

**SENATE BILL No. 365**

By Committee on Judiciary

1-20

1 AN ACT concerning domestic violence offender assessments; requiring  
2 courts to order such assessments for first-time offenders convicted of  
3 domestic battery; courts to provide relevant documents to the certified  
4 batterer intervention programs completing such assessments when  
5 assessments are ordered under the Kansas criminal code or the Kansas  
6 family law code; prosecutors to provide relevant documents to the  
7 certified batterer intervention programs completing such assessments  
8 when assessments are required in a diversion agreement; amending  
9 K.S.A. 2021 Supp. 21-5414, 21-6604, 22-2909 and 23-3203 and  
10 repealing the existing sections.

11

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

13 Section 1. K.S.A. 2021 Supp. 21-5414 is hereby amended to read as  
14 follows: 21-5414. (a) Domestic battery is:

15 (1) Knowingly or recklessly causing bodily harm to a person with  
16 whom the offender is involved or has been involved in a dating  
17 relationship or a family or household member; or

18 (2) knowingly causing physical contact with a person with whom the  
19 offender is involved or has been involved in a dating relationship or a  
20 family or household member, when done in a rude, insulting or angry  
21 manner.

22 (b) Aggravated domestic battery is:

23 (1) Knowingly impeding the normal breathing or circulation of the  
24 blood by applying pressure on the throat, neck or chest of a person with  
25 whom the offender is involved or has been involved in a dating  
26 relationship or a family or household member, when done in a rude,  
27 insulting or angry manner; or

28 (2) knowingly impeding the normal breathing or circulation of the  
29 blood by blocking the nose or mouth of a person with whom the offender  
30 is involved or has been involved in a dating relationship or a family or  
31 household member, when done in a rude, insulting or angry manner.

32 (c) (1) Domestic battery is:

33 (A) Except as provided in subsection (c)(1)(B) or (c)(1)(C), a class B  
34 person misdemeanor and the offender shall be sentenced to not less than  
35 48 consecutive hours nor more than six months' imprisonment and fined  
36 not less than \$200, nor more than \$500 ~~or in the court's discretion the court~~

1 ~~may enter an order which requires the offender.~~ *As a condition of any*  
2 *grant of probation, suspension of sentence or parole or of any other*  
3 *release, the offender shall be required to undergo a domestic violence*  
4 *offender assessment conducted by a certified batterer intervention program*  
5 *and follow all recommendations made by such program, unless otherwise*  
6 *ordered by the court;*

7 (B) except as provided in subsection (c)(1)(C), a class A person  
8 misdemeanor, if, within five years immediately preceding commission of  
9 the crime, an offender is convicted of domestic battery a second time and  
10 the offender shall be sentenced to not less than 90 days nor more than one  
11 year's imprisonment and fined not less than \$500 nor more than \$1,000.  
12 The five days' imprisonment mandated by this paragraph may be served in  
13 a work release program only after such offender has served 48 consecutive  
14 hours' imprisonment, provided such work release program requires such  
15 offender to return to confinement at the end of each day in the work  
16 release program. The offender shall serve at least five consecutive days'  
17 imprisonment before the offender is granted probation, suspension or  
18 reduction of sentence or parole or is otherwise released. As a condition of  
19 any grant of probation, suspension of sentence or parole or of any other  
20 release, the offender shall be required to undergo a domestic violence  
21 offender assessment conducted by a certified batterer intervention program  
22 and follow all recommendations made by such program, unless otherwise  
23 ordered by the court; and

24 (C) a person felony, if, within five years immediately preceding  
25 commission of the crime, an offender is convicted of domestic battery a  
26 third or subsequent time, and the offender shall be sentenced to not less  
27 than 90 days nor more than one year's imprisonment and fined not less  
28 than \$1,000 nor more than \$7,500. The offender convicted shall not be  
29 eligible for release on probation, suspension or reduction of sentence or  
30 parole until the offender has served at least 90 days' imprisonment. As a  
31 condition of any grant of probation, suspension of sentence or parole or of  
32 any other release, the offender shall be required to undergo a domestic  
33 violence offender assessment conducted by a certified batterer intervention  
34 program and follow all recommendations made by such program, unless  
35 otherwise ordered by the court. If the offender does not undergo a  
36 domestic violence offender assessment conducted by a certified batterer  
37 intervention program and follow all recommendations made by such  
38 program, the offender shall serve not less than 180 days nor more than one  
39 year's imprisonment. The 90 days' imprisonment mandated by this  
40 paragraph may be served in a work release program only after such  
41 offender has served 48 consecutive hours imprisonment, provided such  
42 work release program requires such offender to return to confinement at  
43 the end of each day in the work release program.

1 (2) Aggravated domestic battery is a severity level 7, person felony.

2 (d) In determining the sentence to be imposed within the limits  
3 provided for a first, second, third or subsequent offense under this section,  
4 a court shall consider information presented to the court relating to any  
5 current or prior protective order issued against such person.

6 (e) As used in this section:

7 (1) "Dating relationship" means a social relationship of a romantic  
8 nature. In addition to any other factors the court deems relevant, the trier  
9 of fact may consider the following when making a determination of  
10 whether a relationship exists or existed: Nature of the relationship, length  
11 of time the relationship existed, frequency of interaction between the  
12 parties and time since the termination of the relationship, if applicable;

13 (2) "family or household member" means persons 18 years of age or  
14 older who are spouses, former spouses, parents or stepparents and children  
15 or stepchildren, and persons who are presently residing together or who  
16 have resided together in the past, and persons who have a child in common  
17 regardless of whether they have been married or who have lived together  
18 at any time. "Family or household member" also includes a man and  
19 woman if the woman is pregnant and the man is alleged to be the father,  
20 regardless of whether they have been married or have lived together at any  
21 time; and

22 (3) "protective order" means:

23 (A) A protection from abuse order issued pursuant to K.S.A. 60-3105,  
24 60-3106 or 60-3107, and amendments thereto;

25 (B) a protective order issued by a court or tribunal of any state or  
26 Indian tribe that is consistent with the provisions of 18 U.S.C. § 2265;

27 (C) a restraining order issued pursuant to K.S.A. 2021 Supp. 23-2707,  
28 38-2243, 38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-  
29 1607, prior to its transfer;

30 (D) an order issued in this or any other state as a condition of pretrial  
31 release, diversion, probation, suspended sentence, postrelease supervision  
32 or at any other time during the criminal case or upon appeal that orders the  
33 person to refrain from having any direct or indirect contact with a family  
34 or household member;

35 (E) an order issued in this or any other state as a condition of release  
36 after conviction or as a condition of a supersedeas bond pending  
37 disposition of an appeal, that orders the person to refrain from having any  
38 direct or indirect contact with another person; or

39 (F) a protection from stalking order issued pursuant to K.S.A. 60-  
40 31a05 or 60-31a06, and amendments thereto.

41 (f) For the purpose of determining whether a conviction is a first,  
42 second, third or subsequent conviction in sentencing under subsection (c)  
43 (1):

1 (1) "Conviction" includes being convicted of a violation of K.S.A.  
2 21-3412a, prior to its repeal, this section or entering into a diversion or  
3 deferred judgment agreement in lieu of further criminal proceedings on a  
4 complaint alleging a violation of this section;

5 (2) "conviction" includes being convicted of a violation of a law of  
6 another state, or an ordinance of any city, or resolution of any county,  
7 which prohibits the acts that this section prohibits or entering into a  
8 diversion or deferred judgment agreement in lieu of further criminal  
9 proceedings in a case alleging a violation of such law, ordinance or  
10 resolution;

11 (3) only convictions occurring in the immediately preceding five  
12 years including prior to July 1, 2001, shall be taken into account, but the  
13 court may consider other prior convictions in determining the sentence to  
14 be imposed within the limits provided for a first, second, third or  
15 subsequent offender, whichever is applicable; and

16 (4) it is irrelevant whether an offense occurred before or after  
17 conviction for a previous offense.

18 (g) A person may enter into a diversion agreement in lieu of further  
19 criminal proceedings for a violation of subsection (a) or (b) or an  
20 ordinance of any city or resolution of any county which prohibits the acts  
21 that subsection (a) or (b) prohibits only twice during any five-year period.

22 Sec. 2. K.S.A. 2021 Supp. 21-6604 is hereby amended to read as  
23 follows: 21-6604. (a) Whenever any person has been found guilty of a  
24 crime, the court may adjudge any of the following:

25 (1) Commit the defendant to the custody of the secretary of  
26 corrections if the current crime of conviction is a felony and the sentence  
27 presumes imprisonment, or the sentence imposed is a dispositional  
28 departure to imprisonment; or, if confinement is for a misdemeanor, to jail  
29 for the term provided by law;

30 (2) impose the fine applicable to the offense and may impose the  
31 provisions of subsection (q);

32 (3) release the defendant on probation if the current crime of  
33 conviction and criminal history fall within a presumptive nonprison  
34 category or through a departure for substantial and compelling reasons  
35 subject to such conditions as the court may deem appropriate. In felony  
36 cases except for violations of K.S.A. 8-1567 or 8-2,144, and amendments  
37 thereto, the court may include confinement in a county jail not to exceed  
38 60 days, which need not be served consecutively, as a condition of an  
39 original probation sentence;

40 (4) assign the defendant to a community correctional services  
41 program as provided in K.S.A. 75-5291, and amendments thereto, or  
42 through a departure for substantial and compelling reasons subject to such  
43 conditions as the court may deem appropriate, including orders requiring

1 full or partial restitution;

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

7 (6) assign the defendant to a house arrest program pursuant to K.S.A.  
8 2021 Supp. 21-6609, and amendments thereto;

9 (7) order the defendant to attend and satisfactorily complete an  
10 alcohol or drug education or training program as provided by K.S.A. 2021  
11 Supp. 21-6602(c), and amendments thereto;

12 (8) order the defendant to repay the amount of any reward paid by  
13 any crime stoppers chapter, individual, corporation or public entity that  
14 materially aided in the apprehension or conviction of the defendant; repay  
15 the amount of any costs and expenses incurred by any law enforcement  
16 agency in the apprehension of the defendant, if one of the current crimes  
17 of conviction of the defendant includes escape from custody or aggravated  
18 escape from custody, as defined in K.S.A. 2021 Supp. 21-5911, and  
19 amendments thereto; repay expenses incurred by a fire district, fire  
20 department or fire company responding to a fire that has been determined  
21 to be arson or aggravated arson as defined in K.S.A. 2021 Supp. 21-5812,  
22 and amendments thereto, if the defendant is convicted of such crime; repay  
23 the amount of any public funds utilized by a law enforcement agency to  
24 purchase controlled substances from the defendant during the investigation  
25 that leads to the defendant's conviction; or repay the amount of any  
26 medical costs and expenses incurred by any law enforcement agency or  
27 county. Such repayment of the amount of any such costs and expenses  
28 incurred by a county, law enforcement agency, fire district, fire department  
29 or fire company or any public funds utilized by a law enforcement agency  
30 shall be deposited and credited to the same fund from which the public  
31 funds were credited to prior to use by the county, law enforcement agency,  
32 fire district, fire department or fire company;

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

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

37 (11) if the defendant is convicted of a misdemeanor or convicted of a  
38 felony specified in K.S.A. 2021 Supp. 21-6804(i), and amendments  
39 thereto, assign the defendant to work release program, other than a  
40 program at a correctional institution under the control of the secretary of  
41 corrections as defined in K.S.A. 75-5202, and amendments thereto,  
42 provided such work release program requires such defendant to return to  
43 confinement at the end of each day in the work release program. On a

1 second or subsequent conviction of K.S.A. 8-1567, and amendments  
2 thereto, an offender placed into a work release program shall serve the  
3 total number of hours of confinement mandated by that section;

4 (12) order the defendant to pay the full amount of unpaid costs  
5 associated with the conditions of release of the appearance bond under  
6 K.S.A. 22-2802, and amendments thereto;

7 (13) impose any appropriate combination of *paragraphs* (1), ~~(2)~~, ~~(3)~~,  
8 ~~(4)~~, ~~(5)~~, ~~(6)~~, ~~(7)~~, ~~(8)~~, ~~(9)~~, ~~(10)~~, ~~(11)~~ and *through* (12); or

9 (14) suspend imposition of sentence in misdemeanor cases.

10 (b) (1) In addition to or in lieu of any of the above, the court shall  
11 order the defendant to pay restitution, which shall include, but not be  
12 limited to, damage or loss caused by the defendant's crime. Restitution  
13 shall be due immediately unless: (A) The court orders that the defendant  
14 be given a specified time to pay or be allowed to pay in specified  
15 installments; or (B) the court finds compelling circumstances that would  
16 render restitution unworkable, either in whole or in part. In regard to a  
17 violation of K.S.A. 2021 Supp. 21-6107, and amendments thereto, such  
18 damage or loss shall include, but not be limited to, attorney fees and costs  
19 incurred to repair the credit history or rating of the person whose personal  
20 identification documents were obtained and used in violation of such  
21 section, and to satisfy a debt, lien or other obligation incurred by the  
22 person whose personal identification documents were obtained and used in  
23 violation of such section. In regard to a violation of K.S.A. 2021 Supp. 21-  
24 5801, 21-5807, 21-5813 or 21-5818, and amendments thereto, such  
25 damage or loss shall include the cost of repair or replacement of the  
26 property that was damaged, the reasonable cost of any loss of production,  
27 crops and livestock, reasonable labor costs of any kind, reasonable  
28 material costs of any kind and any reasonable costs that are attributed to  
29 equipment that is used to abate or repair the damage to the property. If the  
30 court finds restitution unworkable, either in whole or in part, the court  
31 shall state on the record in detail the reasons therefor.

32 (2) If the court orders restitution, the restitution shall be a judgment  
33 against the defendant that may be collected by the court by garnishment or  
34 other execution as on judgments in civil cases. If, after 60 days from the  
35 date restitution is ordered by the court, a defendant is found to be in  
36 noncompliance with the restitution order, and the victim to whom  
37 restitution is ordered paid has not initiated proceedings in accordance with  
38 K.S.A. 60-4301 et seq., and amendments thereto, the court shall assign an  
39 agent procured by the judicial administrator pursuant to K.S.A. 20-169,  
40 and amendments thereto, to collect the restitution on behalf of the victim.  
41 The chief judge of each judicial district may assign such cases to an  
42 appropriate division of the court for the conduct of civil collection  
43 proceedings.

1 (3) If a restitution order entered prior to the effective date of this act  
2 does not give the defendant a specified time to pay or set payment in  
3 specified installments, the defendant may file a motion with the court prior  
4 to December 31, 2020, proposing payment of restitution in specified  
5 installments. The court may recall the restitution order from the agent  
6 assigned pursuant to K.S.A. 20-169, and amendments thereto, until the  
7 court rules on such motion. If the court does not order payment in  
8 specified installments or if the defendant does not file a motion prior to  
9 December 31, 2020, the restitution shall be due immediately.

10 (c) In addition to or in lieu of any of the above, the court shall order  
11 the defendant to submit to and complete an alcohol and drug evaluation,  
12 and pay a fee therefor, when required by K.S.A. 2021 Supp. 21-6602(d),  
13 and amendments thereto.

14 (d) In addition to any of the above, the court shall order the defendant  
15 to reimburse the county general fund for all or a part of the expenditures  
16 by the county to provide counsel and other defense services to the  
17 defendant. Any such reimbursement to the county shall be paid only after  
18 any order for restitution has been paid in full. In determining the amount  
19 and method of payment of such sum, the court shall take account of the  
20 financial resources of the defendant and the nature of the burden that  
21 payment of such sum will impose. A defendant who has been required to  
22 pay such sum and who is not willfully in default in the payment thereof  
23 may at any time petition the court that sentenced the defendant to waive  
24 payment of such sum or any unpaid portion thereof. If it appears to the  
25 satisfaction of the court that payment of the amount due will impose  
26 manifest hardship on the defendant or the defendant's immediate family,  
27 the court may waive payment of all or part of the amount due or modify  
28 the method of payment.

29 (e) In releasing a defendant on probation, the court shall direct that  
30 the defendant be under the supervision of a court services officer. If the  
31 court commits the defendant to the custody of the secretary of corrections  
32 or to jail, the court may specify in its order the amount of restitution to be  
33 paid and the person to whom it shall be paid if restitution is later ordered  
34 as a condition of parole, conditional release or postrelease supervision.

35 (f) (1) When a new felony is committed while the offender is  
36 incarcerated and serving a sentence for a felony, or while the offender is on  
37 probation, assignment to a community correctional services program,  
38 parole, conditional release or postrelease supervision for a felony, a new  
39 sentence shall be imposed consecutively pursuant to the provisions of  
40 K.S.A. 2021 Supp. 21-6606, and amendments thereto, and the court may  
41 sentence the offender to imprisonment for the new conviction, even when  
42 the new crime of conviction otherwise presumes a nonprison sentence. In  
43 this event, imposition of a prison sentence for the new crime does not

1 constitute a departure.

2 (2) When a new felony is committed during a period of time when the  
3 defendant would have been on probation, assignment to a community  
4 correctional services program, parole, conditional release or postrelease  
5 supervision for a felony had the defendant not been granted release by the  
6 court pursuant to K.S.A. 2021 Supp. 21-6608(d), and amendments thereto,  
7 or the prisoner review board pursuant to K.S.A. 22-3717, and amendments  
8 thereto, the court may sentence the offender to imprisonment for the new  
9 conviction, even when the new crime of conviction otherwise presumes a  
10 nonprison sentence. In this event, imposition of a prison sentence for the  
11 new crime does not constitute a departure.

12 (3) When a new felony is committed while the offender is  
13 incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671,  
14 prior to its repeal, or K.S.A. 38-2373, and amendments thereto, for an  
15 offense, which if committed by an adult would constitute the commission  
16 of a felony, upon conviction, the court shall sentence the offender to  
17 imprisonment for the new conviction, even when the new crime of  
18 conviction otherwise presumes a nonprison sentence. In this event,  
19 imposition of a prison sentence for the new crime does not constitute a  
20 departure. The conviction shall operate as a full and complete discharge  
21 from any obligations, except for an order of restitution, imposed on the  
22 offender arising from the offense for which the offender was committed to  
23 a juvenile correctional facility.

24 (4) When a new felony is committed while the offender is on release  
25 for a felony pursuant to the provisions of article 28 of chapter 22 of the  
26 Kansas Statutes Annotated, and amendments thereto, or similar provisions  
27 of the laws of another jurisdiction, a new sentence may be imposed  
28 consecutively pursuant to the provisions of K.S.A. 2021 Supp. 21-6606,  
29 and amendments thereto, and the court may sentence the offender to  
30 imprisonment for the new conviction, even when the new crime of  
31 conviction otherwise presumes a nonprison sentence. In this event,  
32 imposition of a prison sentence for the new crime does not constitute a  
33 departure.

34 (g) Prior to imposing a dispositional departure for a defendant whose  
35 offense is classified in the presumptive nonprison grid block of either  
36 sentencing guideline grid, prior to sentencing a defendant to incarceration  
37 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing  
38 guidelines grid for nondrug crimes, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I  
39 of the sentencing guidelines grid for drug crimes committed prior to July  
40 1, 2012, or in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing  
41 guidelines grid for drug crimes committed on or after July 1, 2012, prior to  
42 sentencing a defendant to incarceration whose offense is classified in grid  
43 blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes



1 committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of  
2 the sentencing guidelines grid for drug crimes committed on or after July  
3 1, 2012, and whose offense does not meet the requirements of K.S.A. 2021  
4 Supp. 21-6824, and amendments thereto, prior to revocation of a  
5 nonprison sanction of a defendant whose offense is classified in grid  
6 blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes  
7 committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of  
8 the sentencing guidelines grid for drug crimes committed on or after July  
9 1, 2012, and whose offense does not meet the requirements of K.S.A. 2021  
10 Supp. 21-6824, and amendments thereto, or prior to revocation of a  
11 nonprison sanction of a defendant whose offense is classified in the  
12 presumptive nonprison grid block of either sentencing guideline grid or  
13 grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug  
14 crimes, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing  
15 guidelines grid for drug crimes committed prior to July 1, 2012, or in grid  
16 blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug  
17 crimes committed on or after July 1, 2012, the court shall consider  
18 placement of the defendant in the Labette correctional conservation camp,  
19 conservation camps established by the secretary of corrections pursuant to  
20 K.S.A. 75-52,127, and amendments thereto, or a community intermediate  
21 sanction center. Pursuant to this subsection the defendant shall not be  
22 sentenced to imprisonment if space is available in a conservation camp or  
23 community intermediate sanction center and the defendant meets all of the  
24 conservation camp's or community intermediate sanction center's  
25 placement criteria unless the court states on the record the reasons for not  
26 placing the defendant in a conservation camp or community intermediate  
27 sanction center.

28 (h) In committing a defendant to the custody of the secretary of  
29 corrections, the court shall fix a term of confinement within the limits  
30 provided by law. In those cases where the law does not fix a term of  
31 confinement for the crime for which the defendant was convicted, the  
32 court shall fix the term of such confinement.

33 (i) In addition to any of the above, the court shall order the defendant  
34 to reimburse the state general fund for all or part of the expenditures by the  
35 state board of indigents' defense services to provide counsel and other  
36 defense services to the defendant. In determining the amount and method  
37 of payment of such sum, the court shall take account of the financial  
38 resources of the defendant and the nature of the burden that payment of  
39 such sum will impose. A defendant who has been required to pay such sum  
40 and who is not willfully in default in the payment thereof may at any time  
41 petition the court that sentenced the defendant to waive payment of such  
42 sum or any unpaid portion thereof. If it appears to the satisfaction of the  
43 court that payment of the amount due will impose manifest hardship on the

1 defendant or the defendant's immediate family, the court may waive  
2 payment of all or part of the amount due or modify the method of  
3 payment. The amount of attorney fees to be included in the court order for  
4 reimbursement shall be the amount claimed by appointed counsel on the  
5 payment voucher for indigents' defense services or the amount prescribed  
6 by the board of indigents' defense services reimbursement tables as  
7 provided in K.S.A. 22-4522, and amendments thereto, whichever is less.

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

12 (k) An application for or acceptance of probation or assignment to a  
13 community correctional services program shall not constitute an  
14 acquiescence in the judgment for purpose of appeal, and any convicted  
15 person may appeal from such conviction, as provided by law, without  
16 regard to whether such person has applied for probation, suspended  
17 sentence or assignment to a community correctional services program.

18 (l) The secretary of corrections is authorized to make direct  
19 placement to the Labette correctional conservation camp or a conservation  
20 camp established by the secretary pursuant to K.S.A. 75-52,127, and  
21 amendments thereto, of an inmate sentenced to the secretary's custody if  
22 the inmate:

23 (1) Has been sentenced to the secretary for a probation revocation, as  
24 a departure from the presumptive nonimprisonment grid block of either  
25 sentencing grid, for an offense that is classified in grid blocks 5-H, 5-I or  
26 6-G of the sentencing guidelines grid for nondrug crimes, in grid blocks 3-  
27 E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes  
28 committed prior to July 1, 2012, in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of  
29 the sentencing guidelines grid for drug crimes committed on or after July  
30 1, 2012, or for an offense that is classified in grid blocks 4-E or 4-F of the  
31 sentencing guidelines grid for drug crimes committed prior to July 1, 2012,  
32 or in grid blocks 5-C, 5-D, 5-E or 5-F of the sentencing guidelines grid for  
33 drug crimes committed on or after July 1, 2012, and such offense does not  
34 meet the requirements of K.S.A. 2021 Supp. 21-6824, and amendments  
35 thereto; and

36 (2) otherwise meets admission criteria of the camp.

37 If the inmate successfully completes a conservation camp program, the  
38 secretary of corrections shall report such completion to the sentencing  
39 court and the county or district attorney. The inmate shall then be assigned  
40 by the court to six months of follow-up supervision conducted by the  
41 appropriate community corrections services program. The court may also  
42 order that supervision continue thereafter for the length of time authorized  
43 by K.S.A. 2021 Supp. 21-6608, and amendments thereto.

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

4 (n) (1) Except as provided by K.S.A. 2021 Supp. 21-6630 and 21-  
5 6805(f), and amendments thereto, in addition to any of the above, for  
6 felony violations of K.S.A. 2021 Supp. 21-5706, and amendments thereto,  
7 the court shall require the defendant who meets the requirements  
8 established in K.S.A. 2021 Supp. 21-6824, and amendments thereto, to  
9 participate in a certified drug abuse treatment program, as provided in  
10 K.S.A. 75-52,144, and amendments thereto, including, but not limited to,  
11 an approved after-care plan. The amount of time spent participating in  
12 such program shall not be credited as service on the underlying prison  
13 sentence.

14 (2) If the defendant fails to participate in or has a pattern of  
15 intentional conduct that demonstrates the defendant's refusal to comply  
16 with or participate in the treatment program, as established by judicial  
17 finding, the defendant shall be subject to sanction or revocation pursuant  
18 to the provisions of K.S.A. 22-3716, and amendments thereto. If the  
19 defendant's probation is revoked, the defendant shall serve the underlying  
20 prison sentence as established in K.S.A. 2021 Supp. 21-6805, and  
21 amendments thereto.

22 (A) Except as provided in subsection (n)(2)(B), for those offenders  
23 who are convicted on or after July 1, 2003, but prior to July 1, 2013, upon  
24 completion of the underlying prison sentence, the offender shall not be  
25 subject to a period of postrelease supervision.

26 (B) Offenders whose crime of conviction was committed on or after  
27 July 1, 2013, and whose probation is revoked pursuant to K.S.A. 22-  
28 3716(c), and amendments thereto, or whose underlying prison term expires  
29 while serving a sanction pursuant to K.S.A. 22-3716(c)(1), and  
30 amendments thereto, shall serve a period of postrelease supervision upon  
31 the completion of the underlying prison term.

32 (o) (1) Except as provided in paragraph (3), in addition to any other  
33 penalty or disposition imposed by law, upon a conviction for unlawful  
34 possession of a controlled substance or controlled substance analog in  
35 violation of K.S.A. 2021 Supp. 21-5706, and amendments thereto, in  
36 which the trier of fact makes a finding that the unlawful possession  
37 occurred while transporting the controlled substance or controlled  
38 substance analog in any vehicle upon a highway or street, the offender's  
39 driver's license or privilege to operate a motor vehicle on the streets and  
40 highways of this state shall be suspended for one year.

41 (2) Upon suspension of a license pursuant to this subsection, the court  
42 shall require the person to surrender the license to the court, which shall  
43 transmit the license to the division of motor vehicles of the department of

1 revenue, to be retained until the period of suspension expires. At that time,  
2 the licensee may apply to the division for return of the license. If the  
3 license has expired, the person may apply for a new license, which shall be  
4 issued promptly upon payment of the proper fee and satisfaction of other  
5 conditions established by law for obtaining a license unless another  
6 suspension or revocation of the person's privilege to operate a motor  
7 vehicle is in effect.

8 (3) (A) In lieu of suspending the driver's license or privilege to  
9 operate a motor vehicle on the highways of this state of any person as  
10 provided in paragraph (1), the judge of the court in which such person was  
11 convicted may enter an order that places conditions on such person's  
12 privilege of operating a motor vehicle on the highways of this state, a  
13 certified copy of which such person shall be required to carry any time  
14 such person is operating a motor vehicle on the highways of this state. Any  
15 such order shall prescribe the duration of the conditions imposed, which in  
16 no event shall be for a period of more than one year.

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

34 (C) Upon expiration of the period of time for which conditions are  
35 imposed pursuant to this subsection, the licensee may apply to the division  
36 for the return of the license previously surrendered by such licensee. In the  
37 event such license has expired, such person may apply to the division for a  
38 new license, which shall be issued immediately by the division upon  
39 payment of the proper fee and satisfaction of the other conditions  
40 established by law, unless such person's privilege to operate a motor  
41 vehicle on the highways of this state has been suspended or revoked prior  
42 thereto. If any person shall violate any of the conditions imposed under  
43 this paragraph, such person's driver's license or privilege to operate a

1 motor vehicle on the highways of this state shall be revoked for a period of  
2 not less than 60 days nor more than one year by the judge of the court in  
3 which such person is convicted of violating such conditions.

4 (4) As used in this subsection, "highway" and "street" mean the same  
5 as in K.S.A. 8-1424 and 8-1473, and amendments thereto.

6 (p) In addition to any of the above, for any criminal offense that  
7 includes the domestic violence designation pursuant to K.S.A. 2021 Supp.  
8 22-4616, and amendments thereto, the court shall require the defendant to:

9 (1) Undergo a domestic violence offender assessment conducted by a  
10 certified batterer intervention program; and (2) follow all  
11 recommendations made by such program, unless otherwise ordered by the  
12 court or the department of corrections. The court may order a domestic  
13 violence offender assessment and any other evaluation prior to sentencing  
14 if the assessment or evaluation would assist the court in determining an  
15 appropriate sentence. *If the court orders a domestic violence offender*  
16 *assessment, the court shall provide to the certified batterer intervention*  
17 *program completing the assessment a copy of the charging affidavit,*  
18 *complaint, information or indictment and any other documents the court*  
19 *determines are relevant to the completion of the assessment.* The entity  
20 completing the assessment or evaluation shall provide the assessment or  
21 evaluation and recommendations to the court and the court shall provide  
22 the domestic violence offender assessment to any entity responsible for  
23 supervising such defendant. A defendant ordered to undergo a domestic  
24 violence offender assessment shall be required to pay for the assessment  
25 and, unless otherwise ordered by the court or the department of  
26 corrections, for completion of all recommendations.

27 (q) In imposing a fine, the court may authorize the payment thereof in  
28 installments. In lieu of payment of any fine imposed, the court may order  
29 that the person perform community service specified by the court. The  
30 person shall receive a credit on the fine imposed in an amount equal to \$5  
31 for each full hour spent by the person in the specified community service.  
32 The community service ordered by the court shall be required to be  
33 performed by the later of one year after the fine is imposed or one year  
34 after release from imprisonment or jail, or by an earlier date specified by  
35 the court. If by the required date the person performs an insufficient  
36 amount of community service to reduce to zero the portion of the fine  
37 required to be paid by the person, the remaining balance shall become due  
38 on that date. If conditional reduction of any fine is rescinded by the court  
39 for any reason, then pursuant to the court's order the person may be  
40 ordered to perform community service by one year after the date of such  
41 rescission or by an earlier date specified by the court. If by the required  
42 date the person performs an insufficient amount of community service to  
43 reduce to zero the portion of the fine required to be paid by the person, the

1 remaining balance of the fine shall become due on that date. All credits for  
2 community service shall be subject to review and approval by the court.

3 (r) In addition to any other penalty or disposition imposed by law, for  
4 any defendant sentenced to imprisonment pursuant to K.S.A. 21-4643,  
5 prior to its repeal, or K.S.A. 2021 Supp. 21-6627, and amendments  
6 thereto, for crimes committed on or after July 1, 2006, the court shall order  
7 that the defendant be electronically monitored upon release from  
8 imprisonment for the duration of the defendant's natural life and that the  
9 defendant shall reimburse the state for all or part of the cost of such  
10 monitoring as determined by the prisoner review board.

11 (s) Whenever the court has released the defendant on probation  
12 pursuant to subsection (a)(3), the defendant's supervising court services  
13 officer, with the concurrence of the chief court services officer, may  
14 impose the violation sanctions as provided in K.S.A. 22-3716(c)(1)(B),  
15 and amendments thereto, without further order of the court, unless the  
16 defendant, after being apprised of the right to a revocation hearing before  
17 the court pursuant to K.S.A. 22-3716(b), and amendments thereto, refuses  
18 to waive such right.

19 (t) Whenever the court has assigned the defendant to a community  
20 correctional services program pursuant to subsection (a)(4), the defendant's  
21 community corrections officer, with the concurrence of the community  
22 corrections director, may impose the violation sanctions as provided in  
23 K.S.A. 22-3716(c)(1)(B), and amendments thereto, without further order  
24 of the court unless the defendant, after being apprised of the right to a  
25 revocation hearing before the court pursuant to K.S.A. 22-3716(b), and  
26 amendments thereto, refuses to waive such right.

27 (u) In addition to any of the above, the court shall authorize an  
28 additional 18 days of confinement in a county jail to be reserved for  
29 sanctions as set forth in K.S.A. 22-3716(b)(3)(B), (b)(4) or (c)(1)(B), and  
30 amendments thereto.

31 (v) The amendments made to this section by this act are procedural in  
32 nature and shall be construed and applied retroactively.

33 Sec. 3. K.S.A. 2021 Supp. 22-2909 is hereby amended to read as  
34 follows: 22-2909. (a) (1) A diversion agreement shall provide that if the  
35 defendant fulfills the obligations of the program described therein, as  
36 determined by the attorney general or county or district attorney, such  
37 attorney shall act to have the criminal charges against the defendant  
38 dismissed with prejudice. The diversion agreement shall include  
39 specifically the waiver of all rights under the law or the constitution of  
40 Kansas or of the United States to a speedy arraignment, preliminary  
41 examinations and hearings, and a speedy trial, and in the case of diversion  
42 under subsection (c) waiver of the rights to counsel and trial by jury. The  
43 diversion agreement may include, but is not limited to, provisions

1 concerning:

2 (A) Payment of restitution, including court costs and diversion costs;

3 (B) residence in a specified facility;

4 (C) maintenance of gainful employment;

5 (D) participation in programs offering medical, educational,  
6 vocational, social and psychological services, corrective and preventive  
7 guidance and other rehabilitative services; and

8 (E) supervision by the county or district attorney, or by court services  
9 or community correctional services pursuant to a memorandum of  
10 understanding entered into by the county or district attorney pursuant to  
11 K.S.A. 22-2907, and amendments thereto, including the diversion  
12 supervision fee and urinalysis costs described in K.S.A. 22-2907, and  
13 amendments thereto, when applicable.

14 (2) If a county creates a local fund under the property crime  
15 restitution and compensation act, a county or district attorney may require  
16 in all diversion agreements as a condition of diversion the payment of a  
17 diversion fee in an amount not to exceed \$100. Such fees shall be  
18 deposited into the local fund and disbursed pursuant to recommendations  
19 of the local board under the property crime restitution and victims  
20 compensation act.

21 (3) If the attorney general enters into a diversion agreement:

22 (A) Any diversion costs or fees collected pursuant to such agreement  
23 shall be deposited in the fraud and abuse criminal prosecution fund  
24 established by K.S.A. 75-765, and amendments thereto; and

25 (B) the attorney general may enter into agreements with the  
26 appropriate county or district attorney or other appropriate parties  
27 regarding the supervision of conditions of such diversion agreement.

28 (b) The diversion agreement shall state:

29 (1) The defendant's full name;

30 (2) the defendant's full name at the time the complaint was filed, if  
31 different from the defendant's current name;

32 (3) the defendant's sex, race and date of birth;

33 (4) the crime with which the defendant is charged;

34 (5) the date the complaint was filed; and

35 (6) the district court with which the agreement is filed.

36 (c) If a diversion agreement is entered into in lieu of further criminal  
37 proceedings on a complaint alleging a violation of K.S.A. 8-1567, and  
38 amendments thereto, the diversion agreement shall include a stipulation,  
39 agreed to by the defendant, the defendant's attorney if the defendant is  
40 represented by an attorney and the attorney general or county or district  
41 attorney, of the facts upon which the charge is based and a provision that if  
42 the defendant fails to fulfill the terms of the specific diversion agreement  
43 and the criminal proceedings on the complaint are resumed, the

1 proceedings, including any proceedings on appeal, shall be conducted on  
2 the record of the stipulation of facts relating to the complaint. In addition,  
3 the agreement shall include a requirement that the defendant:

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

9 (2) participate in an alcohol and drug evaluation conducted by a  
10 licensed provider pursuant to K.S.A. 8-1008, and amendments thereto, and  
11 follow any recommendation made by the provider after such evaluation.

12 (d) If a diversion agreement is entered into in lieu of further criminal  
13 proceedings on a complaint alleging a domestic violence offense, as  
14 defined in K.S.A. 2021 Supp. 21-5111, and amendments thereto, the  
15 diversion agreement shall include a requirement that the defendant  
16 undergo a domestic violence offender assessment *conducted by a certified*  
17 *batterer intervention program* and follow all recommendations *made by*  
18 *such program* unless otherwise agreed to with the prosecutor in the  
19 diversion agreement. The defendant shall be required to pay for such  
20 assessment and, unless otherwise agreed to with the prosecutor in the  
21 diversion agreement, for completion of all recommendations. *The*  
22 *prosecutor shall provide to the certified batterer intervention program*  
23 *completing the assessment a copy of the complaint and any other*  
24 *documents the prosecutor determines are relevant to the completion of the*  
25 *assessment.*

26 (e) If a diversion agreement is entered into in lieu of further criminal  
27 proceedings on a complaint alleging a violation other than K.S.A. 8-1567,  
28 and amendments thereto, the diversion agreement may include a  
29 stipulation, agreed to by the defendant, the defendant's attorney if the  
30 defendant is represented by an attorney and the attorney general or county  
31 or district attorney, of the facts upon which the charge is based and a  
32 provision that if the defendant fails to fulfill the terms of the specific  
33 diversion agreement and the criminal proceedings on the complaint are  
34 resumed, the proceedings, including any proceedings on appeal, shall be  
35 conducted on the record of the stipulation of facts relating to the  
36 complaint.

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

42 (g) If the attorney general or county or district attorney elects to offer  
43 diversion in lieu of further criminal proceedings on the complaint and the



1 defendant agrees to all of the terms of the proposed agreement, the  
2 diversion agreement shall be filed with the district court and the district  
3 court shall stay further proceedings on the complaint. If the defendant  
4 declines to accept diversion, the district court shall resume the criminal  
5 proceedings on the complaint.

6 (h) Except as provided in subsection (i), if a diversion agreement is  
7 entered into in lieu of further criminal proceedings alleging commission of  
8 a misdemeanor by the defendant, while under 21 years of age, under  
9 K.S.A. 2021 Supp. 21-5701 through 21-5717, and amendments thereto, or  
10 K.S.A. 41-719, 41-727, 41-804, 41-2719 or 41-2720, and amendments  
11 thereto, the agreement shall require the defendant to participate in an  
12 alcohol and drug evaluation conducted by a licensed provider pursuant to  
13 K.S.A. 8-1008, and amendments thereto, and follow any recommendation  
14 made by the provider after such evaluation.

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

19 (j) If a diversion agreement is entered into in lieu of further criminal  
20 proceedings on a complaint alleging a violation of K.S.A. 2021 Supp. 21-  
21 6421, and amendments thereto, the agreement:

22 (1) Shall include a requirement that the defendant pay a fine specified  
23 by the agreement in an amount equal to an amount authorized by K.S.A.  
24 2021 Supp. 21-6421, and amendments thereto; and

25 (2) may include a requirement that the defendant enter into and  
26 complete a suitable educational or treatment program regarding  
27 commercial sexual exploitation.

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

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

41 Sec. 4. K.S.A. 2021 Supp. 23-3203 is hereby amended to read as  
42 follows: 23-3203. (a) In determining the issue of legal custody, residency  
43 and parenting time of a child, the court shall consider all relevant factors,

1 including, but not limited to:

- 2 (1) Each parent's role and involvement with the minor child before  
3 and after separation;
- 4 (2) the desires of the child's parents as to custody or residency;
- 5 (3) the desires of a child of sufficient age and maturity as to the  
6 child's custody or residency;
- 7 (4) the age of the child;
- 8 (5) the emotional and physical needs of the child;
- 9 (6) the interaction and interrelationship of the child with parents,  
10 siblings and any other person who may significantly affect the child's best  
11 interests;
- 12 (7) the child's adjustment to the child's home, school and community;
- 13 (8) the willingness and ability of each parent to respect and appreciate  
14 the bond between the child and the other parent and to allow for a  
15 continuing relationship between the child and the other parent;
- 16 (9) evidence of domestic abuse, including, but not limited to:
  - 17 (A) A pattern or history of physically or emotionally abusive  
18 behavior or threat thereof used by one person to gain or maintain  
19 domination and control over an intimate partner or household member; or
  - 20 (B) an act of domestic violence, stalking or sexual assault;
- 21 (10) the ability of the parties to communicate, cooperate and manage  
22 parental duties;
  - 23 (11) the school activity schedule of the child;
  - 24 (12) the work schedule of the parties;
  - 25 (13) the location of the parties' residences and places of employment;
  - 26 (14) the location of the child's school;
  - 27 (15) whether a parent is subject to the registration requirements of the  
28 Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments  
29 thereto, or any similar act in any other state, or under military or federal  
30 law;
  - 31 (16) whether a parent has been convicted of abuse of a child, K.S.A.  
32 21-3609, prior to its repeal, or K.S.A. 2021 Supp. 21-5602, and  
33 amendments thereto;
  - 34 (17) whether a parent is residing with an individual who is subject to  
35 registration requirements of the Kansas offender registration act, K.S.A.  
36 22-4901 et seq., and amendments thereto, or any similar act in any other  
37 state, or under military or federal law; and
  - 38 (18) whether a parent is residing with an individual who has been  
39 convicted of abuse of a child, K.S.A. 21-3609, prior to its repeal, or K.S.A.  
40 2021 Supp. 21-5602, and amendments thereto.
- 41 (b) To aid in determining the issue of legal custody, residency and  
42 parenting time of a child, the court may order a parent to undergo a  
43 domestic violence offender assessment conducted by a certified batterer

1 intervention program and may order such parent to follow all  
2 recommendations made by such program. *If the court orders a domestic*  
3 *violence offender assessment, the court shall provide to the certified*  
4 *batterer intervention program completing the assessment a copy of any*  
5 *affidavit, petition, pleading, motion, order and other documents the court*  
6 *determines are relevant to the completion of the assessment.*

7 Sec. 5. K.S.A. 2021 Supp. 21-5414, 21-6604, 22-2909 and 23-3203  
8 are hereby repealed.

9 Sec. 6. This act shall take effect and be in force from and after its  
10 publication in the statute book.