

Senate Substitute for HOUSE BILL No. 2049

By Committee on Corrections and Juvenile Justice

1-27

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to possession of controlled substances; burglary; amending K.S.A.
3 2015 Supp. 21-5706 ~~and,~~ 21-5807 *{and 21-6804}* and repealing the
4 existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2015 Supp. 21-5706 is hereby amended to read as
8 follows: 21-5706. (a) It shall be unlawful for any person to possess any
9 opiates, opium or narcotic drugs, or any stimulant designated in ~~subsection~~
10 ~~(d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107(d)(1), (d)(3) or (f)(1),~~ and
11 amendments thereto, or a controlled substance analog thereof.

12 (b) It shall be unlawful for any person to possess any of the following
13 controlled substances or controlled substance analogs thereof:

14 (1) Any depressant designated in ~~subsection (e) of K.S.A. 65-4105(e),~~
15 ~~subsection (e) of K.S.A. 65-4107(e), subsection (b) or (c) of K.S.A. 65-~~
16 ~~4109(b) or (c) or subsection (b) of K.S.A. 65-4111(b),~~ and amendments
17 thereto;

18 (2) any stimulant designated in ~~subsection (f) of K.S.A. 65-4105(f),~~
19 ~~subsection (d)(2), (d)(4), (d)(5) or (f)(2) of K.S.A. 65-4107(d)(2), (d)(4),~~
20 ~~(d)(5) or (f)(2) or subsection (e) of K.S.A. 65-4109(e),~~ and amendments
21 thereto;

22 (3) any hallucinogenic drug designated in ~~subsection (d) of K.S.A.~~
23 ~~65-4105(d), subsection (g) of K.S.A. 65-4107(g) or subsection (g) of~~
24 ~~K.S.A. 65-4109(g),~~ and amendments thereto;

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

28 (5) any anabolic steroids as defined in ~~subsection (f) of K.S.A. 65-~~
29 ~~4109(f),~~ and amendments thereto;

30 (6) any substance designated in K.S.A. 65-4113, and amendments
31 thereto; or

32 (7) any substance designated in ~~subsection (h) of K.S.A. 65-4105(h),~~
33 and amendments thereto.

34 (c) (1) Violation of subsection (a) is a drug severity level 5 felony;
35 ~~and.~~

36 (2) *Except as provided in subsection (c)(3):*

1 (A) Violation of subsection (b) is a class A nonperson misdemeanor,
2 except as provided in subsection (c)(2)(B); and

3 (B) violation of subsection (b)(1) through (b)(5) or (b)(7) is a drug
4 severity level 5 felony if that person has a prior conviction under such
5 subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially
6 similar offense from another jurisdiction, or under any city ordinance or
7 county resolution for a substantially similar offense if the substance
8 involved was 3, 4-methylenedioxyamphetamine (MDMA), marijuana
9 as designated in ~~subsection (d) of K.S.A. 65-4105(d)~~, and amendments
10 thereto, or any substance designated in ~~subsection (h) of K.S.A. 65-~~
11 ~~4105(h)~~, and amendments thereto, or an analog thereof.

12 (3) *If the substance involved is marijuana, as designated in K.S.A.*
13 *65-4105(d), and amendments thereto, violation of subsection (b) is a:*

14 (A) *Class B nonperson misdemeanor; except as provided in (c)(3)(B)*
15 *and (c)(3)(C);*

16 (B) *class A nonperson misdemeanor if that person has a prior*
17 *conviction under such subsection, under K.S.A. 65-4162, prior to its*
18 *repeal, under a substantially similar offense from another jurisdiction, or*
19 *under any city ordinance or county resolution for a substantially similar*
20 *offense; and*

21 (C) *drug severity level 5 felony if that person has two or more prior*
22 *convictions under such subsection, under K.S.A. 65-4162, prior to its*
23 *repeal, under a substantially similar offense from another jurisdiction, or*
24 *under any city ordinance or county resolution for a substantially similar*
25 *offense.*

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

30 Sec. 2. K.S.A. 2015 Supp. 21-5807 is hereby amended to read as
31 follows: 21-5807. (a) Burglary is, without authority, entering into or
32 remaining within any:

33 (1) Dwelling, with intent to commit a felony, theft or sexually
34 motivated crime therein;

35 (2) building, manufactured home, mobile home, tent or other
36 structure which is not a dwelling, with intent to commit a felony, theft or
37 sexually motivated crime therein; or

38 (3) vehicle, aircraft, watercraft, railroad car or other means of
39 conveyance of persons or property, with intent to commit a felony, theft or
40 sexually motivated crime therein.

41 (b) Aggravated burglary is, without authority, entering into or
42 remaining within any:

43 (1) *Dwelling in which there is a human being, with intent to commit a*

- 1 *felony, theft or sexually motivated crime therein;*
 2 (2) building, manufactured home, mobile home, tent or other
 3 structure *which is not a dwelling in which there is a human being, with*
 4 *intent to commit a felony, theft or sexually motivated crime therein;* or
 5 (3) ~~any~~ vehicle, aircraft, watercraft, railroad car or other means of
 6 conveyance of persons or property in which there is a human being with
 7 intent to commit a felony, theft or sexually motivated crime therein.
 8 (c) (1) Burglary as defined in:
 9 (A) ~~Subsection (a)(1) is a severity level 7, person felony, except as~~
 10 ~~provided in subsection (c)(2);~~
 11 (B) ~~subsection (a)(2) is a severity level 7, nonperson felony, except as~~
 12 ~~provided in subsection (c)(2);~~
 13 (C) ~~subsection (a)(3) is a severity level 9, nonperson felony, except as~~
 14 ~~provided in subsection (c)(2); and~~
 15 (2) ~~subsection (a)(1), (a)(2) or (a)(3) with the intent to commit the~~
 16 ~~theft of a firearm is a severity level 5, nonperson felony.~~
 17 (A) (i) ~~Subsection (a)(1) is a severity level 6, person felony, except as~~
 18 ~~provided in subsection (c)(1)(B);~~
 19 (ii) ~~subsection {or}~~ (a)(2) is a severity level 7, nonperson felony,
 20 *except as provided in subsection (c)(1)(B); and*
 21 (iii) ~~(ii)~~ (a)(3) is a severity level 9, nonperson felony,
 22 *except as provided in subsection (c)(1)(B); and*
 23 (B) (i) *subsection (a)(1), with intent to commit the theft of a firearm,*
 24 *is a severity level 5, person felony; and*
 25 (ii) *subsection (a)(2) or (a)(3), with intent to commit the theft of a*
 26 *firearm, is a severity level 5, nonperson felony.*
 27 (3) (2) Aggravated burglary as defined in:
 28 (A) *Subsection (b)(1) is a severity level 4, person felony; and*
 29 (B) *subsection (b)(2) or (b)(3) is a severity level 5, person felony.*
 30 (d) As used in this section, "sexually motivated" means that one of
 31 the purposes for which the defendant committed the crime was for the
 32 purpose of the defendant's sexual gratification.
 33 (e) ~~This section shall not apply to any premises that are, at the time,~~
 34 ~~open to the public {This section shall not apply to any person entering~~
 35 ~~into or remaining in a retail or commercial premises at any time that it is~~
 36 ~~open to the public after having received a personal communication from~~
 37 ~~the owner or manager of such premises not to enter such premises~~
 38 ~~pursuant to K.S.A. 2015 Supp. 21-5808, and amendments thereto, except~~
 39 ~~when such person is entering into or remaining in such premises with~~
 40 ~~the intent to commit a person felony or sexually motivated crime~~
 41 ~~therein}.~~
 42 {Sec. 3. K.S.A. 2015 Supp. 21-6804 is hereby amended to read as
 43 follows: 21-6804. (a) The provisions of this section shall be applicable to

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SENTENCING RANGE - NONDRUG OFFENSES

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

LEGEND
Presumptive Probation
County Jail
Presumptive Imprisonment

following crimes:

1 ***(b) Sentences expressed in the sentencing guidelines grid for***
2 ***nondrug crimes represent months of imprisonment.***

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

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

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

19 ***(2) In presumptive imprisonment cases, the sentencing court shall***
20 ***pronounce the complete sentence which shall include the:***

21 ***(A) Prison sentence;***

22 ***(B) maximum potential reduction to such sentence as a result of***
23 ***good time; and***

24 ***(C) period of postrelease supervision at the sentencing hearing.***
25 ***Failure to pronounce the period of postrelease supervision shall not***
26 ***negate the existence of such period of postrelease supervision.***

27 ***(3) In presumptive nonprison cases, the sentencing court shall***
28 ***pronounce the:***

29 ***(A) Prison sentence; and***

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

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

39 ***(g) The sentence for a violation of K.S.A. 21-3415, prior to its***
40 ***repeal, aggravated battery against a law enforcement officer committed***
41 ***prior to July 1, 2006, or a violation of K.S.A. 2015 Supp. 21-5412(d),***
42 ***and amendments thereto, aggravated assault against a law enforcement***
43 ***officer, which places the defendant's sentence in grid block 6-H or 6-I***

1 *shall be presumed imprisonment. The court may impose an optional*
2 *nonprison sentence as provided in subsection (q).*

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

6 *(i) (1) The sentence for the violation of the felony provision of*
7 *K.S.A. 2015 Supp. 8-1025, K.S.A. 8-2,144, K.S.A. 8-1567, K.S.A. 2015*
8 *Supp. 21-5414(b)(3), K.S.A. 2015 Supp. 21-5823(b)(3) and (b)(4), K.S.A.*
9 *2015 Supp. 21-6412 and K.S.A. 2015 Supp. 21-6416, and amendments*
10 *thereto, shall be as provided by the specific mandatory sentencing*
11 *requirements of that section and shall not be subject to the provisions of*
12 *this section or K.S.A. 2015 Supp. 21-6807, and amendments thereto.*

13 *(2) If because of the offender's criminal history classification the*
14 *offender is subject to presumptive imprisonment or if the judge departs*
15 *from a presumptive probation sentence and the offender is subject to*
16 *imprisonment, the provisions of this section and K.S.A. 2015 Supp. 21-*
17 *6807, and amendments thereto, shall apply and the offender shall not be*
18 *subject to the mandatory sentence as provided in K.S.A. 2015 Supp. 21-*
19 *5823, and amendments thereto.*

20 *(3) Notwithstanding the provisions of any other section, the term of*
21 *imprisonment imposed for the violation of the felony provision of K.S.A.*
22 *2015 Supp. 8-1025, K.S.A. 8-2,144, K.S.A. 8-1567, K.S.A. 2015 Supp. 21-*
23 *5414(b)(3), K.S.A. 2015 Supp. 21-5823(b)(3) and (b)(4), K.S.A. 2015*
24 *Supp. 21-6412 and K.S.A. 2015 Supp. 21-6416, and amendments*
25 *thereto, shall not be served in a state facility in the custody of the*
26 *secretary of corrections, except that the term of imprisonment for felony*
27 *violations of K.S.A. 2015 Supp. 8-1025 or K.S.A. 8-2,144 or K.S.A. 8-*
28 *1567, and amendments thereto, may be served in a state correctional*
29 *facility designated by the secretary of corrections if the secretary*
30 *determines that substance abuse treatment resources and facility*
31 *capacity is available. The secretary's determination regarding the*
32 *availability of treatment resources and facility capacity shall not be*
33 *subject to review. Prior to imposing any sentence pursuant to this*
34 *subsection, the court may consider assigning the defendant to a house*
35 *arrest program pursuant to K.S.A. 2015 Supp. 21-6609, and*
36 *amendments thereto.*

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

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

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

5 (ii) *at the time of the conviction under subsection (j)(2)(A)(i) has at*
6 *least one conviction for a sexually violent crime, as defined in K.S.A. 22-*
7 *3717, and amendments thereto, in this state or comparable felony under*
8 *the laws of another state, the federal government or a foreign*
9 *government; or*

10 (B) (i) *has been convicted of rape, as defined in K.S.A. 21-3502,*
11 *prior to its repeal, or K.S.A. 2015 Supp. 21-5503, and amendments*
12 *thereto; and*

13 (ii) *at the time of the conviction under subsection (j)(2)(B)(i) has at*
14 *least one conviction for rape in this state or comparable felony under the*
15 *laws of another state, the federal government or a foreign government.*

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

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

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

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

29 (B) *the commission of felony violations of article 57 of chapter 21*
30 *of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010*
31 *Supp. 21-36a01 through 21-36a17, prior to their transfer, or any felony*
32 *violation of any provision of the uniform controlled substances act prior*
33 *to July 1, 2009; and*

34 (C) *its members have a common name or common identifying sign*
35 *or symbol; and*

36 (D) *its members, individually or collectively, engage in or have*
37 *engaged in the commission, attempted commission, conspiracy to*
38 *commit or solicitation of two or more person felonies or felony violations*
39 *of article 57 of chapter 21 of the Kansas Statutes Annotated, and*
40 *amendments thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17,*
41 *prior to their transfer, any felony violation of any provision of the*
42 *uniform controlled substances act prior to July 1, 2009, or any*
43 *substantially similar offense from another jurisdiction.*

1 (l) *Except as provided in subsection (o), the sentence for a violation*
2 *of K.S.A. 2015 Supp. 21-5807(a)(1), and amendments thereto, or any*
3 *attempt or conspiracy, as defined in K.S.A. 2015 Supp. 21-5301 and 21-*
4 *5302, and amendments thereto, to commit such offense, when such*
5 *person being sentenced has a prior conviction for a violation of K.S.A.*
6 *21-3715(a) or (b), prior to its repeal, 21-3716, prior to its repeal, K.S.A.*
7 *2015 Supp. 21-5807(a)(1) or (a)(2), or K.S.A. 2015 Supp. 21-5807(b),*
8 *and amendments thereto, or any attempt or conspiracy to commit such*
9 *offense, shall be presumptive imprisonment.*

10 (m) *The sentence for a violation of K.S.A. 22-4903 or K.S.A. 2015*
11 *Supp. 21-5913(a)(2), and amendments thereto, shall be presumptive*
12 *imprisonment. If an offense under such sections is classified in grid*
13 *blocks 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional*
14 *nonprison sentence as provided in subsection (q).*

15 (n) *The sentence for a violation of criminal deprivation of property,*
16 *as defined in K.S.A. 2015 Supp. 21-5803, and amendments thereto,*
17 *when such property is a motor vehicle, and when such person being*
18 *sentenced has any combination of two or more prior convictions of*
19 *K.S.A. 21-3705(b), prior to its repeal, or of criminal deprivation of*
20 *property, as defined in K.S.A. 2015 Supp. 21-5803, and amendments*
21 *thereto, when such property is a motor vehicle, shall be presumptive*
22 *imprisonment. Such sentence shall not be considered a departure and*
23 *shall not be subject to appeal.*

24 (o) *The sentence for a felony violation of theft of property as*
25 *defined in K.S.A. 2015 Supp. 21-5801, and amendments thereto, or*
26 *burglary as defined in K.S.A. 2015 Supp. 21-5807(a), and amendments*
27 *thereto, when such person being sentenced has no prior convictions for*
28 *a violation of K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of*
29 *property as defined in K.S.A. 2015 Supp. 21-5801, and amendments*
30 *thereto, or burglary as defined in K.S.A. 2015 Supp. 21-5807(a), and*
31 *amendments thereto; or the sentence for a felony violation of theft of*
32 *property as defined in K.S.A. 2015 Supp. 21-5801, and amendments*
33 *thereto, when such person being sentenced has one or two prior felony*
34 *convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior*
35 *to their repeal, or theft of property as defined in K.S.A. 2015 Supp. 21-*
36 *5801, and amendments thereto, or burglary or aggravated burglary as*
37 *defined in K.S.A. 2015 Supp. 21-5807, and amendments thereto; or the*
38 *sentence for a felony violation of burglary as defined in K.S.A. 2015*
39 *Supp. 21-5807(a), and amendments thereto, when such person being*
40 *sentenced has one prior felony conviction for a violation of K.S.A. 21-*
41 *3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as*
42 *defined in K.S.A. 2015 Supp. 21-5801, and amendments thereto, or*
43 *burglary or aggravated burglary as defined in K.S.A. 2015 Supp. 21-*

1 *5807, and amendments thereto, shall be the sentence as provided by this*
2 *section, except that the court may order an optional nonprison sentence*
3 *for a defendant to participate in a drug treatment program, including,*
4 *but not limited to, an approved after-care plan, if the court makes the*
5 *following findings on the record:*

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

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

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

13 *A defendant sentenced to an optional nonprison sentence under this*
14 *subsection shall be supervised by community correctional services. The*
15 *provisions of K.S.A. 2015 Supp. 21-6824(f)(1), and amendments thereto,*
16 *shall apply to a defendant sentenced under this subsection. The sentence*
17 *under this subsection shall not be considered a departure and shall not*
18 *be subject to appeal.*

19 *(p) The sentence for a felony violation of theft of property as*
20 *defined in K.S.A. 2015 Supp. 21-5801, and amendments thereto, when*
21 *such person being sentenced has any combination of three or more prior*
22 *felony convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716,*
23 *prior to their repeal, or theft of property as defined in K.S.A. 2015 Supp.*
24 *21-5801, and amendments thereto, or burglary or aggravated burglary*
25 *as defined in K.S.A. 2015 Supp. 21-5807, and amendments thereto; or*
26 *the sentence for a violation of burglary as defined in K.S.A. 2015 Supp.*
27 *21-5807(a), and amendments thereto, when such person being sentenced*
28 *has any combination of two or more prior convictions for violations of*
29 *K.S.A. 21-3701, 21-3715 and 21-3716, prior to their repeal, or theft of*
30 *property as defined in K.S.A. 2015 Supp. 21-5801, and amendments*
31 *thereto, or burglary or aggravated burglary as defined in K.S.A. 2015*
32 *Supp. 21-5807, and amendments thereto, shall be presumed*
33 *imprisonment and the defendant shall be sentenced to prison as provided*
34 *by this section, except that the court may recommend that an offender be*
35 *placed in the custody of the secretary of corrections, in a facility*
36 *designated by the secretary to participate in an intensive substance abuse*
37 *treatment program, upon making the following findings on the record:*

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

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

43 *(3) participation in an intensive substance abuse treatment program*

1 *with the possibility of an early release from imprisonment will serve*
2 *community safety interests by promoting offender reformation.*

3 *The intensive substance abuse treatment program shall be*
4 *determined by the secretary of corrections, but shall be for a period of at*
5 *least four months. Upon the successful completion of such intensive*
6 *treatment program, the offender shall be returned to the court and the*
7 *court may modify the sentence by directing that a less severe penalty be*
8 *imposed in lieu of that originally adjudged within statutory limits. If the*
9 *offender's term of imprisonment expires, the offender shall be placed*
10 *under the applicable period of postrelease supervision. The sentence*
11 *under this subsection shall not be considered a departure and shall not*
12 *be subject to appeal.*

13 *(g) As used in this section, an "optional nonprison sentence" is a*
14 *sentence which the court may impose, in lieu of the presumptive*
15 *sentence, upon making the following findings on the record:*

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

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

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

24 *Any decision made by the court regarding the imposition of an*
25 *optional nonprison sentence shall not be considered a departure and*
26 *shall not be subject to appeal.*

27 *(r) The sentence for a violation of K.S.A. 2015 Supp. 21-5413(c)(2),*
28 *and amendments thereto, shall be presumptive imprisonment and shall*
29 *be served consecutively to any other term or terms of imprisonment*
30 *imposed. Such sentence shall not be considered a departure and shall*
31 *not be subject to appeal.*

32 *(s) The sentence for a violation of K.S.A. 2015 Supp. 21-5512, and*
33 *amendments thereto, shall be presumptive imprisonment. Such sentence*
34 *shall not be considered a departure and shall not be subject to appeal.*

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

40 *(2) The sentence imposed pursuant to subsection (t)(1) shall be*
41 *presumptive imprisonment and shall be served consecutively to any*
42 *other term or terms of imprisonment imposed. Such sentence shall not*
43 *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 (u) *The sentence for a violation of K.S.A. 2015 Supp. 21-6107, and*
8 *amendments thereto, or any attempt or conspiracy, as defined in K.S.A.*
9 *2015 Supp. 21-5301 and 21-5302, and amendments thereto, to commit*
10 *such offense, when such person being sentenced has a prior conviction*
11 *for a violation of K.S.A. 21-4018, prior to its repeal, or K.S.A. 2015*
12 *Supp. 21-6107, and amendments thereto, or any attempt or conspiracy to*
13 *commit such offense, shall be presumptive imprisonment. Such sentence*
14 *shall not be considered a departure and shall not be subject to appeal.*

15 (v) *The sentence for a third or subsequent violation of K.S.A. 8-*
16 *1568, and amendments thereto, shall be presumptive imprisonment and*
17 *shall be served consecutively to any other term or terms of imprisonment*
18 *imposed. Such sentence shall not be considered a departure and shall*
19 *not be subject to appeal.*

20 (w) *The sentence for aggravated criminal damage to property as*
21 *defined in K.S.A. 2015 Supp. 21-5813(b), and amendments thereto,*
22 *when such person being sentenced has a prior conviction for any*
23 *nonperson felony shall be presumptive imprisonment. Such sentence*
24 *shall not be considered a departure and shall not be subject to appeal.*

25 (x) *The sentence for a violation of K.S.A. 2015 Supp. 21-5807(a)(1),*
26 *and amendments thereto, shall be presumptive imprisonment if the offense*
27 *under such paragraph is classified in grid blocks 7-C, 7-D or 7-E. Such*
28 *sentence shall not be considered a departure and shall not be subject to*
29 *appeal.*

30 ~~Sec. 3, {4.}~~ *K.S.A. 2015 Supp. 21-5706~~and~~{,} 21-5807 {and 21-*
31 *6804}* are hereby repealed.

32 ~~Sec. 4, {5.}~~ This act shall take effect and be in force from and after its
33 publication in the statute book.