
2 resides or is otherwise located. All funds retained by the sheriff pursuant
3 to the provisions of this section shall be credited to a special fund of the
4 sheriff's office which shall be used solely for law enforcement and
5 criminal prosecution purposes and which shall not be used as a source of
6 revenue to reduce the amount of funding otherwise made available to the
7 sheriff's office.

8 Sec. 7. K.S.A. 2010 Supp. 22-4913 is hereby amended to read as
9 follows: 22-4913. *(a) On and after July 1, 2011, aggravated sex*
10 *offenders, as defined by subsection (b) of K.S.A. 22-4902, and*
11 *amendments thereto, shall not reside within 2,000 feet of any licensed*
12 *child care facility, registered family day care home or the real property of*
13 *any school upon which is located a structure used by a unified school*
14 *district or an accredited nonpublic school for student instruction or*
15 *attendance or extracurricular activities of pupils enrolled in kindergarten*
16 *or any grades one through 12. This subsection shall not apply to any*
17 *state institution or facility.*

18 ~~(a)(b)~~ Except as provided in subsection ~~(b)(c)~~, on and after ~~the~~
19 ~~effective date of this act~~ June 1, 2006, cities and counties shall be
20 prohibited from adopting or enforcing any ordinance, resolution or
21 regulation establishing residential restrictions for offenders as defined by
22 K.S.A. 22-4902, and amendments thereto.

23 ~~(b)(c)~~ The prohibition in subsection ~~(a)(b)~~, shall not apply to any
24 city or county residential licensing or zoning program for correctional
25 placement residences that includes regulations for the housing of such
26 offenders.

27 ~~(e)(d)~~ As used in this section, "correctional placement residence"
28 means a facility that provides residential services for individuals or
29 offenders who reside or have been placed in such facility due to any one
30 of the following situations:

- 31 (1) Prior to, or instead of, being sentenced to prison;
- 32 (2) received a conditional release prior to a hearing;
- 33 (3) as a part of a sentence of confinement of not more than one year;
- 34 (4) a privately operated facility housing parolees;
- 35 (5) received a deferred sentence and placed in a facility operated by
36 community corrections;
- 37 (6) required court-ordered treatment services for alcohol or drug
38 abuse; or
- 39 (7) voluntary treatment services for alcohol or drug abuse.

40 Correctional placement residence shall not include a single or multi-
41 family dwelling or commercial residential building that provides a
42 residence to staff and persons other than those described in paragraphs (1)
43 through (7).

1 New Sec. 8. (a) Any person defined as an aggravated sex offender
2 pursuant to subsection (b) of K.S.A. 22-4902, and amendments thereto,
3 shall not be present in or loiter within 500 feet of any licensed child care
4 facility, registered family day care home or the real property of any
5 school upon which is located a structure used by a unified school district
6 or an accredited nonpublic school for student instruction or attendance or
7 extracurricular activities of pupils enrolled in kindergarten or any grades
8 one through 12, unless the person is a parent, legal guardian or custodian
9 of a child present in such building and has met the conditions set forth in
10 subsection (b).

11 (b) No parent, legal guardian or custodian of a child, as described in
12 subsection (a), shall be present in or loiter within 500 feet of any licensed
13 child care facility, registered family day care home or the real property of
14 any school upon which is located a structure used by a unified school
15 district or an accredited nonpublic school for student instruction or
16 attendance or extracurricular activities of pupils enrolled in kindergarten
17 or any grades one through 12 unless such parent, legal guardian or
18 custodian has written permission from the operator of the licensed child
19 care facility or registered family day care home, the superintendent or
20 school board for the unified school district, or in the case of a private
21 school, the principal. In the case of a public school, the superintendent or
22 school board shall notify the principal of the school where the parent,
23 legal guardian or custodian will be present. Permission may be granted
24 for more than one event at a time, however the parent, legal guardian or
25 custodian must obtain permission for any other event for which
26 permission has not yet been granted.

27 (c) Regardless of the person's knowledge of location, violation of
28 this section is a class A nonperson misdemeanor.

29 Sec. 9. *Section 285 of chapter 136 of the 2010 Session Laws of*
30 *Kansas is hereby amended to read as follows: Sec. 285. (a) The*
31 *provisions of this section shall be applicable to the sentencing guidelines*
32 *grid for nondrug crimes. The following sentencing guidelines grid shall*
33 *be applicable to nondrug felony crimes:*

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

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

41 (d) The sentencing guidelines grid for nondrug crimes as provided in
42 this section defines presumptive punishments for felony convictions,
43 subject to the sentencing court's discretion to enter a departure sentence.

1 The appropriate punishment for a felony conviction should depend on the
2 severity of the crime of conviction when compared to all other crimes and
3 the offender's criminal history.

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

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

11 (A) Prison sentence;

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

14 (C) period of postrelease supervision at the sentencing hearing.
15 Failure to pronounce the period of postrelease supervision shall not
16 negate the existence of such period of postrelease supervision.

17 (3) In presumptive nonprison cases, the sentencing court shall
18 pronounce the:

19 (A) Prison sentence; and

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

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

29 (g) The sentence for a violation of section 48 *of chapter 136 of the*
30 *2010 Session Laws of Kansas*, and amendments thereto, aggravated
31 battery against a law enforcement officer committed prior to July 1, 2006,
32 or a violation of section 47 *of chapter 136 of the 2010 Session Laws of*
33 *Kansas*, and amendments thereto, aggravated assault against a law
34 enforcement officer, which places the defendant's sentence in grid block
35 6-H or 6-I shall be presumed imprisonment. The court may impose an
36 optional nonprison sentence as provided in subsection (q).

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

40 (i) (1) The sentence for the violation of the felony provision of
41 K.S.A. 8-1567, subsection (b)(3) of section 49 *of chapter 136 of the 2010*
42 *Session Laws of Kansas*, subsections (b)(3) and (b)(4) of section 109 *of*
43 *chapter 136 of the 2010 Session Laws of Kansas*, section 223 *of chapter*

1 *136 of the 2010 Session Laws of Kansas* and section 227 of chapter 136
2 *of the 2010 Session Laws of Kansas*, and amendments thereto, shall be as
3 provided by the specific mandatory sentencing requirements of that
4 section and shall not be subject to the provisions of this section or section
5 288 of chapter 136 of the 2010 Session Laws of Kansas, and amendments
6 thereto.

7 (2) If because of the offender's criminal history classification the
8 offender is subject to presumptive imprisonment or if the judge departs
9 from a presumptive probation sentence and the offender is subject to
10 imprisonment, the provisions of this section and section 288 of chapter
11 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall
12 apply and the offender shall not be subject to the mandatory sentence as
13 provided in section 109 of chapter 136 of the 2010 Session Laws of
14 Kansas, and amendments thereto.

15 (3) Notwithstanding the provisions of any other section, the term of
16 imprisonment imposed for the violation of the felony provision of K.S.A.
17 8-1567, subsection (b)(3) of section 49 of chapter 136 of the 2010
18 Session Laws of Kansas, subsections (b)(3) and (b)(4) of section 109 of
19 chapter 136 of the 2010 Session Laws of Kansas, section 223 of chapter
20 136 of the 2010 Session Laws of Kansas and section 227 of chapter 136
21 of the 2010 Session Laws of Kansas, and amendments thereto, shall not
22 be served in a state facility in the custody of the secretary of corrections,
23 except that the term of imprisonment for felony violations of K.S.A. 8-
24 1567, and amendments thereto, may be served in a state correctional
25 facility designated by the secretary of corrections if the secretary
26 determines that substance abuse treatment resources and facility capacity
27 is available. The secretary's determination regarding the availability of
28 treatment resources and facility capacity shall not be subject to review.

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

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

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

40 (ii) at the time of the conviction under paragraph (A)(i) has at least
41 one conviction for a sexually violent crime, as defined in K.S.A. 22-3717,
42 and amendments thereto, in this state or comparable felony under the
43 laws of another state, the federal government or a foreign government; or

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

4 (ii) at the time of the conviction under paragraph (B)(i) has at least
 5 one conviction for rape in this state or comparable felony under the laws
 6 of another state, the federal government or a foreign government.

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

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

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

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

20 (B) the commission of felony violations of K.S.A. ~~2009~~2010 Supp.
 21 21-36a01 through 21-36a17, and amendments thereto; and

22 (C) its members have a common name or common identifying sign
 23 or symbol; and

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

29 (l) Except as provided in subsection (o), the sentence for a violation
 30 of subsection (a)(1) of section 93 of *chapter 136 of the 2010 Session*
 31 *Laws of Kansas*, and amendments thereto, when such person being
 32 sentenced has a prior conviction for a violation of subsection (a) or (b) of
 33 K.S.A. 21-3715, prior to its repeal, 21-3716, prior to its repeal, subsection
 34 (a)(1) or (a)(2) of section 93 of *chapter 136 of the 2010 Session Laws of*
 35 *Kansas* or subsection (b) of section 93 of *chapter 136 of the 2010 Session*
 36 *Laws of Kansas*, and amendments thereto, shall be presumed
 37 imprisonment.

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

1 (n) The sentence for a violation of criminal deprivation of property,
2 as defined in section 89 *of chapter 136 of the 2010 Session Laws of*
3 *Kansas*, and amendments thereto, when such property is a motor vehicle,
4 and when such person being sentenced has any combination of two or
5 more prior convictions of subsection (b) of K.S.A. 21-3705, prior to its
6 repeal, or of criminal deprivation of property, as defined in section 89 *of*
7 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
8 thereto, when such property is a motor vehicle, shall be presumptive
9 imprisonment. Such sentence shall not be considered a departure and
10 shall not be subject to appeal.

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

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

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

1 and

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

4 A defendant sentenced to an optional nonprison sentence under this
5 subsection shall be supervised by community correctional services. The
6 provisions of subsection (f)(1) of section 305 of *chapter 136 of the 2010*
7 *Session Laws of Kansas*, and amendments thereto, shall apply to a
8 defendant sentenced under this subsection. The sentence under this
9 subsection shall not be considered a departure and shall not be subject to
10 appeal.

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

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

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

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

40 The intensive substance abuse treatment program shall be determined
41 by the secretary of corrections, but shall be for a period of at least four
42 months. Upon the successful completion of such intensive treatment
43 program, the offender shall be returned to the court and the court may

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

21 (r) The sentence for a violation of subsection (c)(2) of section 48 of
22 *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. Such
25 sentence shall not be considered a departure and shall not be subject to
26 appeal.

27 (s) *The sentence for a violation of K.S.A. 22-4903, and amendments*
28 *thereto, shall be presumptive imprisonment. Such sentence shall not be*
29 *considered a departure and shall not be subject to appeal.*

30 Sec. 10. *Section 299 of chapter 136 of the 2010 Session Laws of*
31 *Kansas is hereby amended to read as follows: Sec. 299. (a) When a*
32 *departure sentence is appropriate, the sentencing judge may depart from*
33 *the sentencing guidelines as provided in this section.*

34 (1) The sentencing judge shall not impose a downward dispositional
35 departure sentence for any crime of extreme sexual violence, as defined
36 in section 296 of *chapter 136 of the 2010 Session Laws of Kansas*, and
37 amendments thereto. The sentencing judge shall not impose a downward
38 durational departure sentence for any crime of extreme sexual violence,
39 as defined in section 296 of *chapter 136 of the 2010 Session Laws of*
40 *Kansas*, and amendments thereto, to less than 50% of the center of the
41 range of the sentence for such crime.

42 (2) *The sentencing judge shall not impose a downward dispositional*
43 *departure sentence for a violation of K.S.A. 22-4903, and amendments*

1 *thereto.*

2 (b) When a sentencing judge departs in setting the duration of a
3 presumptive term of imprisonment:

4 (1) The judge shall consider and apply the sentencing guidelines,
5 which is to impose a sentence that is proportionate to the severity of the
6 crime of conviction and the offender's criminal history; and

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

10 (c) When a sentencing judge imposes a prison term as a
11 dispositional departure:

12 (1) The judge shall consider and apply the primary purpose of the
13 sentencing guidelines, which is to impose a sentence that is proportionate
14 to the severity of the crime of conviction; and

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

21 (d) If the sentencing judge imposes a nonprison sentence as a
22 dispositional departure from the guidelines, the recommended duration
23 shall be as provided in subsection (c) of section 248 *of chapter 136 of the*
24 *2010 Session Laws of Kansas*, and amendments thereto.

25 Sec. 11. K.S.A. 22-4903 and K.S.A. 2010 Supp. 8-243, 8-255, 22-
26 4902, 22-4904 and 22-4913 and sections 285 and 299 of chapter 136 of
27 the 2010 Session Laws of Kansas are hereby repealed.

28 Sec. 12. This act shall take effect and be in force from and after its
29 publication in the statute book.