

HOUSE BILL No. 2879

By Select Committee on Corrections Reform and Oversight

2-13

9 AN ACT concerning crimes, punishment and criminal procedure; relat-
10 ing to driving under the influence; amending K.S.A. 21-4704 and 21-
11 4710 and K.S.A. 2007 Supp. 8-1567 and repealing the existing sections;
12 also repealing K.S.A. 21-4704b and K.S.A. 2007 Supp. 8-1567b.
13

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

15 New Section 1. On and after January 1, 2009: (a) There is hereby
16 established a prison sanction of a drug and alcohol abuse treatment pro-
17 gram for a fourth or subsequent violation of K.S.A. 8-1567, and amend-
18 ments thereto. The sentencing court shall commit the offender to a sen-
19 tence of imprisonment for 18 months. Except as provided in subsection
20 (c), the offender convicted shall not be eligible for release on probation,
21 suspension or reduction of sentence or parole until the person has served
22 the 18 month sentence.

23 (b) The drug and alcohol abuse treatment program established in this
24 section shall be at a correctional institution, as defined in K.S.A. 75-5202,
25 and amendments thereto.

26 (c) The court may order the offender released following 12 months
27 imprisonment if the court finds, on the record, that the:

28 (1) Offender has been determined by the secretary of corrections, in
29 consultation with the treatment providers, as suitable for discharge by
30 successfully completing the drug and alcohol abuse treatment program;
31 and

32 (2) violation of K.S.A. 8-1567, and amendments thereto, for which
33 the offender has been sentenced did not involve a vehicle accident or
34 collision resulting in property damage, personal injury or death.

35 (d) Notwithstanding the provisions of any other law to the contrary,
36 an offender who is sentenced to imprisonment pursuant to this section
37 shall not serve a period of postrelease supervision upon the completion
38 of the prison portion of that sentence. The provisions of this subsection
39 shall not apply to offenders who are serving or are to begin serving a
40 sentence for any other felony offense that is not excluded from postrelease
41 supervision by this subsection.

42 (e) The sentencing provisions of this section shall apply to a fourth
43 or subsequent violation of K.S.A. 8-1567, and amendments thereto, com-

1 mitted on or after January 1, 2009.

2 Sec. 2. K.S.A. 2007 Supp. 8-1567 is hereby amended to read as fol-
3 lows: 8-1567. (a) No person shall operate or attempt to operate any vehicle
4 within this state while:

5 (1) The alcohol concentration in the person's blood or breath as
6 shown by any competent evidence, including other competent evidence,
7 as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amend-
8 ments thereto, is .08 or more;

9 (2) the alcohol concentration in the person's blood or breath, as meas-
10 ured within two hours of the time of operating or attempting to operate
11 a vehicle, is .08 or more;

12 (3) under the influence of alcohol to a degree that renders the person
13 incapable of safely driving a vehicle;

14 (4) under the influence of any drug or combination of drugs to a
15 degree that renders the person incapable of safely driving a vehicle; or

16 (5) under the influence of a combination of alcohol and any drug or
17 drugs to a degree that renders the person incapable of safely driving a
18 vehicle.

19 (b) No person shall operate or attempt to operate any vehicle within
20 this state if the person is a habitual user of any narcotic, hypnotic, som-
21 nifacient or stimulating drug.

22 (c) If a person is charged with a violation of this section involving
23 drugs, the fact that the person is or has been entitled to use the drug
24 under the laws of this state shall not constitute a defense against the
25 charge.

26 (d) Upon a first conviction of a violation of this section, a person shall
27 be guilty of a class B, nonperson misdemeanor and sentenced to not less
28 than 48 consecutive hours nor more than six months' imprisonment, or
29 in the court's discretion 100 hours of public service, and fined not less
30 than \$500 nor more than \$1,000. The person convicted must serve at
31 least 48 consecutive hours' imprisonment or 100 hours of public service
32 either before or as a condition of any grant of probation or suspension,
33 reduction of sentence or parole.

34 In addition, the court shall enter an order which requires that the
35 person enroll in and successfully complete an alcohol and drug safety
36 action education program or treatment program as provided in K.S.A. 8-
37 1008, and amendments thereto, or both the education and treatment
38 programs.

39 (e) On a second conviction of a violation of this section, a person shall
40 be guilty of a class A, nonperson misdemeanor and sentenced to not less
41 than 90 days nor more than one year's imprisonment and fined not less
42 than \$1,000 nor more than \$1,500. The person convicted must serve at
43 least five consecutive days' imprisonment before the person is granted

1 probation, suspension or reduction of sentence or parole or is otherwise
2 released. The five days' imprisonment mandated by this subsection may
3 be served in a work release program only after such person has served
4 48 consecutive hours' imprisonment, provided such work release program
5 requires such person to return to confinement at the end of each day in
6 the work release program. The court may place the person convicted
7 under a house arrest program pursuant to K.S.A. 21-4603b, and amend-
8 ments thereto, to serve the remainder of the minimum sentence only
9 after such person has served 48 consecutive hours' imprisonment.

10 As a condition of any grant of probation, suspension of sentence or
11 parole or of any other release, the person shall be required to enter into
12 and complete a treatment program for alcohol and drug abuse as provided
13 in K.S.A. 8-1008, and amendments thereto.

14 (f) (1) On the third conviction of a violation of this section, a person
15 shall be guilty of a nonperson felony and sentenced to not less than 90
16 days nor more than one year's imprisonment and fined not less than
17 \$1,500 nor more than \$2,500. The person convicted shall not be eligible
18 for release on probation, suspension or reduction of sentence or parole
19 until the person has served at least 90 days' imprisonment. The 90 days'
20 imprisonment mandated by this paragraph may be served in a work re-
21 lease program only after such person has served 48 consecutive hours'
22 imprisonment, provided such work release program requires such person
23 to return to confinement at the end of each day in the work release
24 program. The court may place the person convicted under a house arrest
25 program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve
26 the remainder of the minimum sentence only after such person has served
27 48 consecutive hours' imprisonment.

28 (2) The court may order that the term of imprisonment imposed pur-
29 suant to paragraph (1) be served in a state facility in the custody of the
30 secretary of corrections in a facility designated by the secretary for the
31 provision of substance abuse treatment pursuant to the provisions of
32 K.S.A. 21-4704, and amendments thereto. The person shall remain im-
33 prisoned at the state facility only while participating in the substance
34 abuse treatment program designated by the secretary and shall be re-
35 turned to the custody of the sheriff for execution of the balance of the
36 term of imprisonment upon completion of or the person's discharge from
37 the substance abuse treatment program. Custody of the person shall be
38 returned to the sheriff for execution of the sentence imposed in the event
39 the secretary of corrections determines: (A) That substance abuse treat-
40 ment resources or the capacity of the facility designated by the secretary
41 for the incarceration and treatment of the person is not available; (B) the
42 person fails to meaningfully participate in the treatment program of the
43 designated facility; (C) the person is disruptive to the security or operation

1 of the designated facility; or (D) the medical or mental health condition
2 of the person renders the person unsuitable for confinement at the des-
3 ignated facility. The determination by the secretary that the person either
4 is not to be admitted into the designated facility or is to be transferred
5 from the designated facility is not subject to review. The sheriff shall be
6 responsible for all transportation expenses to and from the state correc-
7 tional facility.

8 The court shall also require as a condition of parole that such person
9 enter into and complete a treatment program for alcohol and drug abuse
10 as provided by K.S.A. 8-1008, and amendments thereto.

11 (g) ~~(H)~~ On the fourth or subsequent conviction of a violation of this
12 section, a person shall be guilty of a nonperson felony and sentenced to
13 ~~not less than 90 days nor more than one year's~~ *18 months* imprisonment
14 *at a correctional facility, as provided in section 1, and amendments*
15 *thereto*, and fined \$2,500. ~~The person convicted shall not be eligible for~~
16 ~~release on probation, suspension or reduction of sentence or parole until~~
17 ~~the person has served at least 90 days' imprisonment. The 90 days' im-~~
18 ~~prisonment mandated by this paragraph may be served in a work release~~
19 ~~program only after such person has served 72 consecutive hours' impris-~~
20 ~~onment, provided such work release program requires such person to~~
21 ~~return to confinement at the end of each day in the work release program.~~

22 ~~—(2)—~~ ~~The court may order that the term of imprisonment imposed pur-~~
23 ~~suant to paragraph (1) be served in a state facility in the custody of the~~
24 ~~secretary of corrections in a facility designated by the secretary for the~~
25 ~~provision of substance abuse treatment pursuant to the provisions of~~
26 ~~K.S.A. 21-4704, and amendments thereto. The person shall remain im-~~
27 ~~prisoned at the state facility only while participating in the substance~~
28 ~~abuse treatment program designated by the secretary and shall be re-~~
29 ~~turned to the custody of the sheriff for execution of the balance of the~~
30 ~~term of imprisonment upon completion of or the person's discharge from~~
31 ~~the substance abuse treatment program. Custody of the person shall be~~
32 ~~returned to the sheriff for execution of the sentence imposed in the event~~
33 ~~the secretary of corrections determines: (A) That substance abuse treat-~~
34 ~~ment resources or the capacity of the facility designated by the secretary~~
35 ~~for the incarceration and treatment of the person is not available, (B) the~~
36 ~~person fails to meaningfully participate in the treatment program of the~~
37 ~~designated facility, (C) the person is disruptive to the security or operation~~
38 ~~of the designated facility, or (D) the medical or mental health condition~~
39 ~~of the person renders the person unsuitable for confinement at the des-~~
40 ~~ignated facility. The determination by the secretary that the person either~~
41 ~~is not to be admitted into the designated facility or is to be transferred~~
42 ~~from the designated facility is not subject to review. The sheriff shall be~~
43 ~~responsible for all transportation expenses to and from the state correc-~~

1 tional facility.

2 ~~—At the time of the filing of the judgment form or journal entry as~~
3 ~~required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the~~
4 ~~court shall cause a certified copy to be sent to the officer having the~~
5 ~~offender in charge. The law enforcement agency maintaining custody and~~
6 ~~control of a defendant for imprisonment shall cause a certified copy of~~
7 ~~the judgment form or journal entry to be sent to the secretary of correc-~~
8 ~~tions within three business days of receipt of the judgment form or journal~~
9 ~~entry from the court and notify the secretary of corrections when the~~
10 ~~term of imprisonment expires and upon expiration of the term of impris-~~
11 ~~onment shall deliver the defendant to a location designated by the sec-~~
12 ~~retary. After the term of imprisonment imposed by the court, the person~~
13 ~~shall be placed in the custody of the secretary of corrections for a man-~~
14 ~~datory one-year period of postrelease supervision, which such period of~~
15 ~~postrelease supervision shall not be reduced. During such postrelease~~
16 ~~supervision, the person shall be required to participate in an inpatient or~~
17 ~~outpatient program for alcohol and drug abuse, including, but not limited~~
18 ~~to, an approved aftercare plan or mental health counseling, as determined~~
19 ~~by the secretary and satisfy conditions imposed by the Kansas parole~~
20 ~~board as provided by K.S.A. 22-3717, and amendments thereto. Any vi-~~
21 ~~olation of the conditions of such postrelease supervision may subject such~~
22 ~~person to revocation of postrelease supervision pursuant to K.S.A. 75-~~
23 ~~5217 et seq., and amendments thereto and as otherwise provided by law.~~

24 (h) Any person convicted of violating this section or an ordinance
25 which prohibits the acts that this section prohibits who had one or more
26 children under the age of 14 years in the vehicle at the time of the offense
27 shall have such person's punishment enhanced by one month of impris-
28 onment. This imprisonment must be served consecutively to any other
29 minimum mandatory penalty imposed for a violation of this section or an
30 ordinance which prohibits the acts that this section prohibits. ~~Any~~ *On the*
31 *first, second or third conviction, the* enhanced penalty imposed shall not
32 exceed the maximum sentence allowable by law. During the service of
33 the enhanced penalty, the judge may order the person on house arrest,
34 work release or other conditional release.

35 (i) The court may establish the terms and time for payment of any
36 fines, fees, assessments and costs imposed pursuant to this section. Any
37 assessment and costs shall be required to be paid not later than 90 days
38 after imposed, and any remainder of the fine shall be paid prior to the
39 final release of the defendant by the court.

40 (j) In lieu of payment of a fine imposed pursuant to this section, the
41 court may order that the person perform community service specified by
42 the court. The person shall receive a credit on the fine imposed in an
43 amount equal to \$5 for each full hour spent by the person in the specified

1 community service. The community service ordered by the court shall be
2 required to be performed not later than one year after the fine is imposed
3 or by an earlier date specified by the court. If by the required date the
4 person performs an insufficient amount of community service to reduce
5 to zero the portion of the fine required to be paid by the person, the
6 remaining balance of the fine shall become due on that date.

7 (k) (1) Except as provided in paragraph (5), in addition to any other
8 penalty which may be imposed upon a first conviction of a violation of
9 this section, the court may order that the convicted person's motor vehicle
10 or vehicles be impounded or immobilized for a period not to exceed one
11 year and that the convicted person pay all towing, impoundment and
12 storage fees or other immobilization costs.

13 (2) The court shall not order the impoundment or immobilization of
14 a motor vehicle driven by a person convicted of a violation of this section
15 if the motor vehicle had been stolen or converted at the time it was driven
16 in violation of this section.

17 (3) Prior to ordering the impoundment or immobilization of a motor
18 vehicle or vehicles owned by a person convicted of a violation of this
19 section, the court shall consider, but not be limited to, the following:

20 (A) Whether the impoundment or immobilization of the motor ve-
21 hicle would result in the loss of employment by the convicted person or
22 a member of such person's family; and

23 (B) whether the ability of the convicted person or a member of such
24 person's family to attend school or obtain medical care would be impaired.

25 (4) Any personal property in a vehicle impounded or immobilized
26 pursuant to this subsection may be retrieved prior to or during the period
27 of such impoundment or immobilization.

28 (5) As used in this subsection, the convicted person's motor vehicle
29 or vehicles shall include any vehicle leased by such person. If the lease
30 on the convicted person's motor vehicle subject to impoundment or im-
31 mobilization expires in less than one year from the date of the impound-
32 ment or immobilization, the time of impoundment or immobilization of
33 such vehicle shall be the amount of time remaining on the lease.

34 (l) (1) Except as provided in paragraph (3), in addition to any other
35 penalty which may be imposed upon a second or ~~subsequent~~ *third* con-
36 viction of a violation of this section, the court shall order that each motor
37 vehicle owned or leased by the convicted person shall either be equipped
38 with an ignition interlock device or be impounded or immobilized for a
39 period of two years. The convicted person shall pay all costs associated
40 with the installation, maintenance and removal of the ignition interlock
41 device and all towing, impoundment and storage fees or other immobi-
42 lization costs.

43 (2) Any personal property in a vehicle impounded or immobilized

1 pursuant to this subsection may be retrieved prior to or during the period
2 of such impoundment or immobilization.

3 (3) As used in this subsection, the convicted person's motor vehicle
4 or vehicles shall include any vehicle leased by such person. If the lease
5 on the convicted person's motor vehicle subject to impoundment or im-
6 mobilization expires in less than two years from the date of the impound-
7 ment or immobilization, the time of impoundment or immobilization of
8 such vehicle shall be the amount of time remaining on the lease.

9 (m) The court shall report every conviction of a violation of this sec-
10 tion and every diversion agreement entered into in lieu of further criminal
11 proceedings or a complaint alleging a violation of this section to the di-
12 vision. Prior to sentencing under the provisions of this section, the court
13 shall request and shall receive from the division a record of all prior
14 convictions obtained against such person for any violations of any of the
15 motor vehicle laws of this state.

16 (n) *Except as provided in subsection (w)*, for the purpose of deter-
17 mining whether a conviction is a first, second, third, fourth or subsequent
18 conviction in sentencing under this section:

19 (1) "Conviction" includes being convicted of a violation of this section
20 or entering into a diversion agreement in lieu of further criminal pro-
21 ceedings on a complaint alleging a violation of this section;

22 (2) "conviction" includes being convicted of a violation of a law of
23 another state or an ordinance of any city, or resolution of any county,
24 which prohibits the acts that this section prohibits or entering into a di-
25 version agreement in lieu of further criminal proceedings in a case alleg-
26 ing a violation of such law, ordinance or resolution;

27 (3) any convictions occurring during a person's lifetime shall be taken
28 into account when determining the sentence to be imposed for a first,
29 second, third, fourth or subsequent offender;

30 (4) it is irrelevant whether an offense occurred before or after con-
31 viction for a previous offense; and

32 (5) a person may enter into a diversion agreement in lieu of further
33 criminal proceedings for a violation of this section, and amendments
34 thereto, or an ordinance which prohibits the acts of this section, and
35 amendments thereto, only once during the person's lifetime.

36 (o) Upon conviction of a person of a violation of this section or a
37 violation of a city ordinance or county resolution prohibiting the acts
38 prohibited by this section, the division, upon receiving a report of con-
39 viction, shall suspend, restrict or suspend and restrict the person's driving
40 privileges as provided by K.S.A. 8-1014, and amendments thereto.

41 (p) (1) Nothing contained in this section shall be construed as pre-
42 venting any city from enacting ordinances, or any county from adopting
43 resolutions, declaring acts prohibited or made unlawful by this act as

1 unlawful or prohibited in such city or county and prescribing penalties
2 for violation thereof. Except as specifically provided by this subsection,
3 the minimum penalty prescribed by any such ordinance or resolution shall
4 not be less than the minimum penalty prescribed by this act for the same
5 violation, and the maximum penalty in any such ordinance or resolution
6 shall not exceed the maximum penalty prescribed for the same violation.
7 *On and after July 1, 2007, and retroactive for ordinance violations com-*
8 *mitted on or after July 1, 2006, an ordinance may grant to a municipal*
9 *court jurisdiction over a violation of such ordinance which is concurrent*
10 *with the jurisdiction of the district court over a violation of this section,*
11 *notwithstanding that the elements of such ordinance violation are the*
12 *same as the elements of a violation of this section that would constitute,*
13 *and be punished as, a felony.*

14 Any such ordinance or resolution shall authorize the court to order that
15 the convicted person pay restitution to any victim who suffered loss due
16 to the violation for which the person was convicted. Except as provided
17 in paragraph (5), any such ordinance or resolution may require or au-
18 thorize the court to order that the convicted person's motor vehicle or
19 vehicles be impounded or immobilized for a period not to exceed one
20 year and that the convicted person pay all towing, impoundment and
21 storage fees or other immobilization costs.

22 (2) The court shall not order the impoundment or immobilization of
23 a motor vehicle driven by a person convicted of a violation of this section
24 if the motor vehicle had been stolen or converted at the time it was driven
25 in violation of this section.

26 (3) Prior to ordering the impoundment or immobilization of a motor
27 vehicle or vehicles owned by a person convicted of a violation of this
28 section, the court shall consider, but not be limited to, the following:

29 (A) Whether the impoundment or immobilization of the motor ve-
30 hicle would result in the loss of employment by the convicted person or
31 a member of such person's family; and

32 (B) whether the ability of the convicted person or a member of such
33 person's family to attend school or obtain medical care would be impaired.

34 (4) Any personal property in a vehicle impounded or immobilized
35 pursuant to this subsection may be retrieved prior to or during the period
36 of such impoundment or immobilization.

37 (5) As used in this subsection, the convicted person's motor vehicle
38 or vehicles shall include any vehicle leased by such person. If the lease
39 on the convicted person's motor vehicle subject to impoundment or im-
40 mobilization expires in less than one year from the date of the impound-
41 ment or immobilization, the time of impoundment or immobilization of
42 such vehicle shall be the amount of time remaining on the lease.

43 (q) No plea bargaining agreement shall be entered into nor shall any

1 judge approve a plea bargaining agreement entered into for the purpose
2 of permitting a person charged with a violation of this section, or a vio-
3 lation of any ordinance of a city or resolution of any county in this state
4 which prohibits the acts prohibited by this section, to avoid the mandatory
5 penalties established by this section or by the ordinance. For the purpose
6 of this subsection, entering into a diversion agreement pursuant to K.S.A.
7 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not
8 constitute plea bargaining.

9 (r) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may
10 be pleaded in the alternative, and the state, city or county, but shall not
11 be required to, may elect one or two of the three prior to submission of
12 the case to the fact finder.

13 (s) Upon a fourth or subsequent conviction, the judge of any court in
14 which any person is convicted of violating this section, may revoke the
15 person's license plate or temporary registration certificate of the motor
16 vehicle driven during the violation of this section for a period of one year.
17 Upon revoking any license plate or temporary registration certificate pur-
18 suant to this subsection, the court shall require that such license plate or
19 temporary registration certificate be surrendered to the court.

20 (t) For the purpose of this section: (1) "Alcohol concentration" means
21 the number of grams of alcohol per 100 milliliters of blood or per 210
22 liters of breath.

23 (2) "Imprisonment" shall include any restrained environment in
24 which the court and law enforcement agency intend to retain custody and
25 control of a defendant and such environment has been approved by the
26 board of county commissioners or the governing body of a city.

27 (3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-
28 4165, and amendments thereto.

29 (u) The amount of the increase in fines as specified in this section
30 shall be remitted by the clerk of the district court to the state treasurer
31 in accordance with the provisions of K.S.A. 75-4215, and amendments
32 thereto. Upon receipt of remittance of the increase provided in this act,
33 the state treasurer shall deposit the entire amount in the state treasury
34 and the state treasurer shall credit 50% to the community alcoholism and
35 intoxication programs fund and 50% to the department of corrections
36 alcohol and drug abuse treatment fund, which is hereby created in the
37 state treasury.

38 (v) Upon every conviction of a violation of this section, the court shall
39 order such person to submit to a pre-sentence alcohol and drug abuse
40 evaluation pursuant to K.S.A. 8-1008, and amendments thereto. Such pre-
41 sentence evaluation shall be made available, and shall be considered by
42 the sentencing court.

43 (w) *A first or second conviction of this section committed by an of-*

1 *fender prior to such offender reaching the age of 23, will decay if the*
2 *current crime of conviction of this section is committed after the offender*
3 *reaches the age of 30.*

4 Sec. 3. K.S.A. 21-4704 is hereby amended to read as follows: 21-
5 4704. (a) For purposes of sentencing, the following sentencing guidelines
6 grid for nondrug crimes shall be applied in felony cases for crimes com-
7 mitted on or after July 1, 1993:
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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 Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 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	6 5 5

LEGEND
Presumptive Probation
Non-DRUG
Presumptive Imprisonment

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

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

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

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

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

26 (3) In presumptive nonprison cases, the sentencing court shall pro-
27 nounce the prison sentence as well as the duration of the nonprison sanc-
28 tion at the sentencing hearing.

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

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

40 (2) the recommended treatment program is available and the of-
41 fender can be admitted to such program within a reasonable period of
42 time; or

43 (3) the nonprison sanction will serve community safety interests by

1 promoting offender reformation.

2 Any decision made by the court regarding the imposition of an optional
3 nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or
4 6-G shall not be considered a departure and shall not be subject to appeal.

5 (g) The sentence for the violation of K.S.A. 21-3415, and amend-
6 ments thereto, aggravated battery against a law enforcement officer com-
7 mitted prior to July 1, 2006, or K.S.A. 21-3411, and amendments thereto,
8 aggravated assault against a law enforcement officer, which places the
9 defendant's sentence in grid block 6-H or 6-I shall be presumed impris-
10 onment. The court may impose an optional nonprison sentence upon
11 making a finding on the record that the nonprison sanction will serve
12 community safety interests by promoting offender reformation. Any deci-
13 sion made by the court regarding the imposition of the optional non-
14 prison sentence, if the offense is classified in grid block 6-H or 6-I, shall
15 not be considered departure and shall not be subject to appeal.

16 (h) When a firearm is used to commit any person felony, the of-
17 fender's sentence shall be presumed imprisonment. The court may im-
18 pose an optional nonprison sentence upon making a finding on the record
19 that the nonprison sanction will serve community safety interests by pro-
20 moting offender reformation. Any decision made by the court regarding
21 the imposition of the optional nonprison sentence shall not be considered
22 a departure and shall not be subject to appeal.

23 (i) The sentence for the violation of the felony provision of K.S.A. 8-
24 1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4)
25 of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments
26 thereto, shall be as provided by the specific mandatory sentencing
27 requirements of that section and shall not be subject to the provisions of
28 this section or K.S.A. 21-4707 and amendments thereto. If because of the
29 offender's criminal history classification the offender is subject to pre-
30 sumptive imprisonment or if the judge departs from a presumptive pro-
31 bation sentence and the offender is subject to imprisonment, the provi-
32 sions of this section and K.S.A. 21-4707, and amendments thereto, shall
33 apply and the offender shall not be subject to the mandatory sentence as
34 provided in K.S.A. 21-3710, and amendments thereto. Notwithstanding
35 the provisions of any other section, the term of imprisonment imposed
36 for the violation of the felony provision of *subsection (f) of K.S.A. 8-1567,*
37 *subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of*
38 *K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments*
39 *thereto, shall not be served in a state facility in the custody of the secretary*
40 *of corrections, except that the term of imprisonment for felony violations*
41 *of subsection (f) of K.S.A. 8-1567, and amendments thereto, may be served*
42 *in a state correctional facility designated by the secretary of corrections*
43 *if the secretary determines that substance abuse treatment resources and*

1 *facility capacity is available. The secretary's determination regarding the*
2 *availability of treatment resources and facility capacity shall not be subject*
3 *to review.*

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

11 (2) Except as otherwise provided in this subsection, as used in this
12 subsection, "persistent sex offender" means a person who: (A) (i) Has
13 been convicted in this state of a sexually violent crime, as defined in K.S.A.
14 22-3717 and amendments thereto; and (ii) at the time of the conviction
15 under paragraph (A) (i) has at least one conviction for a sexually violent
16 crime, as defined in K.S.A. 22-3717 and amendments thereto in this state
17 or comparable felony under the laws of another state, the federal gov-
18 ernment or a foreign government; or (B) (i) has been convicted of rape,
19 K.S.A. 21-3502, and amendments thereto; and (ii) at the time of the
20 conviction under paragraph (B) (i) has at least one conviction for rape in
21 this state or comparable felony under the laws of another state, the federal
22 government or a foreign government.

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

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

1 (l) (1) The sentence for a violation of subsection (a) of K.S.A. 21-
2 3715 and amendments thereto when such person being sentenced has a
3 prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715
4 or 21-3716 and amendments thereto shall be presumed imprisonment.

5 (2) The sentence for a violation of K.S.A. 21-3715, and amendments
6 thereto, when such person being sentenced has two or more prior con-
7 victions for violations of K.S.A. 21-3715, and amendments thereto, or a
8 prior conviction of K.S.A. 21-3715 and 21-3716, and amendments thereto,
9 shall be presumed imprisonment and the defendant shall be sentenced
10 to prison as provided by this section. Such sentence shall not be consid-
11 ered a departure and shall not be subject to appeal.

12 (m) The sentence for a violation of K.S.A. 22-4903 or subsection (d)
13 of K.S.A. 21-3812, and amendments thereto, shall be presumptive im-
14 prisonment. If an offense under such sections is classified in grid blocks
15 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison
16 sentence upon making the following findings on the record:

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

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

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

26 Sec. 4. K.S.A. 21-4710 is hereby amended to read as follows: 21-
27 4710. (a) Criminal history categories contained in the sentencing guide-
28 lines grid for nondrug crimes and the sentencing guidelines grid for drug
29 crimes are based on the following types of prior convictions: Person felony
30 adult convictions, nonperson felony adult convictions, person felony ju-
31 venile adjudications, nonperson felony juvenile adjudications, person mis-
32 demeanor adult convictions, nonperson class A misdemeanor adult con-
33 victions, person misdemeanor juvenile adjudications, nonperson class A
34 misdemeanor juvenile adjudications, select class B nonperson misde-
35 meanor adult convictions, select class B nonperson misdemeanor juvenile
36 adjudications and convictions and adjudications for violations of municipal
37 ordinances or county resolutions which are comparable to any crime clas-
38 sified under the state law of Kansas as a person misdemeanor, select
39 nonperson class B misdemeanor or nonperson class A misdemeanor. A
40 prior conviction is any conviction, other than another count in the current
41 case which was brought in the same information or complaint or which
42 was joined for trial with other counts in the current case pursuant to
43 K.S.A. 22-3203 and amendments thereto, which occurred prior to sen-

1 tencing in the current case regardless of whether the offense that led to
2 the prior conviction occurred before or after the current offense or the
3 conviction in the current case.

4 (b) A class B nonperson select misdemeanor is a special classification
5 established for weapons violations. Such classification shall be considered
6 and scored in determining an offender's criminal history classification.

7 (c) Except as otherwise provided, all convictions, whether sentenced
8 consecutively or concurrently, shall be counted separately in the of-
9 fender's criminal history.

10 (d) Except as provided in K.S.A. 21-4716, and amendments thereto,
11 the following are applicable to determining an offender's criminal history
12 classification:

13 (1) Only verified convictions will be considered and scored.

14 (2) All prior adult felony convictions, including expungements, will
15 be considered and scored.

16 (3) *Except as provided in K.S.A. 8-1567, and amendments thereto,*
17 *there will be no decay factor applicable for adult convictions.*

18 (4) Except as otherwise provided, a juvenile adjudication, which
19 would have been a nonperson class D or E felony if committed before
20 July 1, 1993, or a nondrug level 6, 7, 8, 9 or 10, or drug level 4, nonperson
21 felony if committed on or after July 1, 1993, or a misdemeanor if com-
22 mitted by an adult, will decay if the current crime of conviction is com-
23 mitted after the offender reaches the age of 25.

24 (5) For convictions of crimes committed before July 1, 1993, a ju-
25 venile adjudication which would constitute a class A, B or C felony, if
26 committed by an adult, will not decay. For convictions of crimes com-
27 mitted on or after July 1, 1993, a juvenile adjudication which would con-
28 stitute an off-grid felony, a nondrug severity level 1, 2, 3, 4 or 5 felony,
29 or a drug severity level 1, 2 or 3 felony, if committed by an adult, will not
30 decay.

31 (6) All juvenile adjudications which would constitute a person felony
32 will not decay or be forgiven.

33 (7) All person misdemeanors, class A nonperson misdemeanors and
34 class B select nonperson misdemeanors, and all municipal ordinance and
35 county resolution violations comparable to such misdemeanors, shall be
36 considered and scored.

37 (8) Unless otherwise provided by law, unclassified felonies and mis-
38 demeanors, shall be considered and scored as nonperson crimes for the
39 purpose of determining criminal history.

40 (9) Prior convictions of a crime defined by a statute which has since
41 been repealed shall be scored using the classification assigned at the time
42 of such conviction.

43 (10) Prior convictions of a crime defined by a statute which has since

1 been determined unconstitutional by an appellate court shall not be used
2 for criminal history scoring purposes.

3 (11) Prior convictions of any crime shall not be counted in determin-
4 ing the criminal history category if they enhance the severity level or
5 applicable penalties, elevate the classification from misdemeanor to fel-
6 ony, or are elements of the present crime of conviction. Except as oth-
7 erwise provided, all other prior convictions will be considered and scored.

8 Sec. 5. K.S.A. 21-4704, 21-4704b and 21-4710 and K.S.A. 2007 Supp.
9 8-1567 and 8-1567b are hereby repealed.

10 Sec. 6. This act shall take effect and be in force from and after Jan-
11 uary 1, 2009, and its publication in the statute book.