

HOUSE BILL No. 2236

AN ACT relating to crimes, criminal procedure and punishments; concerning drug crimes; recodification of certain statutes; amending K.S.A. 12-4419, 12-4509, 21-2501, 21-3436, 21-3608a, 21-3718, 21-3826, 21-4203, 21-4204, 21-4226, 21-4502, 21-4603d, 21-4708, 21-4713, 21-4717, 21-4729, 22-2512, 22-2515, 22-2909, 22-3901, 36-601, 36-604, 60-427, 65-4102, 65-4127c, 65-4139 and 79-5201 and K.S.A. 2008 Supp. 8-2,128, 8-1567, 12-4104, 21-4704, 21-4705, 21-4714, 22-4902, 38-2255, 44-706, 59-2132, 59-29b46, 60-4104, 65-516, 72-1397, 72-5445, 72-89c01, 75-7c04, 75-52,144 and 76-11a13 and repealing the existing sections; also repealing K.S.A. 21-4214, 21-4215, 65-4105a, 65-4127d, 65-4141, 65-4142, 65-4155, 65-4158, 65-4164 and 65-4165 and K.S.A. 2008 Supp. 65-4150, 65-4151, 65-4152, 65-4153, 65-4159, 65-4159a, 65-4160, 65-4161, 65-4162, 65-4163, 65-4166, 65-4168, 65-4168a and 65-7006.

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

New Section 1. As used in sections 1 through 17, and amendments thereto:

(a) “Controlled substance” means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

(b) (1) “Controlled substance analog” means a substance that is intended for human consumption, and:

(A) The chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto;

(B) which has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto; or

(C) with respect to a particular individual, which the individual represents or intends to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto.

(2) “Controlled substance analog” does not include:

(A) A controlled substance;

(B) a substance for which there is an approved new drug application;

or

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal food, drug, and cosmetic act (21 U.S.C. 355) to the extent conduct with respect to the substance is permitted by the exemption.

(c) “Cultivate” means the planting or promotion of growth of five or more plants which contain or can produce controlled substances.

(d) “Distribute” means the actual, constructive or attempted transfer from one person to another of some item whether or not there is an agency relationship. “Distribute” includes, but is not limited to, sale, offer for sale or any act that causes some item to be transferred from one person to another. “Distribute” does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the pharmacy act of the state of Kansas, the uniform controlled substances act, or otherwise authorized by law.

(e) “Drug” means:

(1) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them;

(2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals;

(3) substances, other than food, intended to affect the structure or any function of the body of man or animals; and

(4) substances intended for use as a component of any article specified in paragraph (1), (2) or (3). It does not include devices or their components, parts or accessories.

(f) “Drug paraphernalia” means all equipment and materials of any kind which are used, or primarily intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled

substance and in violation of this act. “Drug paraphernalia” shall include, but is not limited to:

(1) Kits used or intended for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(3) isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance;

(4) testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(5) scales and balances used or intended for use in weighing or measuring controlled substances;

(6) diluents and adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances;

(7) separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana;

(8) blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances;

(9) capsules, balloons, envelopes, bags and other containers used or intended for use in packaging small quantities of controlled substances;

(10) containers and other objects used or intended for use in storing or concealing controlled substances;

(11) hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body;

(12) objects used or primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into the human body, such as:

(A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

(B) water pipes, bongs or smoking pipes designed to draw smoke through water or another cooling device;

(C) carburetion pipes, glass or other heat resistant tubes or any other device used or intended to be used, designed to be used to cause vaporization of a controlled substance for inhalation;

(D) smoking and carburetion masks;

(E) roach clips, objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(F) miniature cocaine spoons and cocaine vials;

(G) chamber smoking pipes;

(H) carburetor smoking pipes;

(I) electric smoking pipes;

(J) air-driven smoking pipes;

(K) chillums;

(L) bongs;

(M) ice pipes or chillers;

(N) any smoking pipe manufactured to disguise its intended purpose;

(O) wired cigarette papers; or

(P) cocaine freebase kits.

(g) “Immediate precursor” means a substance which the board of pharmacy has found to be and by rules and regulations designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(h) “Isomer” means all enantiomers and diastereomers.

(i) “Manufacture” means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly or by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container. “Manufacture” does not include the preparation or compounding of a controlled

substance by an individual for the individual's own lawful use or the preparation, compounding, packaging or labeling of a controlled substance:

(1) By a practitioner or the practitioner's agent pursuant to a lawful order of a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner or by the practitioner's authorized agent under such practitioner's supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to dispensing of a controlled substance.

(j) "Marijuana" means all parts of all varieties of the plant Cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. "Marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

(k) "Narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1) but not including the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(l) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under K.S.A. 65-4102, and amendments thereto, the dextro-rotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). "Opiate" does include its racemic and levorotatory forms.

(m) "Opium poppy" means the plant of the species *Papaver somniferum* L. except its seeds.

(n) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.

(o) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(p) "Possession" means having joint or exclusive control over an item with knowledge of and intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.

(q) "School property" means property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12. This definition shall not be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the above definition, the actual use of that structure or property at the time alleged shall not be a defense to the crime charged or the sentence imposed.

(r) "Simulated controlled substance" means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.

New Sec. 2. (a) Prosecutions for crimes committed prior to July 1, 2009, shall be governed by the law in effect at the time the crime was committed. For purposes of this section, a crime was committed prior to July 1, 2009, if any element of the crime occurred prior thereto.

(b) The prohibitions of this act shall apply unless the conduct prohibited is authorized by the pharmacy act of the state of Kansas, the uniform controlled substances act or otherwise authorized by law.

New Sec. 3. (a) It shall be unlawful for any person to manufacture any controlled substance or controlled substance analog.

(b) Violation or attempted violation of subsection (a) is a drug severity level 1 felony. The provisions of subsection (d) of K.S.A. 21-3301, and amendments thereto, shall not apply to a violation of attempting to unlawfully manufacture any controlled substance pursuant to this section.

(c) For persons arrested and charged under this section, bail shall be at least \$50,000 cash or surety, unless the court determines, on the record, that the defendant is not likely to re-offend, the court imposes pretrial supervision, or the defendant agrees to participate in a licensed or certified drug treatment program.

(d) The sentence of a person who violates this section shall not be subject to statutory provisions for suspended sentence, community service work or probation.

(e) The sentence of a person who violates this section or K.S.A. 65-4159 prior to its repeal, shall not be reduced because these sections prohibit conduct identical to that prohibited by K.S.A. 65-4161 or 65-4163, prior to such sections repeal, or section 5, and amendments thereto.

New Sec. 4. All costs and expenses resulting from the seizure, disposition and decontamination of an unlawful manufacturing site shall be assessed as costs against the defendant.

New Sec. 5. (a) It shall be unlawful for any person to cultivate, distribute or possess with the intent to distribute any of the following controlled substances or controlled substance analogs thereof;

(1) Opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto;

(2) any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

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

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

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

(6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments thereto.

(b) It shall be unlawful for any person to distribute or possess with the intent to distribute a controlled substance or a controlled substance analog designated in K.S.A. 65-4113, and amendments thereto.

(c) (1) Violation of subsection (a) is a drug severity level 3 felony, except that:

(A) Violation of subsection (a) on or within 1,000 feet of any school property is a drug severity level 2 felony;

(B) violation of subsection (a)(1) is a drug severity level 2 felony if that person has one prior conviction under subsection (a)(1), under K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense from another jurisdiction; and

(C) violation of subsection (a)(1) is a drug severity level 1 felony if that person has two prior convictions under subsection (a)(1), under K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense from another jurisdiction.

(2) Violation of subsection (b) is a class A nonperson misdemeanor, except that, violation of subsection (b) is a drug severity level 4 felony if the substance was distributed to or possessed with the intent to distribute to a child under 18 years of age.

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

New Sec. 6. (a) It shall be unlawful for any person to possess any opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or a controlled substance analog thereof.

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

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

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

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

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

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

(c) (1) Violation of subsection (a) is a drug severity level 4 felony;

(2) violation of subsection (b) is a class A nonperson misdemeanor, except that, violation of subsection (b) is a drug severity level 4 felony if that person has a prior conviction under such subsection, under K.S.A. 65-4162 prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense if the substance involved was 3, 4-methylenedioxymethamphetamine (MDMA), marijuana or tetrahydrocannabinol as designated in subsection (d) of K.S.A. 65-4105, and amendments thereto.

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

New Sec. 7. (a) It shall be unlawful for any person to knowingly or intentionally use any communication facility:

(1) In committing, causing, or facilitating the commission of any felony under section 3, 5 or 6, and amendments thereto; or

(2) in any attempt to commit, any conspiracy to commit, or any criminal solicitation of any felony under section 3, 5 or 6, and amendments thereto. Each separate use of a communication facility may be charged as a separate offense under this subsection.

(b) Violation of subsection (a) is a nondrug severity level 8, nonperson felony.

(c) As used in this section, “communication facility” means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures or sounds of all kinds and includes telephone, wire, radio, computer, computer networks, beepers, pagers and all other means of communication.

New Sec. 8. (a) Unlawfully obtaining and distributing a prescription-only drug is:

(1) Making, altering or signing of a prescription order by a person other than a practitioner or a mid-level practitioner;

(2) distribution of a prescription order, knowing it to have been made, altered or signed by a person other than a practitioner or a mid-level practitioner;

(3) possession of a prescription order with intent to distribute it and knowing it to have been made, altered or signed by a person other than a practitioner or a mid-level practitioner;

(4) possession of a prescription-only drug knowing it to have been obtained pursuant to a prescription order made, altered or signed by a person other than a practitioner or a mid-level practitioner; or

(5) providing false information to a practitioner or mid-level practitioner for the purpose of obtaining a prescription-only drug.

(b) (1) Unlawfully obtaining and distributing a prescription-only drug is a class A nonperson misdemeanor, except that:

(2) Unlawfully obtaining and distributing a prescription-only drug is a nondrug severity level 6, nonperson felony if that person is distributing, and such distribution involves selling, possessing with the intent to sell, or offering for sale the prescription-only drug so obtained; and

(3) Unlawfully obtaining and distributing a prescription-only drug is a nondrug severity level 9 nonperson felony if that person has a prior conviction of paragraph (1) or K.S.A. 21-4214 prior to its repeal.

(c) As used in this section:

(1) “Pharmacist,” “practitioner,” “mid-level practitioner” and “prescription-only drug” shall have the meanings ascribed thereto by K.S.A. 65-1626, and amendments thereto.

(2) “Prescription order” means an order transmitted in writing, orally, telephonically or by other means of communication for a prescription-only drug to be filled by a pharmacist. “Prescription order” does not mean a drug dispensed pursuant to such an order.

(d) The provisions of this section shall not be applicable to prosecutions involving prescription-only drugs which could be bought under section 5 or 6, and amendments thereto.

New Sec. 9. (a) It shall be unlawful for any person to possess ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with an intent to use the product to manufacture a controlled substance.

(b) It shall be unlawful for any person to use or possess with intent to use any drug paraphernalia to:

(1) Manufacture, cultivate, plant, propagate, harvest, test, analyze or distribute a controlled substance; or

(2) store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body.

(c) It shall be unlawful for any person to use or possess with intent to use anhydrous ammonia or pressurized ammonia in a container not approved for that chemical by the Kansas department of agriculture.

(d) It shall be unlawful for any person to purchase, receive or otherwise acquire at retail any compound, mixture or preparation containing more than 3.6 grams of pseudoephedrine base or ephedrine base in any single transaction or any compound, mixture or preparation containing more than nine grams of pseudoephedrine base or ephedrine base within any 30-day period.

(e) (1) Violation of subsection (a) is a drug severity level 2 felony;

(2) violation of subsection (b)(1) is a drug severity level 4 felony, except that violation of subsection (b)(1) is a class A nonperson misdemeanor if the drug paraphernalia was used to cultivate fewer than five marijuana plants;

(3) violation of subsection (b)(2) is a class A nonperson misdemeanor;

(4) violation of subsection (c) is a drug severity level 4 felony;

(5) violation of subsection (d) is a class A nonperson misdemeanor.

(f) For persons arrested and charged under subsection (a) or (c), bail shall be at least \$50,000 cash or surety, unless the court determines, on the record, that the defendant is not likely to reoffend, the court imposes pretrial supervision or the defendant agrees to participate in a licensed or certified drug treatment program.

New Sec. 10. (a) It shall be unlawful for any person to advertise, market, label, distribute or possess with the intent to distribute:

(1) Any product containing ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine or their salts, isomers or salts of isomers if the person knows or reasonably should know that the purchaser will use the product to manufacture a controlled substance; or

(2) any product containing ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers for indication of stimulation, mental alertness, weight loss, appetite control, energy or other indications not approved pursuant to the pertinent federal over-the-counter drug final monograph or tentative final monograph or approved new drug application.

(b) It shall be unlawful for any person to market, distribute or man-

ufacture with intent to distribute any drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to manufacture or distribute a controlled substance in violation of sections 1 through 17, and amendments thereto.

(c) It shall be unlawful for any person to distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing or under circumstances where one reasonably should know, that it will be used as such in violation of sections 1 through 17, and amendments thereto, except subsection (b) of section 6, and amendments thereto.

(d) It shall be unlawful for any person to distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used as such in violation of subsection (b) of section 6, and amendments thereto.

(e) (1) Violation of subsection (a) is a drug severity level 2 felony;

(2) violation of subsection (b) is a drug severity level 4 felony;

(3) violation of subsection (c) is a level 9, nonperson felony, except that violation of subsection (c) is a drug severity level 4 felony if that person distributes or causes drug paraphernalia to be distributed to a person under 18 years of age or within 1,000 feet of any school property;

(4) violation of subsection (d) is a class A nonperson misdemeanor, except that violation of subsection (d) is a nondrug severity level 9, nonperson felony if that person distributes or causes drug paraphernalia to be distributed to a person under 18 years of age or within 1,000 feet of any school property.

(f) For persons arrested and charged under subsection (a), bail shall be at least \$50,000 cash or surety, unless the court determines, on the record, that the defendant is not likely to re-offend, the court imposes pretrial supervision or the defendant agrees to participate in a licensed or certified drug treatment program.

(g) As used in this section, “or under circumstances where one reasonably should know” that an item will be used in violation of this section, shall include, but not be limited to, the following:

(1) Actual knowledge from prior experience or statements by customers;

(2) inappropriate or impractical design for alleged legitimate use;

(3) receipt of packaging material, advertising information or other manufacturer supplied information regarding the item’s use as drug paraphernalia; or

(4) receipt of a written warning from a law enforcement or prosecutorial agency having jurisdiction that the item has been previously determined to have been designed specifically for use as drug paraphernalia.

New Sec. 11. (a) In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or person in control of the object concerning its use;

(2) prior convictions, if any, of an owner or person in control of the object, under any state or federal law relating to any controlled substance;

(3) the proximity of the object, in time and space, to a direct violation of sections 1 through 17, and amendments thereto;

(4) the proximity of the object to controlled substances;

(5) the existence of any residue of controlled substances on the object;

(6) direct or circumstantial evidence of the intent of an owner or person in control of the object, to deliver it to a person the owner or person in control of the object knows, or should reasonably know, intends to use the object to facilitate a violation of sections 1 through 17, and amendments thereto. The innocence of an owner or person in control of the object as to a direct violation of sections 1 through 17, and amendments thereto, shall not prevent a finding that the object is intended for use as drug paraphernalia;

(7) oral or written instructions provided with the object concerning its use;

(8) descriptive materials accompanying the object which explain or depict its use;

- (9) national and local advertising concerning the object's use;
- (10) the manner in which the object is displayed for sale;
- (11) whether the owner or person in control of the object is a legitimate supplier of similar or related items to the community, such as a distributor or dealer of tobacco products;
- (12) direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
- (13) the existence and scope of legitimate uses for the object in the community;
- (14) expert testimony concerning the object's use;
- (15) any evidence that alleged paraphernalia can or has been used to store a controlled substance or to introduce a controlled substance into the human body as opposed to any legitimate use for the alleged paraphernalia; or
- (16) advertising of the item in magazines or other means which specifically glorify, encourage or espouse the illegal use, manufacture, distribution or cultivation of controlled substances.

(b) The fact that an item has not yet been used or did not contain a controlled substance at the time of the seizure is not a defense to a charge that the item was possessed with the intention for use as drug paraphernalia.

New Sec. 12. (a) Unlawful abuse of toxic vapors is possessing, buying, using, smelling or inhaling toxic vapors with the intent of causing a condition of euphoria, excitement, exhilaration, stupefaction or dulled senses of the nervous system.

(b) Unlawful abuse of toxic vapors is a class B nonperson misdemeanor.

(c) In addition to any sentence or fine imposed, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program, treatment program or both such programs as provided in K.S.A. 8-1008, and amendments thereto.

(d) This section shall not apply to the inhalation of anesthesia or other substances for medical or dental purposes.

(e) For the purposes of this section, the term "toxic vapors" means vapors from the following substances or products containing such substances:

- (1) Alcohols, including methyl, isopropyl, propyl or butyl;
- (2) aliphatic acetates, including ethyl, methyl, propyl or methyl cellosolve acetate;
- (3) acetone;
- (4) benzene;
- (5) carbon tetrachloride;
- (6) cyclohexane;
- (7) freons, including freon 11 and freon 12;
- (8) hexane;
- (9) methyl ethyl ketone;
- (10) methyl isobutyl ketone;
- (11) naphtha;
- (12) perchlorethylene;
- (13) toluene;
- (14) trichloroethane; or
- (15) xylene.

(f) In a prosecution for a violation of this section, evidence that a container lists one or more of the substances described in subsection (e) as one of its ingredients shall be prima facie evidence that the substance in such container contains toxic vapors.

New Sec. 13. (a) It shall be unlawful for any person to distribute, possess with the intent to distribute, or manufacture with the intent to distribute any simulated controlled substance.

(b) It shall be unlawful for any person to use or possess with intent to use any simulated controlled substance.

(c) (1) Violation of subsection (a) is a nondrug severity level 9, nonperson felony, except that violation of subsection (a) is a nondrug severity level 7, nonperson felony if that person is 18 or more years of age and the violation occurs on or within 1,000 feet of any school property;

(2) violation of subsection (b) is a class A nonperson misdemeanor.

New Sec. 14. (a) It shall be unlawful for any person to distribute or possess with the intent to distribute any substance which is not a controlled substance:

(1) Upon an express representation that the substance is a controlled substance or that the substance is of such nature or appearance that the recipient will be able to distribute the substance as a controlled substance; or

(2) under circumstances which would give a reasonable person reason to believe that the substance is a controlled substance.

(b) Violation of subsection (a) is a class A nonperson misdemeanor, except that violation of subsection (a) is a nondrug severity level 9, non-person felony if the distributor is 18 or more years of age, distributing to a person under 18 years of age and at least three years older than the person under 18 years of age to whom the distribution is made.

(c) If any one of the following factors is established, there shall be a presumption that distribution of a substance was under circumstances which would give a reasonable person reason to believe that a substance is a controlled substance:

(1) The substance was packaged in a manner normally used for the illegal distribution of controlled substances;

(2) the distribution of the substance included an exchange of or demand for money or other consideration for distribution of the substance and the amount of the consideration was substantially in excess of the reasonable value of the substance; or

(3) the physical appearance of the capsule or other material containing the substance is substantially identical to a specific controlled substance.

New Sec. 15. Within 10 days after the initiation of prosecution with respect to a controlled substance analog by indictment, complaint or information, the prosecuting attorney shall notify the board of pharmacy of information relevant to emergency scheduling as provided for in subsection (e) of K.S.A. 65-4102, and amendments thereto. After final determination that the controlled substance analog should not be scheduled, no prosecution relating to that substance as a controlled substance analog may be commenced or continued.

New Sec. 16. (a) It shall be unlawful for any person to receive or acquire proceeds or engage in transactions involving proceeds, known to be derived from a violation of sections 1 through 17, and amendments thereto. The provisions of this subsection do not apply to any transaction between an individual and that individual's counsel necessary to preserve that individual's right to representation, as guaranteed by section 10 of the bill of rights of the constitution of the state of Kansas and by the sixth amendment to the United States constitution. This exception does not create any presumption against or prohibition of the right of the state to seek and obtain forfeiture of any proceeds derived from a violation of sections 1 through 17, and amendments thereto.

(b) It shall be unlawful for any person to distribute, invest, conceal, transport or maintain an interest in or otherwise make available anything of value which that person knows is intended to be used for the purpose of committing or furthering the commission of any crime in sections 1 through 17, and amendments thereto.

(c) It shall be unlawful for any person to direct, plan, organize, initiate, finance, manage, supervise or facilitate the transportation or transfer of proceeds known to be derived from commission of any crime in sections 1 through 17, and amendments thereto.

(d) It shall be unlawful for any person to conduct a financial transaction involving proceeds derived from commission of any crime in sections 1 through 17, and amendments thereto, when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the proceeds known to be derived from commission of any crime in sections 1 through 17, and amendments thereto, or to avoid a transaction reporting requirement under state or federal law.

(e) (1) Violation of this section is a drug severity level 4 felony if the value of the proceeds is less than \$5,000;

(2) violation of this section is a drug severity level 3 felony if the value of the proceeds is at least \$5,000 but less than \$100,000;

(3) violation of this section shall be a drug severity level 2 felony if the value of the proceeds is at least \$100,000 but less than \$500,000;

(4) violation of this section shall be a drug severity level 1 felony if the value of the proceeds is \$500,000 or more.

New Sec. 17. The statutes listed below shall be applicable and uniform throughout this state and in all cities and counties therein. No city or county shall enact or enforce any law, ordinance, rule, regulation or resolution in conflict with, in addition to, or supplemental to, the provisions listed below unless expressly authorized by law to do so:

(a) Subsection (c) of K.S.A. 21-2501a, and amendments thereto;

(b) subsections (k) and (l) of K.S.A. 65-1643, and amendments thereto;

(c) subsections (e), (f) and (g) of K.S.A. 65-4113, and amendments thereto;

(d) subsection (c) of section 3, and amendments thereto;

(e) subsection (f) of section 9, and amendments thereto;

(f) subsection (f) of section 10, and amendments thereto.

Sec. 18. K.S.A. 2008 Supp. 8-2,128 is hereby amended to read as follows: 8-2,128. As used in this act:

(a) “Alcohol” means any substance containing any form of alcohol including, but not limited to, ethanol, methanol, propanol and isopropanol;

(b) “alcohol concentration” means:

(1) The number of grams of alcohol per 100 milliliters of blood; or

(2) the number of grams of alcohol per 210 liters of breath;

(c) “commercial driver’s license” means a commercial license issued pursuant to K.S.A. 8-234b, and amendments thereto;

(d) “commercial driver license system” means the information system established pursuant to the commercial motor vehicle safety act of 1986 to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers;

(e) “instruction permit” means a permit issued pursuant to K.S.A. 8-294, and amendments thereto;

(f) “commercial motor vehicle” means a motor vehicle designed or used to transport passengers or property, if:

(1) The vehicle has a gross vehicle weight rating of 26,001 or more pounds or such lesser rating, as determined by rules and regulations adopted by the secretary, but shall not be more restrictive than the federal regulation;

(2) the vehicle is designed to transport 16 or more passengers, including the driver; or

(3) the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. 172, subpart F;

(g) “controlled substance” means any substance so classified under ~~K.S.A. 65-4101~~ *section 1*, and amendments thereto;

(h) “conviction” means an unvacated adjudication of guilt or a determination that a person has violated or failed to comply with the law and in a court of original jurisdiction or an administrative proceeding, an unvacated forfeiture of bail or collateral deposited to secure the person’s appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended or probated;

(i) “disqualification” means any of the following:

(1) The suspension, revocation, or cancellation of a commercial driver’s license by the state or jurisdiction of issuance;

(2) any withdrawal of a person’s privileges to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control, other than parking, vehicle weight or vehicle defect violations;

(3) a determination by the federal motor carrier safety administration that a person is not qualified to operate a commercial motor vehicle under 49 C.F.R. 391;

(j) “drive” means to drive, operate or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of K.S.A. 8-2,137, 8-2,138, 8-2,142, 8-2,144 and 8-

2,145, and amendments thereto, “drive” includes operation or physical control of a motor vehicle anywhere in the state;

(k) “driver” means any person who drives, operates or is in physical control of a commercial motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a commercial driver’s license;

(l) “driver’s license” means any driver’s license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this state, including:

(1) Any temporary license or instruction;

(2) the privilege of any person to drive a motor vehicle whether or not such person holds a valid license; or

(3) any nonresident’s operating privilege;

(m) “employer” means any person, including the United States, a state or a political subdivision of a state, who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle;

(n) “endorsement” means an authorization to an individual’s commercial driver’s license required to permit the individual to operate certain types of commercial motor vehicles;

(o) “felony” means any offense under state or federal law that is punishable by death or imprisonment for a term exceeding one year;

(p) “gross vehicle weight rating” means the value specified by the manufacturer as the maximum loaded weight of a single or a combination (articulated) vehicle. The gross vehicle weight rating of a combination (articulated) vehicle (commonly referred to as the “gross combination weight rating”) is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating of the towed unit or units;

(q) “hazardous materials” means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 C.F.R. part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. part 73;

(r) “motor vehicle” means every vehicle which is self-propelled, and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails, except vehicles moved solely by human power and motorized wheel chairs;

(s) “out-of-service order” means a temporary prohibition against driving a commercial motor vehicle, which is imposed when a driver has any measured or detected alcohol concentration while on duty, or operating, or in physical control of a commercial motor vehicle or a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican or local jurisdiction that a driver, a commercial motor vehicle or a motor carrier operation, is out-of-service pursuant to 49 C.F.R. Part 386.72, 392.5, 395.13, 396.9 or such compatible laws, or the North American out-of-service criteria;

(t) “residence” means the place which is adopted by a person as the person’s place of habitation and to which, whenever the person is absent, the person has the intention of returning. When a person eats at one place and sleeps at another, the place where the person sleeps shall be considered the person’s residence;

(u) “secretary” means the secretary of the Kansas department of revenue;

(v) “serious traffic violation” means:

(1) Excessive speeding, is defined as 15 miles per hour or more over the posted speed limit;

(2) reckless driving, as defined under K.S.A. 8-1566, and amendments thereto;

(3) a violation of any state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death to any person;

(4) changing lanes of traffic illegally or erratically, as defined under K.S.A. 8-1548, and amendments thereto;

(5) following another vehicle too closely, as defined under K.S.A. 8-1523, and amendments thereto;

(6) a violation of subsection (a) of K.S.A. 8-2,132, and amendments thereto; or

(7) any other violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, which the secretary determines by rule and regulation to be serious;

(w) “state” means a state of the United States and the District of Columbia;

(x) “state of domicile” means that state where a person has such person’s true, fixed and permanent home and principal residence and to which such person has the intention of returning whenever such person is absent;

(y) “tank vehicle” means any commercial motor vehicle that is designed to transport any liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not limited to, cargo tanks, as defined in 49 C.F.R. 171. However, this definition does not include portable tanks having a rated capacity under 1,000 gallons;

(z) “United States” means the 50 states and the District of Columbia;

(aa) “division” means the division of vehicles of the Kansas department of revenue;

(bb) “director” means the director of the division of vehicles of the Kansas department of revenue;

(cc) “foreign country” means any jurisdiction other than the United States;

(dd) “nonresident commercial driver’s license” means a license issued pursuant to K.S.A. 8-2,148, and amendments thereto;

(ee) “fatality” means the death of a person as a result of a motor vehicle accident;

(ff) “noncommercial motor vehicle” means a motor vehicle or combination of motor vehicles not defined by the term commercial motor vehicle in subsection (f);

(gg) “school bus” means a commercial motor vehicle used to transport preprimary, primary or secondary school students from home to school, from school to home or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

Sec. 19. K.S.A. 2008 Supp. 8-1567 is hereby amended to read as follows: 8-1567. (a) No person shall operate or attempt to operate any vehicle within this state while:

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

(2) the alcohol concentration in the person’s blood or breath, as measured within two hours of the time of operating or attempting to operate a vehicle, is .08 or more;

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

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

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

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

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

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

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

(e) On a second conviction of a violation of this section, a person shall be guilty of a class A, nonperson misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$1,500. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

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

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

(2) The court may order that the term of imprisonment imposed pursuant to paragraph (1) be served in a state facility in the custody of the secretary of corrections in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of K.S.A. 21-4704, and amendments thereto. The person shall remain imprisoned at the state facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the sheriff for execution of the sentence imposed in the event the secretary of corrections determines: (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.

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

(g) (1) On the fourth or subsequent conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served 72 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.

(2) The court may order that the term of imprisonment imposed pursuant to paragraph (1) be served in a state facility in the custody of the secretary of corrections in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of K.S.A. 21-4704, and amendments thereto. The person shall remain imprisoned at the state facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the sheriff for execution of the sentence imposed in the event the secretary of corrections determines: (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.

At the time of the filing of the judgment form or journal entry as required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the secretary of corrections within three business days of receipt of the judgment form or journal entry from the court and notify the secretary of corrections when the term of imprisonment expires and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the secretary. After the term of imprisonment imposed by the court, the person shall be placed in the custody of the secretary of corrections for a mandatory one-year period of postrelease supervision, which such period of postrelease supervision shall not be reduced. During such postrelease supervision, the person shall be required to participate in an inpatient or outpatient program for alcohol and drug abuse, including, but not limited to, an approved aftercare plan or mental health counseling, as determined by the secretary and satisfy conditions imposed by the Kansas parole board as provided by K.S.A. 22-3717, and amendments thereto. Any violation of the conditions of such postrelease supervision may subject such person to revocation of postrelease supervision pursuant to K.S.A. 75-5217 et seq., and amendments thereto and as otherwise provided by law.

(h) Any person convicted of violating this section or an ordinance which prohibits the acts that this section prohibits who had one or more children under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other minimum mandatory penalty imposed for a violation of this section or an ordinance which prohibits the acts that this section prohibits. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

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

(j) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the

person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

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

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

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

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

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

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

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

(l) (1) Except as provided in paragraph (3), in addition to any other penalty which may be imposed upon a second or subsequent conviction of a violation of this section, the court shall order that each motor vehicle owned or leased by the convicted person shall either be equipped with an ignition interlock device or be impounded or immobilized for a period of two years. The convicted person shall pay all costs associated with the installation, maintenance and removal of the ignition interlock device and all towing, impoundment and storage fees or other immobilization costs.

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

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

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

(n) For the purpose of determining whether a conviction is a first, second, third, fourth or subsequent conviction in sentencing under this section:

(1) "Conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

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

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

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and

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

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

(p) (1) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof. Except as specifically provided by this subsection, the minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this act for the same violation, and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed for the same violation. On and after July 1, 2007, and retroactive for ordinance violations committed on or after July 1, 2006, an ordinance may grant to a municipal court jurisdiction over a violation of such ordinance which is concurrent with the jurisdiction of the district court over a violation of this section, notwithstanding that the elements of such ordinance violation are the same as the elements of a violation of this section that would constitute, and be punished as, a felony.

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

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

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

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

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

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

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

(q) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not constitute plea bargaining.

(r) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may be pleaded in the alternative, and the state, city or county, but shall not

be required to, may elect one or two of the three prior to submission of the case to the fact finder.

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

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

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

(3) "Drug" includes toxic vapors as such term is defined in ~~K.S.A. 65-4165~~ *section 12*, and amendments thereto.

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

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

Sec. 20. K.S.A. 2008 Supp. 12-4104 is hereby amended to read as follows: 12-4104. (a) The municipal court of each city shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city, including concurrent jurisdiction to hear and determine a violation of an ordinance when the elements of such ordinance violation are the same as the elements of a violation of one of the following state statutes and would constitute, and be punished as, a felony if charged in district court:

- (1) K.S.A. 8-1567, and amendments thereto, driving under the influence;
- (2) K.S.A. 21-3412a, and amendments thereto, domestic battery;
- (3) K.S.A. 21-3701, and amendments thereto, theft;
- (4) K.S.A. 21-3707, and amendments thereto, giving a worthless check; or
- (5) ~~K.S.A. 65-4162~~ *Section 6*, and amendments thereto, possession of marijuana.

(b) Search warrants shall not issue out of a municipal court.

Sec. 21. K.S.A. 12-4419 is hereby amended to read as follows: 12-4419. (a) Except as provided in subsection (b), if a diversion agreement between a city attorney and a defendant is entered into in lieu of further criminal proceedings alleging a violation by the defendant, while under 21 years of age, of an ordinance prohibiting an act prohibited by ~~the uniform substances act (K.S.A. 65-4101 et seq. and amendments thereto)~~ *sections 1 through 17, and amendments thereto*, or K.S.A. 41-719, 41-727, 41-804, 41-2719; or 41-2720, ~~65-4152, 65-4153, 65-4154 or 65-4155~~, and amendments thereto, the agreement shall require the defendant to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. If the city attorney finds that the defendant is indigent, the fee may be waived.

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

Sec. 22. K.S.A. 12-4509 is hereby amended to read as follows: 12-4509. (a) Whenever a person is found guilty of the violation of an ordinance, the municipal judge may:

- (1) Release the person without imposition of sentence;
- (2) release the person on probation after the imposition of sentence, without imprisonment or the payment of a fine or a portion thereof, subject to conditions imposed by the court as provided in subsection (e); or
- (3) impose such sentence of fine or imprisonment, or both, as authorized for the ordinance violation.

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

(c) Except as provided in subsection (d), in addition to or in lieu of any other sentence authorized by law, whenever a person is convicted of having violated, while under 21 years of age, an ordinance prohibiting an act prohibited by ~~the uniform controlled substances act (K.S.A. 65-4101 et seq. and amendments thereto)~~ *sections 1 through 17, and amendments thereto*, or K.S.A. 8-1599, 41-719; *or 41-727, 65-4152, 65-4153, 65-4154 or 65-4155 or 8-1599*, and amendments thereto, the municipal judge shall order such person to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. If the judge finds that the person is indigent, the fee may be waived.

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

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

- (1) Avoid such injurious or vicious habits, as directed by the court or the probation officer;
- (2) avoid such persons or places of disreputable or harmful character, as directed by the court or the probation officer;
- (3) report to the probation officer as directed;
- (4) permit the probation officer to visit the defendant at home or elsewhere;
- (5) work faithfully at suitable employment insofar as possible;
- (6) remain within the state unless the court grants permission to leave;
- (7) pay a fine or costs, applicable to the ordinance violation, in one or several sums and in the manner as directed by the court;
- (8) support the defendant's dependents;
- (9) reside in a residential facility located in the community and participate in educational counseling, work and other correctional or rehabilitative programs;
- (10) perform community or public service work for local governmental agencies, private corporations organized not for profit, or charitable or social service organizations performing services for the community;
- (11) perform services under a system of day fines whereby the defendant is required to satisfy fines, costs or reparation or restitution obligations by performing services for a period of days determined by the court on the basis of ability to pay, standard of living, support obligations and other factors;
- (12) make reparation or restitution to the aggrieved party for the damage or loss caused by the defendant's crime, in an amount and manner determined by the court and to the person specified by the court; or
- (13) reimburse the city, in accordance with any order made under subsection (f), for all or a part of the reasonable expenditures by the city to provide counsel and other defense services to the defendant.

(f) In addition to or in lieu of any other sentence authorized by law, whenever a person is found guilty of the violation of an ordinance the judge may order such person to reimburse the city for all or a part of the reasonable expenditures by the city to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment.

Sec. 23. K.S.A. 21-2501 is hereby amended to read as follows: 21-2501. (a) It is hereby made the duty of every sheriff, police department or countywide law enforcement agency in the state, immediately to cause two sets of fingerprint impressions and one set of palm print impressions to be made of a person who is arrested if the person:

(1) Is wanted for the commission of a felony. On or after July 1, 1993, fingerprints and palm prints shall be taken if the person is wanted for the commission of a felony or a class A or B misdemeanor or assault as defined in K.S.A. 21-3408 and amendments thereto or a violation of a county resolution which would be the equivalent of a class A or B misdemeanor or assault as defined in K.S.A. 21-3408 and amendments thereto under state law;

(2) is believed to be a fugitive from justice;

(3) may be in the possession at the time of arrest of any goods or property reasonably believed to have been stolen by the person;

(4) is in possession of firearms or other concealed weapons, burglary tools, high explosives or other appliances believed to be used solely for criminal purposes;

(5) is wanted for any offense which involves sexual conduct prohibited by law or for violation of ~~the uniform controlled substances act sections 1 through 17, and amendments thereto;~~ or

(6) is suspected of being or known to be a habitual criminal or violator of the intoxicating liquor law.

(b) The court shall ensure, upon the offender's first appearance, or in any event before final disposition of a felony or an A or B misdemeanor or a violation of a county resolution which prohibits an act which is prohibited by a class A or B misdemeanor, that the offender has been processed, fingerprinted and palm printed.

(c) Impressions taken pursuant to this section shall be made on the forms provided by the department of justice of the United States or the Kansas bureau of investigation. The sheriff, police department or countywide law enforcement agency shall cause the impressions to be forwarded to the Kansas bureau of investigation at Topeka, Kansas, which shall forward one set of the impressions to the federal bureau of investigation, department of justice, at Washington, D.C. A comprehensive description of the person arrested and such other data and information as to the identification of such person as the department of justice and bureau of investigation require shall accompany the impressions.

(d) A sheriff, police department or countywide law enforcement agency may take and retain for its own use copies of such impressions of a person specified in subsection (a), together with a comprehensive description and such other data and information as necessary to properly identify such person.

(e) Except as provided in subsection (a)(1), this section shall not be construed to include violators of any county resolution or municipal ordinance.

Sec. 24. K.S.A. 21-3436 is hereby amended to read as follows: 21-3436. (a) Any of the following felonies shall be deemed an inherently dangerous felony whether or not such felony is so distinct from the homicide alleged to be a violation of subsection (b) of K.S.A. 21-3401, and amendments thereto, as not to be an ingredient of the homicide alleged

to be a violation of subsection (b) of K.S.A. 21-3401, and amendments thereto:

- (1) Kidnapping, as defined in K.S.A. 21-3420, and amendments thereto;
- (2) aggravated kidnapping, as defined in K.S.A. 21-3421, and amendments thereto;
- (3) robbery, as defined in K.S.A. 21-3426, and amendments thereto;
- (4) aggravated robbery, as defined in K.S.A. 21-3427, and amendments thereto;
- (5) rape, as defined in K.S.A. 21-3502, and amendments thereto;
- (6) aggravated criminal sodomy, as defined in K.S.A. 21-3506, and amendments thereto;
- (7) abuse of a child, as defined in K.S.A. 21-3609, and amendments thereto;
- (8) felony theft under subsection (a) or (c) of K.S.A. 21-3701, and amendments thereto;
- (9) burglary, as defined in K.S.A. 21-3715, and amendments thereto;
- (10) aggravated burglary, as defined in K.S.A. 21-3716, and amendments thereto;
- (11) arson, as defined in K.S.A. 21-3718, and amendments thereto;
- (12) aggravated arson, as defined in K.S.A. 21-3719, and amendments thereto;
- (13) treason, as defined in K.S.A. 21-3801, and amendments thereto;
- (14) any felony offense as provided in ~~K.S.A. 65-4127a, 65-4127b or 65-4150 or 65-4160 through 65-4164~~ section 3, 5 or 6, and amendments thereto;
- (15) any felony offense as provided in K.S.A. 21-4219, and amendments thereto;
- (16) endangering the food supply as defined in K.S.A. 21-4221, and amendments thereto;
- (17) aggravated endangering the food supply as defined in K.S.A. 21-4222, and amendments thereto;
- (18) fleeing or attempting to elude a police officer, as defined in subsection (b) of K.S.A. 8-1568, and amendments thereto; or
- (19) aggravated endangering a child, as defined in subsection (a)(1) of K.S.A. 21-3608a, and amendments thereto.

(b) Any of the following felonies shall be deemed an inherently dangerous felony only when such felony is so distinct from the homicide alleged to be a violation of subsection (b) of K.S.A. 21-3401, and amendments thereto, as to not be an ingredient of the homicide alleged to be a violation of subsection (b) of K.S.A. 21-3401, and amendments thereto:

- (1) Murder in the first degree, as defined in subsection (a) of K.S.A. 21-3401, and amendments thereto;
- (2) murder in the second degree, as defined in subsection (a) of K.S.A. 21-3402, and amendments thereto;
- (3) voluntary manslaughter, as defined in subsection (a) of K.S.A. 21-3403, and amendments thereto;
- (4) aggravated assault, as defined in K.S.A. 21-3410, and amendments thereto;
- (5) aggravated assault of a law enforcement officer, as defined in K.S.A. 21-3411, and amendments thereto;
- (6) aggravated battery, as defined in subsection (a)(1) of K.S.A. 21-3414, and amendments thereto; or
- (7) aggravated battery against a law enforcement officer, as defined in K.S.A. 21-3415, and amendments thereto.

(c) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 25. K.S.A. 21-3608a is hereby amended to read as follows: 21-3608a. (a) Aggravated endangering a child is:

- (1) Intentionally causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health is injured or endangered;
- (2) recklessly causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health is injured or endangered;
- (3) causing or permitting such child to be in an environment where a person is selling, offering for sale or having in such person's possession

with intent to sell, deliver, distribute, prescribe, administer, dispense, manufacture or attempt to manufacture any methamphetamine as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto; or

(4) causing or permitting such child to be in an environment where drug paraphernalia or volatile, toxic or flammable chemicals are stored for the purpose of manufacturing or attempting to manufacture any methamphetamine as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto.

(b) Aggravated endangering a child is a severity level 9, person felony.

(c) As used in this section:

(1) “Manufacture” shall have the meaning ascribed to that term in ~~K.S.A. 65-4101~~ *section 1*, and amendments thereto; and

(2) “drug paraphernalia” shall have the meaning ascribed to that term in ~~K.S.A. 65-4150~~ *section 1*, and amendments thereto.

(d) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 26. K.S.A. 21-3718 is hereby amended to read as follows: 21-3718. (a) Arson is: (1) Knowingly, by means of fire or explosive:

(A) Damaging any building or property which is a dwelling in which another person has any interest without the consent of such other person;

(B) damaging any building or property which is a dwelling with intent to injure or defraud an insurer or lienholder;

(C) damaging any building or property which is not a dwelling in which another person has any interest without the consent of such other person; or

(D) damaging any building or property which is not a dwelling with intent to injure or defraud an insurer or lienholder;

(2) accidentally, by means of fire or explosive as a result of manufacturing or attempting to manufacture ~~a~~ *any* controlled substance or *controlled substance analog* in violation of ~~K.S.A. 65-4150~~ *section 3*, and amendments thereto, damaging any building or property which is a dwelling; or

(3) accidentally, by means of fire or explosive as a result of manufacturing or attempting to manufacture ~~a~~ *any* controlled substance or *controlled substance analog* in violation of ~~K.S.A. 65-4150~~ *section 3*, and amendments thereto, damaging any building or property which is not a dwelling.

(b) (1) Arson, as described in subsection (a)(1)(A) or (a)(1)(B), is a severity level 6, person felony.

(2) Arson, as described in subsection (a)(1)(C), (a)(1)(D) or (a)(3), is a severity level 7, nonperson felony.

(3) Arson, as described in subsection (a)(2), is a severity level 7, person felony.

Sec. 27. K.S.A. 21-3826 is hereby amended to read as follows: 21-3826. (a) Traffic in contraband in a correctional institution is introducing or attempting to introduce into or upon the grounds of any correctional institution or taking, sending, attempting to take or attempting to send from any correctional institution or any unauthorized possession while in any correctional institution or distributing within any correctional institution, any item without the consent of the administrator of the correctional institution.

(b) For purposes of this section, “correctional institution” means any state correctional institution or facility, conservation camp, state security hospital, juvenile correctional facility, community correction center or facility for detention or confinement, juvenile detention facility or jail.

(c) (1) Traffic in contraband in a correctional institution of firearms, ammunition, explosives or a controlled substance which is defined in ~~subsection (c) of K.S.A. 65-4101~~ *section 1*, and amendments thereto, is a severity level 5, nonperson felony.

(2) Traffic in any contraband, as defined by rules and regulations adopted by the secretary, in a correctional institution by an employee of a correctional institution is a severity level 5, nonperson felony.

(d) Except as provided in subsection (c), traffic in contraband in a correctional institution is a severity level 6, nonperson felony.

Sec. 28. K.S.A. 21-4203 is hereby amended to read as follows: 21-4203. (a) Criminal disposal of firearms is knowingly:

(1) Selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age;

(2) selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of a controlled substance;

(3) selling, giving or otherwise transferring any firearm to any person who, within the preceding five years, has been convicted of a felony, other than those specified in subsection (b), under the laws of this or any other jurisdiction or has been released from imprisonment for a felony and was found not to have been in possession of a firearm at the time of the commission of the offense;

(4) selling, giving or otherwise transferring any firearm to any person who, within the preceding 10 years, has been convicted of a felony to which this subsection applies, but was not found to have been in the possession of a firearm at the time of the commission of the offense, or has been released from imprisonment for such a crime, and has not had the conviction of such crime expunged or been pardoned for such crime;

(5) selling, giving or otherwise transferring any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction and was found to have been in possession of a firearm at the time of the commission of the offense; or

(6) selling, giving or otherwise transferring any firearm to any person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto, and such person has not received a certificate of restoration pursuant to K.S.A. 2007 Supp. 75-7c26, and amendments thereto.

(b) Subsection (a)(4) shall apply to a felony under K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-3420, 21-3421, 21-3427, 21-3442, 21-3502, 21-3506, 21-3518, 21-3716, ~~65-4127a or 65-4127b, or 65-4160 through 65-4164, section 5 or 6,~~ and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as such felony.

(c) Criminal disposal of firearms is a class A nonperson misdemeanor.

Sec. 29. K.S.A. 21-4204 is hereby amended to read as follows: 21-4204. (a) Criminal possession of a firearm is:

(1) Possession of any firearm by a person who is both addicted to and an unlawful user of a controlled substance;

(2) possession of any firearm by a person who has been convicted of a person felony or a violation of ~~any provision of the uniform controlled substances act under the laws of Kansas sections 1 through 17, and amendments thereto,~~ or a crime under a law of another jurisdiction which is substantially the same as such felony or violation, or was adjudicated a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a person felony or a violation of ~~any provision of the uniform controlled substances act sections 1 through 17, and amendments thereto,~~ and was found to have been in possession of a firearm at the time of the commission of the offense;

(3) possession of any firearm by a person who, within the preceding five years has been convicted of a felony, other than those specified in subsection (a)(4)(A), under the laws of Kansas or a crime under a law of another jurisdiction which is substantially the same as such felony, has been released from imprisonment for a felony or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a felony, and was found not to have been in possession of a firearm at the time of the commission of the offense;

(4) possession of any firearm by a person who, within the preceding 10 years, has been convicted of: (A) A felony under K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-3420, 21-3421, 21-3427, 21-3442, 21-3502, 21-3506, 21-3518, 21-3716, ~~65-4127a or 65-4127b, or 65-4160 through 65-4164, section 5 or 6,~~ and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as such felony, has been released from imprisonment for such felony, or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would

constitute the commission of such felony, was found not to have been in possession of a firearm at the time of the commission of the offense, and has not had the conviction of such crime expunged or been pardoned for such crime; or (B) a nonperson felony under the laws of Kansas or a crime under the laws of another jurisdiction which is substantially the same as such nonperson felony, has been released from imprisonment for such nonperson felony or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a nonperson felony, and was found to have been in possession of a firearm at the time of the commission of the offense;

(5) possession of any firearm by any person, other than a law enforcement officer, in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades 1 through 12 or at any regularly scheduled school sponsored activity or event;

(6) refusal to surrender or immediately remove from school property or grounds or at any regularly scheduled school sponsored activity or event any firearm in the possession of any person, other than a law enforcement officer, when so requested or directed by any duly authorized school employee or any law enforcement officer; or

(7) possession of any firearm by a person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or persons with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto.

(b) Subsection (a)(5) shall not apply to:

(1) Possession of any firearm in connection with a firearms safety course of instruction or firearms education course approved and authorized by the school;

(2) any possession of any firearm specifically authorized in writing by the superintendent of any unified school district or the chief administrator of any accredited nonpublic school;

(3) possession of a firearm secured in a motor vehicle by a parent, guardian, custodian or someone authorized to act in such person's behalf who is delivering or collecting a student; or

(4) possession of a firearm secured in a motor vehicle by a registered voter who is on the school grounds, which contain a polling place for the purpose of voting during polling hours on an election day.

(c) Subsection (a)(7) shall not apply to a person who has received a certificate of restoration pursuant to K.S.A. 2008 Supp. 75-7c26, and amendments thereto.

(d) Violation of subsection (a)(1) or (a)(5) is a class B nonperson select misdemeanor; violation of subsection (a)(2), (a)(3), (a)(4) or (a)(7) is a severity level 8, nonperson felony; violation of subsection (a)(6) is a class A nonperson misdemeanor.

Sec. 30. K.S.A. 21-4226 is hereby amended to read as follows: 21-4226. As used in K.S.A. 21-4225 through 21-4229, and amendments thereto:

(a) "Criminal street gang" means any organization, association or group, whether formal or informal:

(1) Consisting of three or more persons;

(2) having as one of its primary activities the commission of one or more person felonies, person misdemeanors, felony violations of ~~the uniform controlled substances act, K.S.A. 65-4101 et seq. sections 1 through 17,~~ and amendments thereto, or the comparable juvenile offenses, which if committed by an adult would constitute the commission of such felonies or misdemeanors;

(3) which has a common name or common identifying sign or symbol; and

(4) whose members, individually or collectively, engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies, person misdemeanors, felony violations of ~~the uniform controlled substances act, K.S.A. 65-4101 et seq. sections 1 through 17,~~ and amendments thereto, the comparable

juvenile offenses, which if committed by an adult would constitute the commission of such felonies or misdemeanors or any substantially similar offense from another jurisdiction.

(b) “Criminal street gang member” is a person who:

- (1) Admits to criminal street gang membership; or
- (2) meets three or more of the following criteria:

(A) Is identified as a criminal street gang member by a parent or guardian.

(B) Is identified as a criminal street gang member by a state, county or city law enforcement officer or correctional officer or documented reliable informant.

(C) Is identified as a criminal street gang member by an informant of previously untested reliability and such identification is corroborated by independent information.

(D) Resides in or frequents a particular criminal street gang’s area and adopts such gang’s style of dress, color, use of hand signs or tattoos, and associates with known criminal street gang members.

(E) Has been arrested more than once in the company of identified criminal street gang members for offenses which are consistent with usual criminal street gang activity.

(F) Is identified as a criminal street gang member by physical evidence including, but not limited to, photographs or other documentation.

(G) Has been stopped in the company of known criminal street gang members two or more times.

(H) Has participated in or undergone activities self-identified or identified by a reliable informant as a criminal street gang initiation ritual.

(c) “Criminal street gang activity” means the commission or attempted commission of, or solicitation or conspiracy to commit, one or more person felonies, person misdemeanors, felony violations of ~~the uniform controlled substances act, K.S.A. 65-4101, et seq.~~ *sections 1 through 17*, and amendments thereto, or the comparable juvenile offenses, which if committed by an adult would constitute the commission of such felonies or misdemeanors on separate occasions.

(d) “Criminal street gang associate” means a person who:

- (1) Admits to criminal street gang association; or
- (2) meets two or more defining criteria for criminal street gang membership described in subsection (b)(2).

(e) For purposes of law enforcement identification and tracking only “gang-related incident” means an incident that, upon investigation, meets any of the following conditions:

(1) The participants are identified as criminal street gang members or criminal street gang associates, acting, individually or collectively, to further any criminal purpose of the gang;

(2) a state, county or city law enforcement officer or correctional officer or reliable informant identifies an incident as criminal street gang activity; or

(3) an informant of previously untested reliability identifies an incident as criminal street gang activity and it is corroborated by independent information.

Sec. 31. K.S.A. 21-4502 is hereby amended to read as follows: 21-4502. (1) For the purpose of sentencing, the following classes of misdemeanors and the punishment and the terms of confinement authorized for each class are established:

(a) Class A, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one year.

(b) Class B, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed six months.

(c) Class C, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one month.

(d) Unclassified misdemeanors, which shall include all crimes declared to be misdemeanors without specification as to class, the sentence for which shall be in accordance with the sentence specified in the statute that defines the crime; if no penalty is provided in such law, the sentence shall be the same penalty as provided herein for a class C misdemeanor.

(2) Upon conviction of a misdemeanor, a person may be punished by a fine, as provided in K.S.A. 21-4503, and amendments thereto, instead of or in addition to confinement, as provided in this section.

(3) In addition to or in lieu of any other sentence authorized by law, whenever there is evidence that the act constituting the misdemeanor was substantially related to the possession, use or ingestion of cereal malt beverage or alcoholic liquor by such person, the court may order such person to attend and satisfactorily complete an alcohol or drug education or training program certified by the chief judge of the judicial district or licensed by the secretary of social and rehabilitation services.

(4) Except as provided in subsection (5), in addition to or in lieu of any other sentence authorized by law, whenever a person is convicted of having committed, while under 21 years of age, a misdemeanor under ~~the uniform controlled substances act (K.S.A. 65-4101 et seq. and amendments thereto)~~, K.S.A. 41-719, 41-727, ~~65-4152, 65-4153, 65-4154 or 65-4155~~ sections 1 through 17 or 8-1599, and amendments thereto, the court shall order such person to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee not to exceed the fee established by that statute for such evaluation. If the court finds that the person is indigent, the fee may be waived.

(5) If the person is 18 or more years of age but less than 21 years of age and is convicted of a violation of K.S.A. 41-727, and amendments thereto, involving cereal malt beverage, the provisions of subsection (4) are permissive and not mandatory.

Sec. 32. K.S.A. 21-4603d is hereby amended to read as follows: 21-4603d. (a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

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

(2) impose the fine applicable to the offense;

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

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

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

(6) assign the defendant to a house arrest program pursuant to K.S.A. 21-4603b and amendments thereto;

(7) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (3) of K.S.A. 21-4502, and amendments thereto;

(8) order the defendant to repay the amount of any reward paid by any crime stoppers chapter, individual, corporation or public entity which materially aided in the apprehension or conviction of the defendant; repay the amount of any costs and expenses incurred by any law enforcement agency in the apprehension of the defendant, if one of the current crimes of conviction of the defendant includes escape, as defined in K.S.A. 21-3809, and amendments thereto, or aggravated escape, as defined in K.S.A. 21-3810, and amendments thereto; repay expenses incurred by a fire district, fire department or fire company responding to a fire which has been

determined to be arson under K.S.A. 21-3718 or 21-3719, and amendments thereto, if the defendant is convicted of such crime; repay the amount of any public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation which leads to the defendant's conviction; or repay the amount of any medical costs and expenses incurred by any law enforcement agency or county. Such repayment of the amount of any such costs and expenses incurred by a county, law enforcement agency, fire district, fire department or fire company or any public funds utilized by a law enforcement agency shall be deposited and credited to the same fund from which the public funds were credited to prior to use by the county, law enforcement agency, fire district, fire department or fire company;

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

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

(11) impose any appropriate combination of (1), (2), (3), (4), (5), (6), (7), (8), (9) and (10); or

(12) suspend imposition of sentence in misdemeanor cases.

(b) (1) In addition to or in lieu of any of the above, the court shall order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime, unless the court finds compelling circumstances which would render a plan of restitution unworkable. In regard to a violation of K.S.A. 21-4018, and amendments thereto, such damage or loss shall include, but not be limited to, attorney fees and costs incurred to repair the credit history or rating of the person whose personal identification documents were obtained and used in violation of such section, and to satisfy a debt, lien or other obligation incurred by the person whose personal identification documents were obtained and used in violation of such section. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefor.

(2) If the court orders restitution, the restitution shall be a judgment against the defendant which may be collected by the court by garnishment or other execution as on judgments in civil cases. If, after 60 days from the date restitution is ordered by the court, a defendant is found to be in noncompliance with the plan established by the court for payment of restitution, and the victim to whom restitution is ordered paid has not initiated proceedings in accordance with K.S.A. 60-4301 et seq., and amendments thereto, the court shall assign an agent procured by the attorney general pursuant to K.S.A. 75-719, and amendments thereto, to collect the restitution on behalf of the victim. The administrative judge of each judicial district may assign such cases to an appropriate division of the court for the conduct of civil collection proceedings.

(c) In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (4) of K.S.A. 21-4502, and amendments thereto.

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

(e) In imposing a fine the court may authorize the payment thereof in installments. In releasing a defendant on probation, the court shall direct that the defendant be under the supervision of a court services officer. If the court commits the defendant to the custody of the secretary of corrections or to jail, the court may specify in its order the amount of

restitution to be paid and the person to whom it shall be paid if restitution is later ordered as a condition of parole, conditional release or postrelease supervision.

(f) (1) When a new felony is committed while the offender is incarcerated and serving a sentence for a felony, or while the offender is on probation, assignment to a community correctional services program, parole, conditional release, or postrelease supervision for a felony, a new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(2) When a new felony is committed while the offender is incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671 prior to its repeal or K.S.A. 2008 Supp. 38-2373, and amendments thereto, for an offense, which if committed by an adult would constitute the commission of a felony, upon conviction, the court shall sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure. The conviction shall operate as a full and complete discharge from any obligations, except for an order of restitution, imposed on the offender arising from the offense for which the offender was committed to a juvenile correctional facility.

(3) When a new felony is committed while the offender is on release for a felony pursuant to the provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, or similar provisions of the laws of another jurisdiction, a new sentence may be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(g) Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of K.S.A. 21-4729, and amendments thereto, prior to revocation of a nonprison sanction of a defendant whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of K.S.A. 21-4729, and amendments thereto, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, the court shall consider placement of the defendant in the Labette correctional conservation camp, conservation camps established by the secretary of corrections pursuant to K.S.A. 75-52,127, and amendment thereto or a community intermediate sanction center. Pursuant to this paragraph the defendant shall not be sentenced to imprisonment if space is available in a conservation camp or a community intermediate sanction center and the defendant meets all of the conservation camp's or a community intermediate sanction center's placement criteria unless the court states on the record the reasons for not placing the defendant in a conservation camp or a community intermediate sanction center.

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

(i) In addition to any of the above, the court shall order the defendant

to reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. The amount of attorney fees to be included in the court order for reimbursement shall be the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less.

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

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

(l) The secretary of corrections is authorized to make direct placement to the Labette correctional conservation camp or a conservation camp established by the secretary pursuant to K.S.A. 75-52,127, and amendments thereto, of an inmate sentenced to the secretary's custody if the inmate: (1) Has been sentenced to the secretary for a probation revocation, as a departure from the presumptive nonimprisonment grid block of either sentencing grid, for an offense which is classified in grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, or for an offense which is classified in gridblocks 4-E or 4-F of the sentencing guidelines grid for drug crimes and such offense does not meet the requirements of K.S.A. 21-4729, and amendments thereto, and (2) otherwise meets admission criteria of the camp. If the inmate successfully completes a conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district attorney. The inmate shall then be assigned by the court to six months of follow-up supervision conducted by the appropriate community corrections services program. The court may also order that supervision continue thereafter for the length of time authorized by K.S.A. 21-4611 and amendments thereto.

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

(n) Except as provided by subsection (f) of K.S.A. 21-4705, and amendments thereto, in addition to any of the above, for felony violations of ~~K.S.A. 65-4160 or 65-4162~~ section 6, and amendments thereto, the court shall require the defendant who meets the requirements established in K.S.A. 21-4729, and amendments thereto, to participate in a certified drug abuse treatment program, as provided in K.S.A. 2008 Supp. 75-52,144, and amendments thereto, including but not limited to, an approved after-care plan. If the defendant fails to participate in or has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the treatment program, as established by judicial finding, the defendant shall be subject to revocation of probation and the defendant shall serve the underlying prison sentence as established in K.S.A. 21-4705, and amendments thereto. For those offenders who are convicted on or after the effective date of this act, upon completion of the underlying prison sentence, the defendant shall not be subject to a period of postrelease supervision. The amount of time spent

participating in such program shall not be credited as service on the underlying prison sentence.

Sec. 33. K.S.A. 2008 Supp. 21-4704 is hereby amended to read as follows: 21-4704. (a) For purposes of sentencing, the following sentencing guidelines grid for nondrug crimes shall be applied in felony cases for crimes committed on or after July 1, 1993:

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

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

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

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

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

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

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

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

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

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

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

(g) The sentence for the violation of K.S.A. 21-3415, and amendments thereto, aggravated battery against a law enforcement officer committed prior to July 1, 2006, or K.S.A. 21-3411, and amendments thereto, aggravated assault against a law enforcement officer, which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence, if the offense is classified in grid block 6-H or 6-I, shall not be considered departure and shall not be subject to appeal.

(h) When a firearm is used to commit any person felony, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal.

(i) The sentence for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments

thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or K.S.A. 21-4707 and amendments thereto. If because of the offender's criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the offender is subject to imprisonment, the provisions of this section and K.S.A. 21-4707, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in K.S.A. 21-3710, and amendments thereto. Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall not be served in a state facility in the custody of the secretary of corrections, except that the term of imprisonment for felony violations of K.S.A. 8-1567, and amendments thereto, may be served in a state correctional facility designated by the secretary of corrections if the secretary determines that substance abuse treatment resources and facility capacity is available. The secretary's determination regarding the availability of treatment resources and facility capacity shall not be subject to review.

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

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

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

(k) If it is shown at sentencing that the offender committed any felony violation for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members, the offender's sentence shall be presumed imprisonment. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal. As used in this subsection, "criminal street gang" means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more person felonies or felony violations of ~~the uniform controlled substances act, K.S.A. 65-4101 et seq. sections 1 through 17,~~ and amendments thereto, which has a common name or common identifying sign or symbol, whose members, individually or collectively engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of ~~the uniform controlled substances act, K.S.A. 65-4101 et seq. sections 1 through 17,~~ and amendments thereto, or any substantially similar offense from another jurisdiction.

(l) Except as provided in subsection (o), the sentence for a violation of subsection (a) of K.S.A. 21-3715 and amendments thereto when such person being sentenced has a prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-3716 and amendments thereto shall be presumed imprisonment.

(m) The sentence for a violation of K.S.A. 22-4903 or subsection (d) of K.S.A. 21-3812, and amendments thereto, shall be presumptive imprisonment. If an offense under such sections is classified in grid blocks

5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison sentence upon making the following findings on the record:

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

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

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

(n) The sentence for a third or subsequent violation of subsection (b) of K.S.A. 21-3705, and amendments thereto, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(o) The sentence for a felony violation of K.S.A. 21-3701 or 21-3715, and amendments thereto, when such person being sentenced has no prior convictions for a violation of K.S.A. 21-3701 or 21-3715, and amendments thereto; or the sentence for a felony violation of K.S.A. 21-3701, and amendments thereto, when such person being sentenced has one or two prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, and amendments thereto; or the sentence for a felony violation of K.S.A. 21-3715, and amendments thereto, when such person being sentenced has one prior felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, and amendments thereto, shall be the sentence as provided by this section, except that the court may order an optional nonprison sentence for a defendant to participate in a drug treatment program, including, but not limited to, an approved after-care plan, if the court makes the following findings on the record:

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

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

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

A defendant sentenced to an optional nonprison sentence under this subsection shall be supervised by community correctional services. The provisions of subsection (f)(1) of K.S.A. 21-4729, and amendments thereto, shall apply to a defendant sentenced under this subsection.

The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(p) The sentence for a felony violation of K.S.A. 21-3701, and amendments thereto, when such person being sentenced has any combination of three or more prior felony convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716 and amendments thereto, or the sentence for a violation of K.S.A. 21-3715, and amendments thereto, when such person being sentenced has any combination of two or more prior convictions for violations of K.S.A. 21-3701, 21-3715 and 21-3716, and amendments thereto, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section, except that the court may recommend that an offender be placed in the custody of the secretary of corrections, in a facility designated by the secretary to participate in an intensive substance abuse treatment program, upon making the following findings on the record:

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

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

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

The intensive substance abuse treatment program shall be determined by the secretary of corrections, but shall be for a period of at least four months. Upon the successful completion of such intensive treatment program, the offender shall be returned to the court and the court may modify the sentence by directing that a less severe penalty be imposed

in lieu of that originally adjudged within statutory limits. If the offender's term of imprisonment expires, the offender shall be placed under the applicable period of postrelease supervision.

The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

Sec. 34. K.S.A. 2008 Supp. 21-4705 is hereby amended to read as follows: 21-4705. (a) For the purpose of sentencing, the following sentencing guidelines grid for drug crimes shall be applied in felony cases under ~~the uniform controlled substances act sections 1 through 17, and amendments thereto~~, for crimes committed on or after July 1, 1993:

(b) The provisions of subsection (a) will apply for the purpose of sentencing violations of ~~the uniform controlled substances act sections 1 through 17, and amendments thereto~~, except as otherwise provided by law. Sentences expressed in the sentencing guidelines grid for drug crimes in subsection (a) represent months of imprisonment.

(c) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure. The sentencing court shall not distinguish between the controlled substances cocaine base (9041L000) and cocaine hydrochloride (9041L005) when sentencing within the sentencing range of the grid block.

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

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(d) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I, the court may impose an optional nonprison sentence upon making the following findings on the record:

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

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

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

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

(e) The sentence for a second or subsequent conviction of K.S.A. 65-4159 *prior to its repeal, or section 3*, and amendments thereto, manufacture of any controlled substance or controlled substance analog shall be a presumptive term of imprisonment of two times the maximum duration of the presumptive term of imprisonment. The court may impose an optional reduction in such sentence of not to exceed 50% of the mandatory increase provided by this subsection upon making a finding on the record that one or more of the mitigating factors as specified in K.S.A. 21-4716 and amendments thereto justify such a reduction in sentence. Any decision made by the court regarding the reduction in such sentence shall not be considered a departure and shall not be subject to appeal.

(f) (1) The sentence for a third or subsequent felony conviction of K.S.A. 65-4160 or 65-4162, *prior to such sections repeal or section 6*, and amendments thereto, shall be a presumptive term of imprisonment and the defendant shall be sentenced to prison as provided by this section. Such term of imprisonment shall be served in a facility designated by the secretary of corrections in the custody of the secretary of corrections to participate in an intensive substance abuse treatment program. The intensive substance abuse treatment program shall be determined by the secretary of corrections, but shall be for a period of at least four months. Upon the successful completion of such intensive treatment program, the offender shall be returned to the court and the court may modify the sentence by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits. If the offender's term of imprisonment expires, the offender shall be placed under the applicable period of postrelease supervision.

(2) If the defendant has previously completed a certified drug abuse treatment program, as provided in K.S.A. 2008 Supp. 75-52,144, and amendments thereto, has been discharged or refused to participate in a certified drug abuse treatment program, as provided in K.S.A. 2008 Supp. 75-52,144, and amendments thereto, has completed an intensive substance abuse treatment program under paragraph (1) or has been discharged or refused to participate in an intensive substance abuse treatment program under paragraph (1), such defendant's term of imprisonment shall not be subject to modification under paragraph (1).

The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

Sec. 35. K.S.A. 21-4708 is hereby amended to read as follows: 21-4708. (a) The crime severity scale contained in the sentencing guidelines grid for drug offenses as provided in K.S.A. 21-4705 and amendments thereto consists of 4 levels of crimes. Crimes listed within each level are considered to be relatively equal in severity. Level 1 crimes are the most severe crimes and level 4 crimes are the least severe crimes.

(b) The provisions of this section shall also be applicable to the presumptive sentences for anticipatory crimes committed on or after July 1, 1993, contained in the sentencing guidelines grid for drug crimes as provided in K.S.A. 21-4705 and amendments thereto:

(1) The sentencing rule for a conviction of an attempt to commit a drug offense shall be as provided in K.S.A. 21-3301 and amendments thereto. The sentencing rule for a conviction of a conspiracy to commit a drug offense shall be as provided in K.S.A. 21-3302 and amendments thereto. The sentencing rule for conviction of a solicitation to commit a drug offense shall be as provided in K.S.A. 21-3303 and amendments thereto.

(2) No plea bargaining agreement may be entered into whereby the prosecutor agrees to decline to use a prior drug conviction of the defendant to elevate or enhance the severity level of a drug crime as provided in ~~K.S.A. 65-4127a, 65-4127b and 65-4150 or K.S.A. 1995 Supp. 65-4160 through 65-4164~~ section 3, 5 or 6, and amendments thereto, or agrees to exclude any prior conviction from the defendant's criminal history.

Sec. 36. K.S.A. 21-4713 is hereby amended to read as follows: 21-4713. The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea to a charged offense or to a lesser or related offense, the prosecutor may do any of the following:

- (a) Move for dismissal of other charges or counts;
- (b) recommend a particular sentence within the sentencing range applicable to the offense or to the offense to which the offender pled guilty;
- (c) recommend a particular sentence outside of the sentencing range only when departure factors exist and shall be stated on the record;
- (d) agree to file a particular charge or count;
- (e) agree not to file charges or counts; or
- (f) make any other promise to the defendant, except that the prosecutor shall not enter into any agreement to decline to use a prior drug conviction of the defendant to elevate or enhance the severity level of a drug crime as provided in ~~K.S.A. 65-4127a, 65-4127b and 65-4150 or K.S.A. 1995 Supp. 65-4160 through 65-4164~~ section 3, 5 or 6, and amendments thereto, or make any agreement to exclude any prior conviction from the criminal history of the defendant.

Sec. 37. K.S.A. 2008 Supp. 21-4714 is hereby amended to read as follows: 21-4714. (a) The court shall order the preparation of the presentence investigation report by the court services officer as soon as possible after conviction of the defendant.

(b) Each presentence report prepared for an offender to be sentenced for one or more felonies committed on or after July 1, 1993, shall be limited to the following information:

- (1) A summary of the factual circumstances of the crime or crimes of conviction.
- (2) If the defendant desires to do so, a summary of the defendant's version of the crime.
- (3) When there is an identifiable victim, a victim report. The person

preparing the victim report shall submit the report to the victim and request that the information be returned to be submitted as a part of the presentence investigation. To the extent possible, the report shall include a complete listing of restitution for damages suffered by the victim.

(4) An appropriate classification of each crime of conviction on the crime severity scale.

(5) A listing of prior adult convictions or juvenile adjudications for felony or misdemeanor crimes or violations of county resolutions or city ordinances comparable to any misdemeanor defined by state law. Such listing shall include an assessment of the appropriate classification of the criminal history on the criminal history scale and the source of information regarding each listed prior conviction and any available source of journal entries or other documents through which the listed convictions may be verified. If any such journal entries or other documents are obtained by the court services officer, they shall be attached to the presentence investigation report. Any prior criminal history worksheets of the defendant shall also be attached.

(6) A proposed grid block classification for each crime, or crimes of conviction and the presumptive sentence for each crime, or crimes of conviction.

(7) If the proposed grid block classification is a grid block which presumes imprisonment, the presumptive prison term range and the presumptive duration of postprison supervision as it relates to the crime severity scale.

(8) If the proposed grid block classification does not presume prison, the presumptive prison term range and the presumptive duration of the nonprison sanction as it relates to the crime severity scale and the court services officer's professional assessment as to recommendations for conditions to be mandated as part of the nonprison sanction.

(9) For defendants who are being sentenced for a conviction of a felony violation of K.S.A. 65-4160 or 65-4162, *prior to such sections repeal or section 6*, and amendments thereto, and meet the requirements of K.S.A. 21-4729, and amendments thereto, the drug abuse assessment as provided in K.S.A. 21-4729, and amendments thereto.

(10) For defendants who are being sentenced for a third or subsequent felony conviction of a violation of K.S.A. 65-4160 or 65-4162, *prior to such sections repeal or section 6*, and amendments thereto, the drug abuse assessment as provided in K.S.A. 21-4729, and amendments thereto.

(c) The presentence report will become part of the court record and shall be accessible to the public, except that the official version, defendant's version and the victim's statement, any psychological reports, risk and needs assessments and drug and alcohol reports and assessments shall be accessible only to the parties, the sentencing judge, the department of corrections, and if requested, the Kansas sentencing commission. If the offender is committed to the custody of the secretary of corrections, the report shall be sent to the secretary and, in accordance with K.S.A. 75-5220, and amendments thereto, to the warden of the state correctional institution to which the defendant is conveyed.

(d) The criminal history worksheet will not substitute as a presentence report.

(e) The presentence report will not include optional report components, which would be subject to the discretion of the sentencing court in each district except for psychological reports and drug and alcohol reports.

(f) The court can take judicial notice in a subsequent felony proceeding of an earlier presentence report criminal history worksheet prepared for a prior sentencing of the defendant for a felony committed on or after July 1, 1993.

(g) All presentence reports in any case in which the defendant has been convicted of a felony shall be on a form approved by the Kansas sentencing commission.

Sec. 38. K.S.A. 21-4717 is hereby amended to read as follows: 21-4717. (a) The following aggravating factors, which apply to drug crimes committed on or after July 1, 1993, under the sentencing guidelines system, may be considered in determining whether substantial and compelling reasons for departure exist:

(1) The crime was committed as part of a major organized drug manufacture, ~~production~~, cultivation or ~~delivery~~ *distribution* activity. Two or more of the following nonexclusive factors constitute evidence of major organized drug manufacture, ~~production~~, cultivation or ~~delivery~~ *distribution* activity:

(A) The offender derived a substantial amount of money or asset ownership from the illegal drug ~~sale~~ *distribution* activity.

(B) The presence of a substantial quantity or variety of weapons or explosives at the scene of arrest or associated with the illegal drug activity.

(C) The presence of drug transaction records or customer lists that indicate a drug ~~sale~~ *distribution* activity of major size.

(D) The presence of manufacturing or distribution materials such as, but not limited to, drug recipes, precursor chemicals, laboratory equipment, lighting, irrigation systems, ventilation, power-generation, scales or packaging material.

(E) Building acquisitions or building modifications including but not limited to painting, wiring, plumbing or lighting which advanced or facilitated the commission of the offense.

(F) Possession of large amounts of illegal drugs or substantial quantities of controlled substances.

(G) A showing that the offender has engaged in repeated criminal acts associated with the manufacture, ~~production~~, cultivation or ~~delivery~~ *distribution* of controlled substances.

(2) The offender possessed illegal drugs:

(A) With ~~intent to sell, which were sold or were offered for sale the intent to distribute or which were distributed or offered for distribution~~ to a person under 18 years of age; or

(B) with the intent to ~~sell, deliver or~~ distribute or which were ~~sold distributed~~ or offered for ~~sale distribution~~ in the immediate presence of a person under 18 years of age.

(3) The offender, 18 or more years of age, employs, hires, uses, persuades, induces, entices or coerces any individual under 16 years of age to violate or assist in avoiding detection or apprehension for violation of any provision of ~~the uniform controlled substances act, K.S.A. 65-4101 et seq. sections 1 through 17,~~ and amendments thereto, or any attempt, conspiracy or solicitation as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, to commit a violation of any provision of ~~the uniform controlled substances act sections 1 through 17, and amendments thereto,~~ regardless of whether the offender knew the age of the individual under 16 years of age.

(4) The offender was incarcerated during the commission of the offense.

(b) In determining whether aggravating factors exist as provided in this section, the court shall review the victim impact statement.

Sec. 39. K.S.A. 21-4729 is hereby amended to read as follows: 21-4729. (a) There is hereby established a nonprison sanction of certified drug abuse treatment programs for certain offenders who are sentenced on or after November 1, 2003. Placement of offenders in certified drug abuse treatment programs by the court shall be limited to placement of adult offenders, convicted of a felony violation of K.S.A. 65-4160 or 65-4162, *prior to such sections repeal or section 6*, and amendments thereto:

(1) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes and such offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, *prior to such sections repeal or section 3, 5 or 16*, and amendments thereto, or any substantially similar offense from another jurisdiction; or

(2) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of the sentencing guidelines grid for drug crimes and such offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, *prior to such sections repeal or section 3, 5 or 16*, and amendments thereto, or any substantially similar offense from another jurisdiction, if such person felonies committed by the offender were severity level 8, 9 or 10 or nongrid offenses of the sentencing guidelines grid for nondrug crimes and the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will not be jeopardized by such placement in a drug abuse treatment program.

(b) As a part of the presentence investigation pursuant to K.S.A. 21-4714, and amendments thereto, offenders who meet the requirements of subsection (a) shall be subject to:

(1) A drug abuse assessment which shall include a clinical interview with a mental health professional and a recommendation concerning drug abuse treatment for the offender; and

(2) a criminal risk-need assessment, unless otherwise specifically ordered by the court. The criminal risk-need assessment shall assign a high or low risk status to the offender.

(c) The sentencing court shall commit the offender to treatment in a drug abuse treatment program until determined suitable for discharge by the court but the term of treatment shall not exceed 18 months.

(d) Offenders shall be supervised by community correctional services.

(e) Placement of offenders under subsection (a)(2) shall be subject to the departure sentencing statutes of the Kansas sentencing guidelines act.

(f) (1) Offenders in drug abuse treatment programs shall be discharged from such program if the offender:

(A) Is convicted of a new felony; or

(B) has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the treatment program, as established by judicial finding.

(2) Offenders who are discharged from such program shall be subject to the revocation provisions of subsection (n) of K.S.A. 21-4603d, and amendments thereto.

(g) As used in this section, "mental health professional" includes licensed social workers, licensed psychiatrists, licensed psychologists, licensed professional counselors or registered alcohol and other drug abuse counselors licensed or certified as addiction counselors who have been certified by the secretary of corrections to treat offenders pursuant to K.S.A. 2008 Supp. 75-52,144, and amendments thereto.

(h) (1) The following offenders who meet the requirements of subsection (a) shall not be subject to the provisions of this section and shall be sentenced as otherwise provided by law:

(A) Offenders who are residents of another state and are returning to such state pursuant to the interstate corrections compact or the interstate compact for adult offender supervision; or

(B) offenders who are not lawfully present in the United States and being detained for deportation.

(2) Such sentence shall not be considered a departure and shall not be subject to appeal.

Sec. 40. K.S.A. 22-2512 is hereby amended to read as follows: 22-2512. (1) Property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer seizing the same unless otherwise directed by the magistrate, and shall be so kept as long as necessary for the purpose of being produced as evidence on any trial. The property seized may not be taken from the officer having it in custody so long as it is or may be required as evidence in any trial. The officer seizing the property shall give a receipt to the person detained or arrested particularly describing each article of property being held and shall file a copy of such receipt with the magistrate before whom the person detained or arrested is taken. Where seized property is no longer required as evidence in the prosecution of any indictment or information, the court which has jurisdiction of such property may transfer the same to the jurisdiction of any other court, including courts of another state or federal courts, where it is shown to the satisfaction of the court that such property is required as evidence in any prosecution in such other court.

(2) (a) Notwithstanding the provisions of subsection (1) and with the approval of the affected court, any law enforcement officer who seizes hazardous materials as evidence related to a criminal investigation may collect representative samples of such hazardous materials, and lawfully destroy or dispose of, or direct another person to lawfully destroy or dispose of the remaining quantity of such hazardous materials.

(b) In any prosecution, representative samples of hazardous materials accompanied by photographs, videotapes, laboratory analysis reports or other means used to verify and document the identity and quantity of the material shall be deemed competent evidence of such hazardous mate-

rials and shall be admissible in any proceeding, hearing or trial as if such materials had been introduced as evidence.

(c) As used in this section, the term “hazardous materials” means any substance which is capable of posing an unreasonable risk to health, safety and property. It shall include any substance which by its nature is explosive, flammable, corrosive, poisonous, radioactive, a biological hazard or a material which may cause spontaneous combustion. It shall include, but not be limited to, substances listed in the table of hazardous materials contained in the code of federal regulations title 49 and national fire protection association’s fire protection guide on hazardous materials.

(d) The provisions of this subsection shall not apply to ammunition and components thereof.

(3) When property seized is no longer required as evidence, it shall be disposed of as follows:

(a) Property stolen, embezzled, obtained by false pretenses, or otherwise obtained unlawfully from the rightful owner thereof shall be restored to the owner;

(b) money shall be restored to the owner unless it was contained in a slot machine or otherwise used in unlawful gambling or lotteries, in which case it shall be forfeited, and shall be paid to the state treasurer pursuant to K.S.A. 20-2801, and amendments thereto;

(c) property which is unclaimed or the ownership of which is unknown shall be sold at public auction to be held by the sheriff and the proceeds, less the cost of sale and any storage charges incurred in preserving it, shall be paid to the state treasurer pursuant to K.S.A. 20-2801, and amendments thereto;

(d) articles of contraband shall be destroyed, except that any such articles the disposition of which is otherwise provided by law shall be dealt with as so provided and any such articles the disposition of which is not otherwise provided by law and which may be capable of innocent use may in the discretion of the court be sold and the proceeds disposed of as provided in subsection (2)(b);

(e) firearms, ammunition, explosives, bombs and like devices, which have been used in the commission of crime, may be returned to the rightful owner, or in the discretion of the court having jurisdiction of the property, destroyed or forfeited to the Kansas bureau of investigation as provided in K.S.A. 21-4206 and amendments thereto;

(f) ~~controlled substances forfeited under the uniform controlled substances act for violations of sections 1 through 17, and amendments thereto,~~ shall be dealt with as provided under K.S.A. 60-4101 through 60-4126, and amendments thereto;

(g) unless otherwise provided by law, all other property shall be disposed of in such manner as the court in its sound discretion shall direct.

Sec. 41. K.S.A. 22-2515 is hereby amended to read as follows: 22-2515. (a) An *ex parte* order authorizing the interception of a wire, oral or electronic communication may be issued by a judge of competent jurisdiction. The attorney general, district attorney or county attorney may make an application to any judge of competent jurisdiction for an order authorizing the interception of a wire, oral or electronic communication by an investigative or law enforcement officer and agency having responsibility for the investigation of the offense regarding which the application is made, when such interception may provide evidence of the commission of any of the following offenses:

(1) Any crime directly and immediately affecting the safety of a human life which is a felony;

(2) murder;

(3) kidnapping;

(4) treason;

(5) sedition;

(6) racketeering;

(7) commercial bribery;

(8) robbery;

(9) theft, if the offense would constitute a felony;

(10) bribery;

(11) any *felony* violation of ~~the uniform controlled substances act, if the offense would constitute a felony~~ *sections 1 through 17, and amendments thereto;*

- (12) commercial gambling;
- (13) sports bribery;
- (14) tampering with a sports contest;
- (15) aggravated escape;
- (16) aggravated failure to appear;
- (17) arson;
- (18) terrorism;
- (19) illegal use of weapons of mass destruction; or
- (20) any conspiracy to commit any of the foregoing offenses.

(b) Any investigative or law enforcement officer who, by any means authorized by this act or by chapter 119 of title 18 of the United States code, has obtained knowledge of the contents of any wire, oral or electronic communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(c) Any investigative or law enforcement officer who, by any means authorized by this act or by chapter 119 of title 18 of the United States code, has obtained knowledge of the contents of any wire, oral or electronic communication, or evidence derived therefrom, may use such contents to the extent such use is appropriate to the proper performance of such officer's official duties.

(d) Any person who has received, by any means authorized by this act or by chapter 119 of title 18 of the United States code or by a like statute of any other state, any information concerning a wire, oral or electronic communication, or evidence derived therefrom, intercepted in accordance with the provisions of this act, may disclose the contents of such communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding in any court, or before any grand jury, of this state or of the United States or of any other state.

(e) No otherwise privileged wire, oral or electronic communication intercepted in accordance with, or in violation of, the provisions of this act or of chapter 119 of title 18 of the United States code shall lose its privileged character.

(f) When an investigative or law enforcement officer, while engaged in intercepting wire, oral or electronic communications in the manner authorized by this act, intercepts wire, oral or electronic communications relating to offenses other than those specified in the order authorizing the interception of the wire, oral or electronic communication, the contents thereof and evidence derived therefrom may be disclosed or used as provided in subsections (b) and (c) of this section. Such contents and evidence derived therefrom may be used under subsection (d) of this section when authorized or approved by a judge of competent jurisdiction, where such judge finds on subsequent application, made as soon as practicable, that the contents were otherwise intercepted in accordance with the provisions of this act, or with chapter 119 of title 18 of the United States code.

Sec. 42. K.S.A. 22-2909 is hereby amended to read as follows: 22-2909. (a) A diversion agreement shall provide that if the defendant fulfills the obligations of the program described therein, as determined by the attorney general or county or district attorney, such attorney shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment, preliminary examinations and hearings, and a speedy trial, and in the case of diversion under subsection (c) waiver of the rights to counsel and trial by jury. The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services. If a county creates a local fund under the property crime restitution and compensation act, a county or district attorney may require in all diversion agreements as a condition of diversion the payment of a diversion fee in an amount not to exceed \$100. Such fees shall be deposited into the local

fund and disbursed pursuant to recommendations of the local board under the property crime restitution and victims compensation act.

(b) The diversion agreement shall state: (1) The defendant's full name; (2) the defendant's full name at the time the complaint was filed, if different from the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime with which the defendant is charged; (5) the date the complaint was filed; and (6) the district court with which the agreement is filed.

(c) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567, and amendments thereto, the diversion agreement shall include a stipulation, agreed to by the defendant, the defendant's attorney if the defendant is represented by an attorney and the attorney general or county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:

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

(2) enroll in and successfully complete an alcohol and drug safety action program or a treatment program, or both, as provided in K.S.A. 8-1008, and amendments thereto, and specified by the agreement, and pay the assessment required by K.S.A. 8-1008, and amendments thereto.

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

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

(f) If the attorney general or county or district attorney elects to offer diversion in lieu of further criminal proceedings on the complaint and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement shall be filed with the district court and the district court shall stay further proceedings on the complaint. If the defendant declines to accept diversion, the district court shall resume the criminal proceedings on the complaint.

(g) Except as provided in subsection (h), if a diversion agreement is entered into in lieu of further criminal proceedings alleging commission of a misdemeanor by the defendant, while under 21 years of age, under ~~the uniform controlled substances act (K.S.A. 65-4101 et seq., and amendments thereto)~~ *sections 1 through 17, and amendments thereto*, or K.S.A. 41-719, 41-727, 41-804, 41-2719; *or 41-2720, 65-4152, 65-4153, 65-4154 or 65-4155*, and amendments thereto, the agreement shall require the defendant to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. If the attorney general or county or district attorney finds that the defendant is indigent, the fee may be waived.

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

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

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

Sec. 43. K.S.A. 22-3901 is hereby amended to read as follows: 22-3901. The following unlawful activities and the use of real or personal property in maintaining and carrying on such activities are hereby declared to be common nuisances:

- (a) Commercial gambling;
- (b) dealing in gambling devices;
- (c) possession of gambling devices;
- (d) promoting obscenity;
- (e) promoting prostitution;
- (f) habitually promoting prostitution;
- (g) violations of any law regulating controlled substances;
- (h) habitual violations of any law regulating the sale or exchange of alcoholic liquor or cereal malt beverages, by any person not licensed pursuant to chapter 41 of the Kansas Statutes Annotated;

(i) habitual violations of any law regulating the sale or exchange of cigarettes or tobacco products, by any person not licensed pursuant to article 33 of chapter 79 of the Kansas Statutes Annotated;

(j) any felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members. As used in this subsection, “criminal street gang” means any organization, association or group, whether formal or informal:

- (1) Consisting of three or more persons;
- (2) having as one of its primary activities the commission of one or more person felonies, person misdemeanors, felony violations of ~~the uniform controlled substances act, K.S.A. 65-4101 et seq.~~ *sections 1 through 17*, and amendments thereto, or the comparable juvenile offenses, which if committed by an adult would constitute the commission of such felonies or misdemeanors;
- (3) which has a common name or common identifying sign or symbol; and
- (4) whose members, individually or collectively engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies, person misdemeanors, felony violations of ~~the uniform controlled substances act, K.S.A. 65-4101 et seq.~~ *sections 1 through 17*, and amendments thereto, or the comparable juvenile offenses, which if committed by an adult would constitute the commission of such felonies or misdemeanors, or any substantially similar offense from another jurisdiction; or

(k) use of pyrotechnics, pyrotechnic devices or pyrotechnic materials in violation of K.S.A. 2008 Supp. 31-170, and amendments thereto.

Any real property used as a place where any such activities are carried on or permitted to be carried on and any effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property designed for and used on such premises in connection with such unlawful activities are subject to the provisions of K.S.A. 22-3902, 22-3903 and 22-3904, and amendments thereto.

Sec. 44. K.S.A. 2008 Supp. 22-4902 is hereby amended to read as follows: 22-4902. As used in this act, unless the context otherwise requires:

- (a) “Offender” means: (1) A sex offender as defined in subsection (b);
- (2) a violent offender as defined in subsection (d);
- (3) a sexually violent predator as defined in subsection (f);
- (4) any person who, on and after the effective date of this act, is

convicted of any of the following crimes when the victim is less than 18 years of age:

(A) Kidnapping as defined in K.S.A. 21-3420 and amendments thereto, except by a parent;

(B) aggravated kidnapping as defined in K.S.A. 21-3421 and amendments thereto; or

(C) criminal restraint as defined in K.S.A. 21-3424 and amendments thereto, except by a parent;

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

(A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;

(B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-3505, and amendments thereto;

(C) promoting prostitution as defined by K.S.A. 21-3513, and amendments thereto;

(D) patronizing a prostitute as defined by K.S.A. 21-3515, and amendments thereto;

(E) lewd and lascivious behavior as defined by K.S.A. 21-3508, and amendments thereto; or

(F) unlawful sexual relations as defined by K.S.A. 21-3520, and amendments thereto;

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

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

(8) any person who has been convicted of an offense in effect at any time prior to the effective date of this act, that is comparable to any crime defined in subsection (4), (5), (7) or (11), or any federal, military or other state conviction for an offense that under the laws of this state would be an offense defined in subsection (4), (5), (7) or (11);

(9) any person who has been convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in subsection (4), (5), (7) or (10);

(10) any person who has been convicted of aggravated trafficking as defined in K.S.A. 21-3447, and amendments thereto; or

(11) any person who has been convicted of: (A) Unlawful manufacture or attempting such of any controlled substance *or controlled substance analog* as defined by K.S.A. 65-4159, *prior to its repeal or section 3*, and amendments thereto, unless the court makes a finding on the record that the manufacturing or attempting to manufacture such controlled substance was for such person's personal use;

(B) possession of ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product to manufacture a controlled substance as defined by K.S.A. 65-7006, *prior to its repeal or section 9 or 10*, and amendments thereto, unless the court makes a finding on the record that the possession of such product was intended to be used to manufacture a controlled substance for such person's personal use; or

(C) K.S.A. 65-4161, *prior to its repeal or section 5*, and amendments thereto.

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

(b) "Sex offender" includes any person who, after the effective date of this act, is convicted of any sexually violent crime set forth in subsection (c) or is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime set forth in subsection (c).

(c) "Sexually violent crime" means:

(1) Rape as defined in K.S.A. 21-3502 and amendments thereto;

(2) indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto;

- (3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto;
 - (4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of K.S.A. 21-3505 and amendments thereto;
 - (5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and amendments thereto;
 - (6) indecent solicitation of a child as defined by K.S.A. 21-3510 and amendments thereto;
 - (7) aggravated indecent solicitation of a child as defined by K.S.A. 21-3511 and amendments thereto;
 - (8) sexual exploitation of a child as defined by K.S.A. 21-3516 and amendments thereto;
 - (9) sexual battery as defined by K.S.A. 21-3517 and amendments thereto;
 - (10) aggravated sexual battery as defined by K.S.A. 21-3518 and amendments thereto;
 - (11) aggravated incest as defined by K.S.A. 21-3603 and amendments thereto; or
 - (12) electronic solicitation as defined by K.S.A. 21-3523, and amendments thereto, committed on and after the effective date of this act;
 - (13) any conviction for an offense in effect at any time prior to the effective date of this act, that is comparable to a sexually violent crime as defined in subparagraphs (1) through (11), or any federal, military or other state conviction for an offense that under the laws of this state would be a sexually violent crime as defined in this section;
 - (14) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of a sexually violent crime, as defined in this section; or
 - (15) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, “sexually motivated” means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant’s sexual gratification.
- (d) “Violent offender” includes any person who, after the effective date of this act, is convicted of any of the following crimes:
- (1) Capital murder as defined by K.S.A. 21-3439 and amendments thereto;
 - (2) murder in the first degree as defined by K.S.A. 21-3401 and amendments thereto;
 - (3) murder in the second degree as defined by K.S.A. 21-3402 and amendments thereto;
 - (4) voluntary manslaughter as defined by K.S.A. 21-3403 and amendments thereto;
 - (5) involuntary manslaughter as defined by K.S.A. 21-3404 and amendments thereto; or
 - (6) any conviction for an offense in effect at any time prior to the effective date of this act, that is comparable to any crime defined in this subsection, or any federal, military or other state conviction for an offense that under the laws of this state would be an offense defined in this subsection; or
 - (7) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in this subsection.
- (e) “Law enforcement agency having jurisdiction” means the sheriff of the county in which the offender expects to reside upon the offender’s discharge, parole or release.
- (f) “Sexually violent predator” means any person who, on or after July 1, 2001, is found to be a sexually violent predator pursuant to K.S.A. 59-29a01 et seq. and amendments thereto.
- (g) “Nonresident student or worker” includes any offender who crosses into the state or county for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, for the purposes of employment, with or without compensation, or to attend school as a student.
- (h) “Aggravated offenses” means engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence, or engaging in sexual acts involving penetration with victims less than 14 years of age, and includes the following offenses:

(1) Rape as defined in subsection (a)(1)(A) and subsection (a)(2) of K.S.A. 21-3502, and amendments thereto;

(2) aggravated criminal sodomy as defined in subsection (a)(1) and subsection (a)(3)(A) of K.S.A. 21-3506, and amendments thereto; and

(3) any attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in this subsection.

(i) “Institution of higher education” means any post-secondary school under the supervision of the Kansas board of regents.

Sec. 45. K.S.A. 36-601 is hereby amended to read as follows: 36-601. As used in this act:

(a) “Hotel” means the same as provided in K.S.A. 36-501, and amendments thereto;

(b) “innkeeper” means the owner, operator, manager or keeper of a hotel;

(c) “minor” means an unemancipated person under the age of 18 years;

(d) “alcoholic liquor” means the same as provided in subsection (b) of K.S.A. 41-102, and amendments thereto;

(e) “cereal malt beverage” means the same as provided in subsection (a) of K.S.A. 41-2701, and amendments thereto;

(f) “controlled substance” means the same as provided in ~~K.S.A. 65-4101 et seq.~~ *section 1*, and amendments thereto.

Sec. 46. K.S.A. 36-604 is hereby amended to read as follows: 36-604. An innkeeper may eject a person from the hotel premises, without return of such person’s room rental payment, for any of the following reasons:

(a) Nonpayment of the hotel’s charges for accommodations or services;

(b) the person is engaged in disorderly conduct as defined in K.S.A. 21-4101, and amendments thereto, or has been the subject of complaints from other guests of the hotel;

(c) the person is using the premises for an unlawful act, including but not limited to the unlawful use or possession of controlled substances by such person in violation of ~~K.S.A. 65-4101 et seq.~~ *sections 1 through 17*, and amendments thereto, or the use of the premises for the consumption of alcoholic liquor or cereal malt beverage by any person under the age of 21 years in violation of K.S.A. 41-727, and amendments thereto;

(d) the person has brought property onto the hotel premises which may be dangerous to other persons as defined in K.S.A. 21-4201 et seq., and amendments thereto;

(e) the person is not a registered guest of the hotel;

(f) the person has exceeded the limitations for guest room occupancy established by the hotel;

(g) the person has obtained the accommodation under false pretenses;

(h) the person is a minor and is not under the supervision of the adult who has obtained the accommodation;

(i) the person has violated any federal, state or local laws or regulations relating to the hotel; or

(j) the person has violated any rule of the hotel which is posted in a conspicuous place and manner in the hotel as provided in K.S.A. 36-605, except that no such rule may authorize the innkeeper to eject or to refuse or deny service or accommodations to a person because of race, religion, color, sex, disability, national origin or ancestry.

Sec. 47. K.S.A. 2008 Supp. 38-2255 is hereby amended to read as follows: 38-2255. (a) *Considerations*. Prior to entering an order of disposition, the court shall give consideration to:

(1) The child’s physical, mental and emotional condition;

(2) the child’s need for assistance;

(3) the manner in which the parent participated in the abuse, neglect or abandonment of the child;

(4) any relevant information from the intake and assessment process; and

(5) the evidence received at the dispositional hearing.

(b) *Placement with a parent*. The court may place the child in the custody of either of the child’s parents subject to terms and conditions

which the court prescribes to assure the proper care and protection of the child, including, but not limited to:

- (1) Supervision of the child and the parent by a court services officer;
- (2) participation by the child and the parent in available programs operated by an appropriate individual or agency; and
- (3) any special treatment or care which the child needs for the child's physical, mental or emotional health and safety.

(c) *Removal of a child from custody of a parent.* The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1)(A) The child is likely to sustain harm if not immediately removed from the home;

(B) allowing the child to remain in home is contrary to the welfare of the child; or

(C) immediate placement of the child is in the best interest of the child; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child.

(d) *Custody of a child removed from the custody of a parent.* If the court has made the findings required by subsection (c), the court shall enter an order awarding custody to a relative of the child or to a person with whom the child has close emotional ties, to any other suitable person, to a shelter facility, to a youth residential facility or to the secretary. Custody awarded under this subsection shall continue until further order of the court.

(1) When custody is awarded to the secretary, the secretary shall consider any placement recommendation by the court and notify the court of the placement or proposed placement of the child within 10 days of the order awarding custody.

(A) After providing the parties or interested parties notice and opportunity to be heard, the court may determine whether the secretary's placement or proposed placement is contrary to the welfare or in the best interests of the child. In making that determination the court shall consider the health and safety needs of the child and the resources available to meet the needs of children in the custody of the secretary. If the court determines that the placement or proposed placement is contrary to the welfare or not in the best interests of the child, the court shall notify the secretary, who shall then make an alternative placement.

(B) The secretary may propose and the court may order the child to be placed in the custody of a parent or parents if the secretary has provided and the court has approved an appropriate safety action plan which includes services to be provided. The court may order the parent or parents and the child to perform tasks as set out in the safety action plan.

(2) The custodian designated under this subsection shall notify the court in writing at least 10 days prior to any planned placement with a parent. The written notice shall state the basis for the custodian's belief that placement with a parent is no longer contrary to the welfare or best interest of the child. Upon reviewing the notice, the court may allow the custodian to proceed with the planned placement or may set the date for a hearing to determine if the child shall be allowed to return home. If the court sets a hearing on the matter, the custodian shall not return the child home without written consent of the court.

(3) The court may grant any person reasonable rights to visit the child upon motion of the person and a finding that the visitation rights would be in the best interests of the child.

(4) The court may enter an order restraining any alleged perpetrator of physical, mental or emotional abuse or sexual abuse of the child from residing in the child's home; visiting, contacting, harassing or intimidating the child, other family member or witness; or attempting to visit, contact, harass or intimidate the child, other family member or witness. Such restraining order shall be served by personal service pursuant to subsection (a) of K.S.A. 2008 Supp. 38-2237, and amendments thereto, on any alleged perpetrator to whom the order is directed.

(5) The court shall provide a copy of any orders entered within 10 days of entering the order to the custodian designated under this subsection.

(e) *Further determinations regarding a child removed from the home.* If custody has been awarded under subsection (d) to a person other than

a parent, a permanency plan shall be provided or prepared pursuant to K.S.A. 2008 Supp. 38-2264, and amendments thereto. If a permanency plan is provided at the dispositional hearing, the court may determine whether reintegration is a viable alternative or, if reintegration is not a viable alternative, whether the child should be placed for adoption or a permanent custodian appointed. In determining whether reintegration is a viable alternative, the court shall consider:

(1) Whether a parent has been found by a court to have committed one of the following crimes or to have violated the law of another state prohibiting such crimes or to have aided and abetted, attempted, conspired or solicited the commission of one of these crimes: Murder in the first degree, K.S.A. 21-3401, and amendments thereto, murder in the second degree, K.S.A. 21-3402, and amendments thereto, capital murder, K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, or a felony battery that resulted in bodily injury;

(2) whether a parent has subjected the child or another child to aggravated circumstances;

(3) whether a parent has previously been found to be an unfit parent in proceedings under this code or in comparable proceedings under the laws of another state or the federal government;

(4) whether the child has been in extended out of home placement;

(5) whether the parents have failed to work diligently toward reintegration;

(6) whether the secretary has provided the family with services necessary for the safe return of the child to the home; and

(7) whether it is reasonable to expect reintegration to occur within a time frame consistent with the child's developmental needs.

(f) *Proceedings if reintegration is not a viable alternative.* If the court determines that reintegration is not a viable alternative, proceedings to terminate parental rights and permit placement of the child for adoption or appointment of a permanent custodian shall be initiated unless the court finds that compelling reasons have been documented in the case plan why adoption or appointment of a permanent custodian would not be in the best interests of the child. If compelling reasons have not been documented, the county or district attorney shall file a motion within 30 days to terminate parental rights or a motion to appoint a permanent custodian within 30 days and the court shall hold a hearing on the motion within 90 days of its filing. No hearing is required when the parents voluntarily relinquish parental rights or consent to the appointment of a permanent custodian.

(g) *Additional Orders.* In addition to or in lieu of any other order authorized by this section:

(1) The court may order the child and the parents of any child who has been adjudicated a child in need of care to attend counseling sessions as the court directs. The expense of the counseling may be assessed as an expense in the case. No mental health provider shall charge a greater fee for court-ordered counseling than the provider would have charged to the person receiving counseling if the person had requested counseling on the person's own initiative.

(2) If the court has reason to believe that a child is before the court due, in whole or in part, to the use or misuse of alcohol or a violation of ~~the uniform controlled substances act sections 1 through 17, and amendments thereto,~~ by the child, a parent of the child, or another person responsible for the care of the child, the court may order the child, parent of the child or other person responsible for the care of the child to submit to and complete an alcohol and drug evaluation by a qualified person or agency and comply with any recommendations. If the evaluation is performed by a community-based alcohol and drug safety program certified pursuant to K.S.A. 8-1008, and amendments thereto, the child, parent of the child or other person responsible for the care of the child shall pay a fee not to exceed the fee established by that statute. If the court finds that the child and those legally liable for the child's support are indigent, the fee may be waived. In no event shall the fee be assessed against the secretary.

(3) If child support has been requested and the parent or parents have a duty to support the child, the court may order one or both parents to pay child support and, when custody is awarded to the secretary, the

court shall order one or both parents to pay child support. The court shall determine, for each parent separately, whether the parent is already subject to an order to pay support for the child. If the parent is not presently ordered to pay support for any child who is subject to the jurisdiction of the court and the court has personal jurisdiction over the parent, the court shall order the parent to pay child support in an amount determined under K.S.A. 2008 Supp. 38-2277, and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 23-4,105 et seq., and amendments thereto, for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 2008 Supp. 38-2279, and amendments thereto. The parent shall also be informed that, after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

Sec. 48. K.S.A. 2008 Supp. 44-706 is hereby amended to read as follows: 44-706. An individual shall be disqualified for benefits:

(a) If the individual left work voluntarily without good cause attributable to the work or the employer, subject to the other provisions of this subsection (a). Failure to return to work after expiration of approved personal or medical leave, or both, shall be considered a voluntary resignation. After a temporary job assignment, failure of an individual to affirmatively request an additional assignment on the next succeeding workday, if required by the employment agreement, after completion of a given work assignment, shall constitute leaving work voluntarily. The disqualification shall begin the day following the separation and shall continue until after the individual has become reemployed and has had earnings from insured work of at least three times the individual's weekly benefit amount. An individual shall not be disqualified under this subsection (a) if:

(1) The individual was forced to leave work because of illness or injury upon the advice of a licensed and practicing health care provider and, upon learning of the necessity for absence, immediately notified the employer thereof, or the employer consented to the absence, and after recovery from the illness or injury, when recovery was certified by a practicing health care provider, the individual returned to the employer and offered to perform services and the individual's regular work or comparable and suitable work was not available; as used in this paragraph (1) "health care provider" means any person licensed by the proper licensing authority of any state to engage in the practice of medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

(2) the individual left temporary work to return to the regular employer;

(3) the individual left work to enlist in the armed forces of the United States, but was rejected or delayed from entry;

(4) the individual left work because of the voluntary or involuntary transfer of the individual's spouse from one job to another job, which is for the same employer or for a different employer, at a geographic location which makes it unreasonable for the individual to continue work at the individual's job;

(5) the individual left work because of hazardous working conditions; in determining whether or not working conditions are hazardous for an individual, the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness and prior training and the working conditions of workers engaged in the same or similar work for the same and other employers in the locality shall be considered; as used in this paragraph (5), "hazardous working conditions" means working conditions that could result in a danger to the physical or mental well-being of the individual; each determination as to whether hazardous working conditions exist shall include, but shall not be limited to, a consideration of (A) the safety measures used or the lack thereof, and (B) the condition of equipment or lack of proper equipment; no work shall be considered hazardous if the working conditions surrounding the individual's work are

the same or substantially the same as the working conditions generally prevailing among individuals performing the same or similar work for other employers engaged in the same or similar type of activity;

(6) the individual left work to enter training approved under section 236(a)(1) of the federal trade act of 1974, provided the work left is not of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the federal trade act of 1974), and wages for such work are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal trade act of 1974;

(7) the individual left work because of unwelcome harassment of the individual by the employer or another employee of which the employing unit had knowledge;

(8) the individual left work to accept better work; each determination as to whether or not the work accepted is better work shall include, but shall not be limited to, consideration of (A) the rate of pay, the hours of work and the probable permanency of the work left as compared to the work accepted, (B) the cost to the individual of getting to the work left in comparison to the cost of getting to the work accepted, and (C) the distance from the individual's place of residence to the work accepted in comparison to the distance from the individual's residence to the work left;

(9) the individual left work as a result of being instructed or requested by the employer, a supervisor or a fellow employee to perform a service or commit an act in the scope of official job duties which is in violation of an ordinance or statute;

(10) the individual left work because of a violation of the work agreement by the employing unit and, before the individual left, the individual had exhausted all remedies provided in such agreement for the settlement of disputes before terminating;

(11) after making reasonable efforts to preserve the work, the individual left work due to a personal emergency of such nature and compelling urgency that it would be contrary to good conscience to impose a disqualification; or

(12) (A) the individual left work due to circumstances resulting from domestic violence, including:

(i) The individual's reasonable fear of future domestic violence at or en route to or from the individual's place of employment; or

(ii) the individual's need to relocate to another geographic area in order to avoid future domestic violence; or

(iii) the individual's need to address the physical, psychological and legal impacts of domestic violence; or

(iv) the individual's need to leave employment as a condition of receiving services or shelter from an agency which provides support services or shelter to victims of domestic violence; or

(v) the individual's reasonable belief that termination of employment is necessary to avoid other situations which may cause domestic violence and to provide for the future safety of the individual or the individual's family.

(B) An individual may prove the existence of domestic violence by providing one of the following:

(i) A restraining order or other documentation of equitable relief by a court of competent jurisdiction; or

(ii) a police record documenting the abuse; or

(iii) documentation that the abuser has been convicted of one or more of the offenses enumerated in articles 34 and 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, where the victim was a family or household member; or

(iv) medical documentation of the abuse; or

(v) a statement provided by a counselor, social worker, health care provider, clergy, shelter worker, legal advocate, domestic violence or sexual assault advocate or other professional who has assisted the individual in dealing with the effects of abuse on the individual or the individual's family; or

(vi) a sworn statement from the individual attesting to the abuse.

(C) No evidence of domestic violence experienced by an individual, including the individual's statement and corroborating evidence, shall be

disclosed by the department of labor unless consent for disclosure is given by the individual.

(b) If the individual has been discharged for misconduct connected with the individual's work. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount, except that if an individual is discharged for gross misconduct connected with the individual's work, such individual shall be disqualified for benefits until such individual again becomes employed and has had earnings from insured work of at least eight times such individual's determined weekly benefit amount. In addition, all wage credits attributable to the employment from which the individual was discharged for gross misconduct connected with the individual's work shall be canceled. No such cancellation of wage credits shall affect prior payments made as a result of a prior separation.

(1) For the purposes of this subsection (b), "misconduct" is defined as a violation of a duty or obligation reasonably owed the employer as a condition of employment. The term "gross misconduct" as used in this subsection (b) shall be construed to mean conduct evincing extreme, willful or wanton misconduct as defined by this subsection (b). Failure of the employee to notify the employer of an absence shall be considered prima facie evidence of a violation of a duty or obligation reasonably owed the employer as a condition of employment.

(2) For the purposes of this subsection (b), the use of or impairment caused by alcoholic liquor, a cereal malt beverage or a nonprescribed controlled substance by an individual while working shall be conclusive evidence of misconduct and the possession of alcoholic liquor, a cereal malt beverage or a nonprescribed controlled substance by an individual while working shall be prima facie evidence of conduct which is a violation of a duty or obligation reasonably owed to the employer as a condition of employment. Alcoholic liquor shall be defined as provided in K.S.A. 41-102, and amendments thereto. Cereal malt beverage shall be defined as provided in K.S.A.41-2701, and amendments thereto. Controlled substance shall be defined as provided in ~~K.S.A. 65-4101~~ *section 1*, and amendments thereto ~~of the uniform controlled substances act~~. As used in this subsection (b)(2), "required by law" means required by a federal or state law, a federal or state rule or regulation having the force and effect of law, a county resolution or municipal ordinance, or a policy relating to public safety adopted in open meeting by the governing body of any special district or other local governmental entity. Chemical test shall include, but is not limited to, tests of urine, blood or saliva. A positive chemical test shall mean a chemical result showing a concentration at or above the levels listed in K.S.A. 44-501, and amendments thereto, for the drugs or abuse listed therein. A positive breath test shall mean a test result showing an alcohol concentration of .04 or greater. Alcohol concentration means the number of grams of alcohol per 210 liters of breath. An individual's refusal to submit to a chemical test or breath alcohol test shall be conclusive evidence of misconduct if the test meets the standards of the drug free workplace act, 41 U.S.C. 701 et seq.; the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment; the test was otherwise required by law and the test constituted a required condition of employment for the individual's job; the test was requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment; or there was probable cause to believe that the individual used, possessed or was impaired by alcoholic liquor, a cereal malt beverage or a controlled substance while working. A positive breath alcohol test or a positive chemical test shall be conclusive evidence to prove misconduct if the following conditions are met:

(A) Either (i) the test was required by law and was administered pursuant to the drug free workplace act, 41 U.S.C. 701 et seq., (ii) the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, (iii) the test was requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment, (iv) the test was required by law and the test constituted a required condition

of employment for the individual's job, or (v) there was probable cause to believe that the individual used, had possession of, or was impaired by alcoholic liquor, the cereal malt beverage or the controlled substance while working;

(B) the test sample was collected either (i) as prescribed by the drug free workplace act, 41 U.S.C. 701 et seq., (ii) as prescribed by an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, (iii) as prescribed by the written policy of the employer of which the employee had knowledge and which constituted a required condition of employment, (iv) as prescribed by a test which was required by law and which constituted a required condition of employment for the individual's job, or (v) at a time contemporaneous with the events establishing probable cause;

(C) the collecting and labeling of a chemical test sample was performed by a licensed health care professional or any other individual certified pursuant to paragraph (b)(2)(F) or authorized to collect or label test samples by federal or state law, or a federal or state rule or regulation having the force or effect of law, including law enforcement personnel;

(D) the chemical test was performed by a laboratory approved by the United States department of health and human services or licensed by the department of health and environment, except that a blood sample may be tested for alcohol content by a laboratory commonly used for that purpose by state law enforcement agencies;

(E) the chemical test was confirmed by gas chromatography, gas chromatography-mass spectroscopy or other comparably reliable analytical method, except that no such confirmation is required for a blood alcohol sample or a breath alcohol test;

(F) the breath alcohol test was administered by an individual trained to perform breath tests, the breath testing instrument used was certified and operated strictly according to description provided by the manufacturers and the reliability of the instrument performance was assured by testing with alcohol standards; and

(G) the foundation evidence must establish, beyond a reasonable doubt, that the test results were from the sample taken from the individual.

(3) (A) For the purposes of this subsection (b), misconduct shall include, but not be limited to repeated absence, including incarceration, resulting in absence from work of three days or longer, excluding Saturdays, Sundays and legal holidays, and lateness, from scheduled work if the facts show:

(i) The individual was absent without good cause;

(ii) the absence was in violation of the employer's written absenteeism policy;

(iii) the employer gave or sent written notice to the individual, at the individual's last known address, that future absence may or will result in discharge; and

(iv) the employee had knowledge of the employer's written absenteeism policy.

(B) For the purposes of this subsection (b), if an employee disputes being absent without good cause, the employee shall present evidence that a majority of the employee's absences were for good cause. If the employee alleges that the employee's repeated absences were the result of health related issues, such evidence shall include documentation from a licensed and practicing health care provider as defined in subsection (a)(1).

(4) An individual shall not be disqualified under this subsection if the individual is discharged under the following circumstances:

(A) The employer discharged the individual after learning the individual was seeking other work or when the individual gave notice of future intent to quit;

(B) the individual was making a good-faith effort to do the assigned work but was discharged due to: (i) Inefficiency, (ii) unsatisfactory performance due to inability, incapacity or lack of training or experience, (iii) isolated instances of ordinary negligence or inadvertence, (iv) good-faith errors in judgment or discretion, or (v) unsatisfactory work or conduct due to circumstances beyond the individual's control; or

(C) the individual's refusal to perform work in excess of the contract of hire.

(c) If the individual has failed, without good cause, to either apply for suitable work when so directed by the employment office of the secretary of labor, or to accept suitable work when offered to the individual by the employment office, the secretary of labor, or an employer, such disqualification shall begin with the week in which such failure occurred and shall continue until the individual becomes reemployed and has had earnings from insured work of at least three times such individual's determined weekly benefit amount. In determining whether or not any work is suitable for an individual, the secretary of labor, or a person or persons designated by the secretary, shall consider the degree of risk involved to health, safety and morals, physical fitness and prior training, experience and prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation or work for which the individual is reasonably fitted by training or experience, and the distance of the available work from the individual's residence. Notwithstanding any other provisions of this act, an otherwise eligible individual shall not be disqualified for refusing an offer of suitable employment, or failing to apply for suitable employment when notified by an employment office, or for leaving the individual's most recent work accepted during approved training, including training approved under section 236(a)(1) of the trade act of 1974, if the acceptance of or applying for suitable employment or continuing such work would require the individual to terminate approved training and no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (1) If the position offered is vacant due directly to a strike, lockout or other labor dispute; (2) if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (3) if as a condition of being employed, the individual would be required to join or to resign from or refrain from joining any labor organization; (4) if the individual left employment as a result of domestic violence, and the position offered does not reasonably accommodate the individual's physical, psychological, safety, and/or legal needs relating to such domestic violence.

(d) For any week with respect to which the secretary of labor, or a person or persons designated by the secretary, finds that the individual's unemployment is due to a stoppage of work which exists because of a labor dispute or there would have been a work stoppage had normal operations not been maintained with other personnel previously and currently employed by the same employer at the factory, establishment or other premises at which the individual is or was last employed, except that this subsection (d) shall not apply if it is shown to the satisfaction of the secretary of labor, or a person or persons designated by the secretary, that: (1) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and (2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs any of whom are participating in or financing or directly interested in the dispute. If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection (d) be deemed to be a separate factory, establishment or other premises. For the purposes of this subsection (d), failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept the individual's available and customary work at the factory, establishment or other premises where the individual is or was last employed shall be considered as participation and interest in the labor dispute.

(e) For any week with respect to which or a part of which the individual has received or is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such other state or the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

(f) For any week with respect to which the individual is entitled to

receive any unemployment allowance or compensation granted by the United States under an act of congress to ex-service men and women in recognition of former service with the military or naval services of the United States.

(g) For the period of one year beginning with the first day following the last week of unemployment for which the individual received benefits, or for one year from the date the act was committed, whichever is the later, if the individual, or another in such individual's behalf with the knowledge of the individual, has knowingly made a false statement or representation, or has knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other unemployment compensation law administered by the secretary of labor.

(h) For any week with respect to which the individual is receiving compensation for temporary total disability or permanent total disability under the workmen's compensation law of any state or under a similar law of the United States.

(i) For any week of unemployment on the basis of service in an instructional, research or principal administrative capacity for an educational institution as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, if such week begins during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms during such period or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs such services in the first of such academic years or terms and there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.

(j) For any week of unemployment on the basis of service in any capacity other than service in an instructional, research, or administrative capacity in an educational institution, as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, if such week begins during the period between two successive academic years or terms if the individual performs such services in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of such academic years or terms, except that if benefits are denied to the individual under this subsection (j) and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection (j).

(k) For any week of unemployment on the basis of service in any capacity for an educational institution as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, if such week begins during an established and customary vacation period or holiday recess, if the individual performs services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(l) For any week of unemployment on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, if such week begins during the period between two successive sport seasons or similar period if such individual performed services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods.

(m) For any week on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the federal immigration and nationality act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case

of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of such individual's alien status shall be made except upon a preponderance of the evidence.

(n) For any week in which an individual is receiving a governmental or other pension, retirement or retired pay, annuity or other similar periodic payment under a plan maintained by a base period employer and to which the entire contributions were provided by such employer, except that: (1) If the entire contributions to such plan were provided by the base period employer but such individual's weekly benefit amount exceeds such governmental or other pension, retirement or retired pay, annuity or other similar periodic payment attributable to such week, the weekly benefit amount payable to the individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity or other similar periodic payment which is attributable to such week; or (2) if only a portion of contributions to such plan were provided by the base period employer, the weekly benefit amount payable to such individual for such week shall be reduced (but not below zero) by the prorated weekly amount of the pension, retirement or retired pay, annuity or other similar periodic payment after deduction of that portion of the pension, retirement or retired pay, annuity or other similar periodic payment that is directly attributable to the percentage of the contributions made to the plan by such individual; or (3) if the entire contributions to the plan were provided by such individual, or by the individual and an employer (or any person or organization) who is not a base period employer, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection (n); or (4) whatever portion of contributions to such plan were provided by the base period employer, if the services performed for the employer by such individual during the base period, or remuneration received for the services, did not affect the individual's eligibility for, or increased the amount of, such pension, retirement or retired pay, annuity or other similar periodic payment, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection (n). No reduction shall be made for payments made under the social security act or railroad retirement act of 1974.

(o) For any week of unemployment on the basis of services performed in any capacity and under any of the circumstances described in subsection (i), (j) or (k) which an individual performed in an educational institution while in the employ of an educational service agency. For the purposes of this subsection (o), the term "educational service agency" means a governmental agency or entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(p) For any week of unemployment on the basis of service as a school bus or other motor vehicle driver employed by a private contractor to transport pupils, students and school personnel to or from school-related functions or activities for an educational institution, as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, if such week begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, if the individual has a contract or contracts, or a reasonable assurance thereof, to perform services in any such capacity with a private contractor for any educational institution for both such academic years or both such terms. An individual shall not be disqualified for benefits as provided in this subsection (p) for any week of unemployment on the basis of service as a bus or other motor vehicle driver employed by a private contractor to transport persons to or from nonschool-related functions or activities.

(q) For any week of unemployment on the basis of services performed by the individual in any capacity and under any of the circumstances described in subsection (i), (j), (k) or (o) which are provided to or on behalf of an educational institution, as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, while the individual is in the employ of an employer which is a governmental entity, Indian tribe or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income under section 501(a) of the code.

(r) For any week in which an individual is registered at and attending

an established school, training facility or other educational institution, or is on vacation during or between two successive academic years or terms. An individual shall not be disqualified for benefits as provided in this subsection (r) provided:

(1) The individual was engaged in full-time employment concurrent with the individual's school attendance; or

(2) the individual is attending approved training as defined in subsection (s) of K.S.A. 44-703 and amendments thereto; or

(3) the individual is attending evening, weekend or limited day time classes, which would not affect availability for work, and is otherwise eligible under subsection (c) of K.S.A. 44-705 and amendments thereto.

(s) For any week with respect to which an individual is receiving or has received remuneration in the form of a back pay award or settlement. The remuneration shall be allocated to the week or weeks in the manner as specified in the award or agreement, or in the absence of such specificity in the award or agreement, such remuneration shall be allocated to the week or weeks in which such remuneration, in the judgment of the secretary, would have been paid.

(1) For any such weeks that an individual receives remuneration in the form of a back pay award or settlement, an overpayment will be established in the amount of unemployment benefits paid and shall be collected from the claimant.

(2) If an employer chooses to withhold from a back pay award or settlement, amounts paid to a claimant while they claimed unemployment benefits, such employer shall pay the department the amount withheld. With respect to such amount, the secretary shall have available all of the collection remedies authorized or provided in K.S.A. 44-717, and amendments thereto.

(t) If the individual has been discharged for failing a preemployment drug screen required by the employer and if such discharge occurs not later than seven days after the employer is notified of the results of such drug screen. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount.

(u) If the individual was found not to have a disqualifying adjudication or conviction under K.S.A. 39-970, and amendments thereto, or K.S.A. 65-5117, and amendments thereto, was hired and then was subsequently convicted of a disqualifying felony under K.S.A. 39-970, and amendments thereto, or K.S.A. 65-5117, and amendments thereto, and discharged pursuant to K.S.A. 39-970, and amendments thereto, or K.S.A. 65-5117, and amendments thereto. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount.

Sec. 49. K.S.A. 2008 Supp. 59-2132 is hereby amended to read as follows: 59-2132. (a) Except as provided in subsection (h), in independent and agency adoptions, the court shall require the petitioner to obtain an assessment of the advisability of the adoption by a court approved:

(1) (A) Licensed social worker, licensed specialist social worker, licensed specialist clinical social worker, licensed masters social worker, licensed baccalaureate social worker or licensed associate social worker licensed by the behavioral sciences regulatory board;

(B) licensed clinical marriage and family therapist as defined in K.S.A. 65-6402, and amendments thereto;

(C) licensed marriage and family therapist as defined in K.S.A. 65-6402, and amendments thereto;

(D) licensed clinical professional counselor as defined in K.S.A. 65-5802, and amendments thereto;

(E) licensed professional counselor as defined in K.S.A. 65-5802, and amendments thereto;

(F) licensed psychologist as defined in K.S.A. 65-6319, and amendments thereto;

(G) licensed masters level psychologist as defined in K.S.A. 74-5362, and amendments thereto;

(H) licensed clinical psychotherapist as defined in K.S.A. 74-5363, and amendments thereto; or

- (I) a licensed child-placing agency.
- (2) Any person performing an assessment pursuant to this subsection shall:
 - (A) Possess a minimum of two years experience in adoption services or be supervised by a person with such experience; or
 - (B) if licensed by the behavioral sciences regulatory board to diagnose and treat mental disorders in independent practice, possess a minimum of one year of experience in adoption services or be supervised by a person with such experience.
- (b) The petitioner shall file with the court, not less than 10 days before the hearing on the petition, a report of the assessment and, if necessary, confirmation or clarification of the information filed under K.S.A. 59-2130, and amendments thereto.
- (c) If there is no one authorized pursuant to this section available to make the assessment and report to the court, the court may use the department of social and rehabilitation services for that purpose.
- (d) The costs of making the assessment and report may be assessed as court costs in the case as provided in article 20 of chapter 60 of the Kansas Statutes Annotated and amendments thereto.
- (e) In making the assessment, the person authorized pursuant to this section or department of social and rehabilitation services is authorized to observe the child in the petitioner's home, verify financial information of the petitioner, shall clear the name of the petitioner with the child abuse and neglect registry through the department of social and rehabilitation services and, when appropriate, with a similar registry in another state or nation, shall determine whether the petitioner has been convicted of a felony for any act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or, within the last five years been convicted of a felony violation of ~~the uniform controlled substances act, K.S.A. 65-4101 et seq. sections 1 through 17,~~ and amendments thereto, and, when appropriate, any similar conviction in another jurisdiction, and to contact the agency or individuals consenting to the adoption and confirm and, if necessary, clarify any genetic and medical history filed with the petition. This information shall be made a part of the report to the court. The report to the court by any person authorized pursuant to this section to perform this assessment shall include the results of the investigation of the petitioner, the petitioner's home and the ability of the petitioner to care for the child.
- (f) In the case of a nonresident who is filing a petition to adopt a child in Kansas, the assessment and report required by this section must be completed in the petitioner's state of residence by a person authorized in that state to conduct such assessments. Such report shall be filed with the court not less than 10 days before the hearing on the petition.
- (g) The assessment and report required by this section shall comply with any applicable rules and regulations of the department of health and environment and shall have been completed not more than one year prior to the filing of the petition for adoption.
- (h) The assessment and report required by this section may be waived by the court upon:
 - (1) Review of a petition requesting such waiver by a relative of the child; or
 - (2) the court's own motion.

Sec. 50. K.S.A. 2008 Supp. 59-29b46 is hereby amended to read as follows: 59-29b46. When used in the care and treatment act for persons with an alcohol or substance abuse problem:

- (a) "Discharge" means the final and complete release from treatment, by either the head of a treatment facility acting pursuant to K.S.A. 59-29b50 and amendments thereto or by an order of a court issued pursuant to K.S.A. 59-29b73 and amendments thereto.
- (b) "Head of a treatment facility" means the administrative director of a treatment facility or such person's designee.
- (c) "Law enforcement officer" shall have the meaning ascribed to it in K.S.A. 22-2202 and amendments thereto.
- (d) "Other facility for care or treatment" means any mental health clinic, medical care facility, nursing home, the detox units at either Osawatomie state hospital or Larned state hospital, any physician or any other institution or individual authorized or licensed by law to give care or treatment to any person.

(e) “Patient” means a person who is a voluntary patient, a proposed patient or an involuntary patient.

(1) “Voluntary patient” means a person who is receiving treatment at a treatment facility pursuant to K.S.A. 59-29b49 and amendments thereto.

(2) “Proposed patient” means a person for whom a petition pursuant to K.S.A. 59-29b52 or 59-29b57 and amendments thereto has been filed.

(3) “Involuntary patient” means a person who is receiving treatment under order of a court or a person admitted and detained by a treatment facility pursuant to an application filed pursuant to subsection (b) or (c) of K.S.A. 59-29b54 and amendments thereto.

(f) “Person with an alcohol or substance abuse problem” means a person who: (1) Lacks self-control as to the use of alcoholic beverages or any substance as defined in subsection (k); or

(2) uses alcoholic beverages or any substance as defined in subsection (k) to the extent that the person’s health may be substantially impaired or endangered without treatment.

(g) (1) “Person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment” means a person with an alcohol or substance abuse problem, as defined in subsection (f), who also is incapacitated by alcohol or any substance and is likely to cause harm to self or others.

(2) “Incapacitated by alcohol or any substance” means that the person, as the result of the use of alcohol or any substance as defined in subsection (k), has impaired judgment resulting in the person: (A) Being incapable of realizing and making a rational decision with respect to the need for treatment; or

(B) lacking sufficient understanding or capability to make or communicate responsible decisions concerning either the person’s well-being or estate.

(3) “Likely to cause harm to self or others” means that the person, by reason of the person’s use of alcohol or any substance: (A) Is likely, in the reasonably foreseeable future, to cause substantial physical injury or physical abuse to self or others or substantial damage to another’s property, as evidenced by behavior threatening, attempting or causing such injury, abuse or damage; except that if the harm threatened, attempted or caused is only harm to the property of another, the harm must be of such a value and extent that the state’s interest in protecting the property from such harm outweighs the person’s interest in personal liberty; or

(B) is substantially unable, except for reason of indigency, to provide for any of the person’s basic needs, such as food, clothing, shelter, health or safety, causing a substantial deterioration of the person’s ability to function on the person’s own.

(h) “Physician” means a person licensed to practice medicine and surgery as provided for in the Kansas healing arts act or a person who is employed by a state psychiatric hospital or by an agency of the United States and who is authorized by law to practice medicine and surgery within that hospital or agency.

(i) “Psychologist” means a licensed psychologist, as defined by K.S.A. 74-5302 and amendments thereto.

(j) “State certified alcohol and drug abuse counselor” means a person approved by the secretary of social and rehabilitation services to perform assessments using the American Society of Addiction Medicine criteria and employed at a state funded and designated assessment center.

(k) “Substance” means: (1) The same as the term “controlled substance” as defined in ~~K.S.A. 65-4101~~ *section 1*, and amendments thereto; or

(2) fluorocarbons, toluene or volatile hydrocarbon solvents.

(l) “Treatment” means the broad range of emergency, outpatient, intermediate and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological and social service care, vocational rehabilitation and career counseling, which may be extended to persons with an alcohol or substance abuse problem.

(m) (1) “Treatment facility” means a treatment program, public or private treatment facility, or any facility of the United States government available to treat a person for an alcohol or other substance abuse problem, but such term shall not include a licensed medical care facility, a licensed adult care home, a facility licensed under K.S.A. 75-3307b and

amendments thereto, a community-based alcohol and drug safety action program certified under K.S.A. 8-1008 and amendments thereto, and performing only those functions for which the program is certified to perform under K.S.A. 8-1008 and amendments thereto, or a professional licensed by the behavioral sciences regulatory board to diagnose and treat mental disorders at the independent level or a physician, who may treat in the usual course of the behavioral sciences regulatory board licensee's or physician's professional practice individuals incapacitated by alcohol or other substances, but who are not primarily engaged in the usual course of the individual's professional practice in treating such individuals, or any state institution, even if detoxification services may have been obtained at such institution.

(2) "Private treatment facility" means a private agency providing facilities for the care and treatment or lodging of persons with either an alcohol or other substance abuse problem and meeting the standards prescribed in either K.S.A. 65-4013 or 65-4603 and amendments thereto, and licensed under either K.S.A. 65-4014 or 65-4607 and amendments thereto.

(3) "Public treatment facility" means a treatment facility owned and operated by any political subdivision of the state of Kansas and licensed under either K.S.A. 65-4014 or 65-4603 and amendments thereto, as an appropriate place for the care and treatment or lodging of persons with an alcohol or other substance abuse problem.

(n) The terms defined in K.S.A. 59-3051 and amendments thereto shall have the meanings provided by that section.

Sec. 51. K.S.A. 2008 Supp. 60-4104 is hereby amended to read as follows: 60-4104. Conduct and offenses giving rise to forfeiture under this act, whether or not there is a prosecution or conviction related to the offense, are:

- (a) All offenses which statutorily and specifically authorize forfeiture;
- (b) violations of ~~the uniform controlled substances act, K.S.A. 65-4101 et seq. sections 1 through 17,~~ and amendments thereto;
- (c) theft which is classified as a felony violation pursuant to K.S.A. 21-3701, and amendments thereto, in which the property taken was livestock;
- (d) unlawful discharge of a firearm, K.S.A. 21-4219, and amendments thereto;
- (e) ~~money laundering, K.S.A. 65-4142~~ violations of section 16, and amendments thereto;
- (f) gambling, K.S.A. 21-4303, and amendments thereto, and commercial gambling, K.S.A. 21-4304, and amendments thereto;
- (g) counterfeiting, K.S.A. ~~2006 Supp.~~ 21-3763, and amendments thereto;
- (h) violations of K.S.A. ~~2006 Supp.~~ 21-4019, and amendments thereto;
- (i) medicaid fraud, K.S.A. 21-3844 et seq., and amendments thereto;
- (j) an act or omission occurring outside this state, which would be a violation in the place of occurrence and would be described in this section if the act occurred in this state, whether or not it is prosecuted in any state;
- (k) an act or omission committed in furtherance of any act or omission described in this section including any inchoate or preparatory offense, whether or not there is a prosecution or conviction related to the act or omission;
- (l) any solicitation or conspiracy to commit any act or omission described in this section, whether or not there is a prosecution or conviction related to the act or omission;
- (m) furtherance of terrorism or illegal use of weapons of mass destruction, K.S.A. ~~2006 Supp.~~ 21-3451, and amendments thereto.

Sec. 52. K.S.A. 60-427 is hereby amended to read as follows: 60-427.

(a) As used in this section:

- (1) "Patient" means a person who, for the sole purpose of securing preventive, palliative, or curative treatment, or a diagnosis preliminary to such treatment, of such person's physical or mental condition, consults a physician, or submits to an examination by a physician.
- (2) "Physician" means a person licensed or reasonably believed by the patient to be licensed to practice medicine or one of the healing arts

as defined in K.S.A. 65-2802 and amendments thereto in the state or jurisdiction in which the consultation or examination takes place.

(3) “Holder of the privilege” means the patient while alive and not under guardianship or conservatorship or the guardian or conservator of the patient, or the personal representative of a deceased patient.

(4) “Confidential communication between physician and patient” means such information transmitted between physician and patient, including information obtained by an examination of the patient, as is transmitted in confidence and by a means which, so far as the patient is aware, discloses the information to no third persons other than those reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it is transmitted.

(b) Except as provided by subsections (c), (d), (e) and (f), a person, whether or not a party, has a privilege in a civil action or in a prosecution for a misdemeanor, other than a prosecution for a violation of K.S.A. 8-1567 and amendments thereto or an ordinance which prohibits the acts prohibited by that statute, to refuse to disclose, and to prevent a witness from disclosing, a communication, if the person claims the privilege and the judge finds that: (1) The communication was a confidential communication between patient and physician; (2) the patient or the physician reasonably believed the communication necessary or helpful to enable the physician to make a diagnosis of the condition of the patient or to prescribe or render treatment therefor; (3) the witness (i) is the holder of the privilege, (ii) at the time of the communication was the physician or a person to whom disclosure was made because reasonably necessary for the transmission of the communication or for the accomplishment of the purpose for which it was transmitted or (iii) is any other person who obtained knowledge or possession of the communication as the result of an intentional breach of the physician’s duty of nondisclosure by the physician or the physician’s agent or servant; and (4) the claimant is the holder of the privilege or a person authorized to claim the privilege for the holder of the privilege.

(c) There is no privilege under this section as to any relevant communication between the patient and the patient’s physician: (1) Upon an issue of the patient’s condition in an action to commit the patient or otherwise place the patient under the control of another or others because of alleged incapacity or mental illness, in an action in which the patient seeks to establish the patient’s competence or in an action to recover damages on account of conduct of the patient which constitutes a criminal offense other than a misdemeanor; (2) upon an issue as to the validity of a document as a will of the patient; or (3) upon an issue between parties claiming by testate or intestate succession from a deceased patient.

(d) There is no privilege under this section in an action in which the condition of the patient is an element or factor of the claim or defense of the patient or of any party claiming through or under the patient or claiming as a beneficiary of the patient through a contract to which the patient is or was a party.

(e) There is no privilege under this section: (1) As to blood drawn at the request of a law enforcement officer pursuant to K.S.A. 8-1001 and amendments thereto; and (2) as to information which the physician or the patient is required to report to a public official or as to information required to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed.

(f) No person has a privilege under this section if the judge finds that sufficient evidence, aside from the communication has been introduced to warrant a finding that the services of the physician were sought or obtained to enable or aid anyone to commit or to plan to commit a crime or a tort, or to escape detection or apprehension after the commission of a crime or a tort.

(g) A privilege under this section as to a communication is terminated if the judge finds that any person while a holder of the privilege has caused the physician or any agent or servant of the physician to testify in any action to any matter of which the physician or the physician’s agent or servant gained knowledge through the communication.

(h) Providing false information to a physician for the purpose of obtaining a prescription-only drug shall not be a confidential communication between physician and patient and no person shall have a privilege in any

prosecution for *unlawfully obtaining or distributing* a prescription-only drug ~~by fraudulent means~~ under ~~K.S.A. 21-4214~~ *section 8*, and amendments thereto.

Sec. 53. K.S.A. 2008 Supp. 65-516 is hereby amended to read as follows: 65-516. (a) No person shall knowingly maintain a child care facility or maintain a family day care home if, in the child care facility or family day care home, there resides, works or regularly volunteers any person who in this state or in other states or the federal government:

(1) (A) Has a felony conviction for a crime against persons, (B) has a felony conviction under ~~the uniform controlled substances act sections 1 through 17, and amendments thereto~~, (C) has a conviction of any act which is described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or a conviction of an attempt under K.S.A. 21-3301, and amendments thereto, to commit any such act or a conviction of conspiracy under K.S.A. 21-3302, and amendments thereto, to commit such act, or similar statutes of other states or the federal government, or (D) has been convicted of any act which is described in K.S.A. 21-4301 or 21-4301a, and amendments thereto, or similar statutes of other states or the federal government;

(2) has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of a felony and which is a crime against persons, is any act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or similar statutes of other states or the federal government, or is any act described in K.S.A. 21-4301 or 21-4301a, and amendments thereto, or similar statutes of other states or the federal government;

(3) has committed an act of physical, mental or emotional abuse or neglect or sexual abuse and who is listed in the child abuse and neglect registry maintained by the department of social and rehabilitation services pursuant to K.S.A. 2008 Supp. 38-2226, and amendments thereto, and (A) the person has failed to successfully complete a corrective action plan which had been deemed appropriate and approved by the department of social and rehabilitation services, or (B) the record has not been expunged pursuant to rules and regulations adopted by the secretary of social and rehabilitation services;

(4) has had a child removed from home based on a court order pursuant to K.S.A. 2008 Supp. 38-2251, and amendments thereto, in this state, or a court order in any other state based upon a similar statute that finds the child to be deprived or a child in need of care based on a finding of physical, mental or emotional abuse or neglect or sexual abuse and the child has not been returned to the home or the child reaches majority before being returned to the home and the person has failed to satisfactorily complete a corrective action plan approved by the department of health and environment;

(5) has had parental rights terminated pursuant to the Kansas juvenile code or K.S.A. 2008 Supp. 38-2266 through 38-2270, and amendments thereto, or a similar statute of other states;

(6) has signed a diversion agreement pursuant to K.S.A. 22-2906 et seq., and amendments thereto, or an immediate intervention agreement pursuant to K.S.A. 2008 Supp. 38-2346, and amendments thereto, involving a charge of child abuse or a sexual offense; or

(7) has an infectious or contagious disease.

(b) No person shall maintain a child care facility or a family day care home if such person has been found to be a person in need of a guardian or a conservator, or both, as provided in K.S.A. 59-3050 through 59-3095, and amendments thereto.

(c) Any person who resides in a child care facility or family day care home and who has been found to be in need of a guardian or a conservator, or both, shall be counted in the total number of children allowed in care.

(d) In accordance with the provisions of this subsection, the secretary of health and environment shall have access to any court orders or adjudications of any court of record, any records of such orders or adjudications, criminal history record information including, but not limited to, diversion agreements, in the possession of the Kansas bureau of investigation and any report of investigations as authorized by K.S.A. 2008 Supp.

38-2226, and amendments thereto, in the possession of the department of social and rehabilitation services or court of this state concerning persons working, regularly volunteering or residing in a child care facility or a family day care home. The secretary shall have access to these records for the purpose of determining whether or not the home meets the requirements of K.S.A. 59-2132, 65-503, 65-508, 65-516 and 65-519, and amendments thereto.

(e) In accordance with the provisions of this subsection, the secretary is authorized to conduct national criminal history record checks to determine criminal history on persons residing, working or regularly volunteering in a child care facility or family day care home. In order to conduct a national criminal history check the secretary shall require fingerprinting for identification and determination of criminal history. The secretary shall submit the fingerprints to the Kansas bureau of investigation and to the federal bureau of investigation and receive a reply to enable the secretary to verify the identity of such person and whether such person has been convicted of any crime that would prohibit such person from residing, working or regularly volunteering in a child care facility or family day care home. The secretary is authorized to use information obtained from the national criminal history record check to determine such person's fitness to reside, work or regularly volunteer in a child care facility or family day care home.

(f) The secretary shall notify the child care applicant, licensee or registrant, within seven days by certified mail with return receipt requested, when the result of the national criminal history record check or other appropriate review reveals unfitness specified in subsection (a)(1) through (7) with regard to the person who is the subject of the review.

(g) No child care facility or family day care home or the employees thereof, shall be liable for civil damages to any person refused employment or discharged from employment by reason of such facility's or home's compliance with the provisions of this section if such home acts in good faith to comply with this section.

(h) For the purpose of subsection (a)(3), a person listed in the child abuse and neglect central registry shall not be prohibited from residing, working or volunteering in a child care facility or family day care home unless such person has: (1) Had an opportunity to be interviewed and present information during the investigation of the alleged act of abuse or neglect; and (2) been given notice of the agency decision and an opportunity to appeal such decision to the secretary and to the courts pursuant to the act for judicial review and civil enforcement of agency actions.

(i) In regard to Kansas issued criminal history records:

(1) The secretary of health and environment shall provide in writing information available to the secretary to each child placement agency requesting information under this section, including the information provided by the Kansas bureau of investigation pursuant to this section, for the purpose of assessing the fitness of persons living, working or regularly volunteering in a family foster home under the child placement agency's sponsorship.

(2) The child placement agency is considered to be a governmental entity and the designee of the secretary of health and environment for the purposes of obtaining, using and disseminating information obtained under this section.

(3) The information shall be provided to the child placement agency regardless of whether the information discloses that the subject of the request has been convicted of any offense.

(4) Whenever the information available to the secretary reveals that the subject of the request has no criminal history on record, the secretary shall provide notice thereof in writing to each child placement agency requesting information under this section.

(5) Any staff person of a child placement agency who receives information under this subsection shall keep such information confidential, except that the staff person may disclose such information on a need-to-know basis to: (A) The person who is the subject of the request for information, (B) the applicant or operator of the family foster home in which the person lives, works or regularly volunteers, (C) the department of health and environment, (D) the department of social and rehabilitation services, (E) the juvenile justice authority, and (F) the courts.

(6) A violation of the provisions of subsection (i)(5) shall be an unclassified misdemeanor punishable by a fine of \$100 for each violation.

Sec. 54. K.S.A. 65-4102 is hereby amended to read as follows: 65-4102. (a) The board shall administer this act and may adopt rules and regulations relating to the registration and control of the manufacture, distribution and dispensing of controlled substances within this state. All rules and regulations of the board shall be adopted in conformance with article 4 of chapter 77 of the Kansas Statutes Annotated and the procedures prescribed by this act.

(b) Annually, the board shall submit to the speaker of the house of representatives and the president of the senate a report on substances proposed by the board for scheduling, rescheduling or deletion by the legislature with respect to any one of the schedules as set forth in this act, and reasons for the proposal shall be submitted by the board therewith. In making a determination regarding the proposal to schedule, reschedule or delete a substance, the board shall consider the following:

- (1) The actual or relative potential for abuse;
- (2) the scientific evidence of its pharmacological effect, if known;
- (3) the state of current scientific knowledge regarding the substance;
- (4) the history and current pattern of abuse;
- (5) the scope, duration and significance of abuse;
- (6) the risk to the public health;
- (7) the potential of the substance to produce psychological or physiological dependence liability; and
- (8) whether the substance is an immediate precursor of a substance already controlled under this article.

(c) The board shall not include any nonnarcotic substance within a schedule if such substance may be lawfully sold over the counter without a prescription under the federal food, drug and cosmetic act.

(d) Authority to control under this section does not extend to distilled spirits, wine, malt beverages or tobacco.

(e) Upon receipt of notice under ~~K.S.A. 65-4105~~ *section 15, and amendments thereto*, the board shall initiate scheduling of the controlled substance analog on an emergency basis pursuant to this subsection. The scheduling of a substance under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, the board shall consider whether the substance has been scheduled on a temporary basis under federal law or factors set forth in subsections (b)(4), (5) and (6), and may also consider clandestine importation, manufacture or distribution, and if available, information concerning the other factors set forth in subsection (b). A rule may not be adopted under this subsection until the board initiates a rulemaking proceeding under subsection (a) with respect to the substance. A rule adopted under this subsection lapses upon the conclusion of the rulemaking proceeding initiated under subsection (a) with respect to the substance.

Sec. 55. K.S.A. 65-4127c is hereby amended to read as follows: 65-4127c. ~~Except as otherwise provided in K.S.A. 65-4127a and 65-4127b and K.S.A. 65-4160 through 65-4164 and amendments thereto,~~ Any person violating any of the provisions of the uniform controlled substances act shall be guilty of a class A nonperson misdemeanor. The criminal penalties prescribed for violations of the uniform controlled substances act shall not be applicable to violations of the rules and regulations adopted by the board pursuant thereto.

Sec. 56. K.S.A. 65-4139 is hereby amended to read as follows: 65-4139. ~~This act Article 41 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto,~~ shall be known and may be cited as the uniform controlled substances act.

Sec. 57. K.S.A. 2008 Supp. 72-1397 is hereby amended to read as follows: 72-1397. (a) The state board of education shall not knowingly issue a license to or renew the license of any person who has been convicted of:

- (1) Rape, as defined in K.S.A. 21-3502, and amendments thereto;
- (2) indecent liberties with a child, as defined in K.S.A. 21-3503, and amendments thereto;
- (3) aggravated indecent liberties with a child, as defined in K.S.A. 21-3504, and amendments thereto;

- (4) criminal sodomy, as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, and amendments thereto;
 - (5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, and amendments thereto;
 - (6) indecent solicitation of a child, as defined in K.S.A. 21-3510, and amendments thereto;
 - (7) aggravated indecent solicitation of a child, as defined in K.S.A. 21-3511, and amendments thereto;
 - (8) sexual exploitation of a child, as defined in K.S.A. 21-3516, and amendments thereto;
 - (9) aggravated incest, as defined in K.S.A. 21-3603, and amendments thereto;
 - (10) aggravated endangering a child, as defined in K.S.A. 21-3608a, and amendments thereto;
 - (11) abuse of a child, as defined in K.S.A. 21-3609, and amendments thereto;
 - (12) capital murder, as defined in K.S.A. 21-3439, and amendments thereto;
 - (13) murder in the first degree, as defined in K.S.A. 21-3401, and amendments thereto;
 - (14) murder in the second degree, as defined in K.S.A. 21-3402, and amendments thereto;
 - (15) voluntary manslaughter, as defined in K.S.A. 21-3403, and amendments thereto;
 - (16) involuntary manslaughter, as defined in K.S.A. 21-3404, and amendments thereto;
 - (17) involuntary manslaughter while driving under the influence of alcohol or drugs, as defined in K.S.A. 21-3442, and amendments thereto;
 - (18) sexual battery, as defined in K.S.A. 21-3517, and amendments thereto, when, at the time the crime was committed, the victim was less than 18 years of age or a student of the person committing such crime;
 - (19) aggravated sexual battery, as defined in K.S.A. 21-3518, and amendments thereto;
 - (20) attempt under K.S.A. 21-3301, and amendments thereto, to commit any act specified in this subsection;
 - (21) conspiracy under K.S.A. 21-3302, and amendments thereto, to commit any act specified in this subsection;
 - (22) an act in another state or by the federal government that is comparable to any act described in this subsection; or
 - (23) an offense in effect at any time prior to the effective date of this act that is comparable to an offense as provided in this subsection.
- (b) Except as provided in subsection (c), the state board of education shall not knowingly issue a license to or renew the license of any person who has been convicted of, or has entered into a criminal diversion agreement after having been charged with:
- (1) A felony under ~~the uniform controlled substances act sections 1 through 17, and amendments thereto;~~
 - (2) a felony described in any section of article 34 of chapter 21 of the Kansas Statutes Annotated, other than an act specified in subsection (a), or a battery, as described in K.S.A. 21-3412, and amendments thereto, or domestic battery, as described in K.S.A. 21-3412a, and amendments thereto, if the victim is a minor or student;
 - (3) a felony described in any section of article 35 of chapter 21 of the Kansas Statutes Annotated, other than an act specified in subsection (a);
 - (4) any act described in any section of article 36 of chapter 21 of the Kansas Statutes Annotated, other than an act specified in subsection (a);
 - (5) a felony described in article 37 of chapter 21 of the Kansas Statutes Annotated;
 - (6) promoting obscenity, as described in K.S.A. 21-4301, and amendments thereto, promoting obscenity to minors, as described in K.S.A. 21-4301a, and amendments thereto, or promoting to minors obscenity harmful to minors, as described in K.S.A. 21-4301c, and amendments thereto;
 - (7) endangering a child, as defined in K.S.A. 21-3608, and amendments thereto;
 - (8) driving under the influence of alcohol or drugs in violation of K.S.A. 8-1567 or 8-2,144, and amendments thereto, when the violation is punishable as a felony;

(9) attempt under K.S.A. 21-3301, and amendments thereto, to commit any act specified in this subsection;

(10) conspiracy under K.S.A. 21-3302, and amendments thereto, to commit any act specified in this subsection; or

(11) an act committed in violation of a federal law or in violation of another state's law that is comparable to any act described in this subsection.

(c) The state board of education may issue a license to or renew the license of a person who has been convicted of committing an offense or act described in subsection (b) or who has entered into a criminal diversion agreement after having been charged with an offense or act described in subsection (b) if the state board determines, following a hearing, that the person has been rehabilitated for a period of at least five years from the date of conviction of the offense or commission of the act or, in the case of a person who has entered into a criminal diversion agreement, that the person has satisfied the terms and conditions of the agreement. The state board of education may consider factors including, but not limited to, the following in determining whether to grant a license:

(1) The nature and seriousness of the offense or act;

(2) the conduct of the person subsequent to commission of the offense or act;

(3) the time elapsed since the commission of the offense or act;

(4) the age of the person at the time of the offense or act;

(5) whether the offense or act was an isolated or recurring incident; and

(6) discharge from probation, pardon or expungement.

(d) Before any license is denied by the state board of education for any of the offenses or acts specified in subsections (a) and (b), the person shall be given notice and an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act.

(e) The county or district attorney shall file a report with the state board of education indicating the name, address and social security number of any person who has been determined to have committed any offense or act specified in subsection (a) or (b) or to have entered into a criminal diversion agreement after having been charged with any offense or act specified in subsection (b). Such report shall be filed within 30 days of the date of the determination that the person has committed any such act or entered into any such diversion agreement.

(f) The state board of education shall not be liable for civil damages to any person refused issuance or renewal of a license by reason of the state board's compliance, in good faith, with the provisions of this section.

Sec. 58. K.S.A. 2008 Supp. 72-5445 is hereby amended to read as follows: 72-5445. (a) (1) Subject to the provisions of subsection (b), the provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto, apply only to: (A) Teachers who have completed not less than three consecutive years of employment, and been offered a fourth contract, in the school district, area vocational-technical school or community college by which any such teacher is currently employed; and (B) teachers who have completed not less than two consecutive years of employment, and been offered a third contract, in the school district, area vocational-technical school or community college by which any such teacher is currently employed if at any time prior to the current employment the teacher has completed the years of employment requirement of subpart (A) in any school district, area vocational-technical school or community college in this state.

(2) Any board may waive, at any time, the years of employment requirements of provision (1) for any teachers employed by it.

(3) The provisions of this subsection are subject to the provisions of K.S.A. 72-5446, and amendments thereto.

(b) The provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto, do not apply to any teacher whose license has been non-renewed or revoked by the state board of education for the reason that the teacher: (1) Has been convicted of a felony under ~~the uniform controlled substances act sections 1 through 17, and amendments thereto;~~ (2) has been convicted of a felony described in any section of article 34 of chapter 21 of the Kansas Statutes Annotated or an act described in K.S.A. 21-3412 or K.S.A. 21-3412a, and amendments thereto, if the victim is a

minor or student; (3) has been convicted of a felony described in any section of article 35 of chapter 21 of the Kansas Statutes Annotated, or has been convicted of an act described in K.S.A. 21-3517 and amendments thereto, if the victim is a minor or student; (4) has been convicted of any act described in any section of article 36 of chapter 21 of the Kansas Statutes Annotated; (5) has been convicted of a felony described in article 37 of chapter 21 of the Kansas Statutes Annotated; (6) has been convicted of an attempt under K.S.A. 21-3301, and amendments thereto, to commit any act specified in this subsection; (7) has been convicted of any act which is described in K.S.A. 21-4301, 21-4301a or 21-4301c, and amendments thereto; (8) has been convicted in another state or by the federal government of an act similar to any act described in this subsection; or (9) has entered into a criminal diversion agreement after having been charged with any offense described in this subsection.

Sec. 59. K.S.A. 2008 Supp. 72-89c01 is hereby amended to read as follows: 72-89c01. As used in K.S.A. 72-89c01 and 72-89c02, and amendments thereto:

(a) “Board of education” means the board of education of a unified school district or the governing authority of an accredited nonpublic school.

(b) “School” means a public school or an accredited nonpublic school.

(c) “Public school” means a school operated by a unified school district organized under the laws of this state.

(d) “Accredited nonpublic school” means a nonpublic school participating in the quality performance accreditation system.

(e) “Chief administrative officer of a school” means, in the case of a public school, the superintendent of schools or a designee of the superintendent and, in the case of an accredited nonpublic school, the person designated as chief administrative officer by the governing authority of the school.

(f) “Weapon” means (1) any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (2) the frame or receiver of any weapon described in the preceding example; (3) any firearm muffler or firearm silencer; (4) any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than ¼ ounce, (E) mine, or (F) similar device; (5) any weapon which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than ½ inch in diameter; (6) any combination of parts either designed or intended for use in converting any device into any destructive device described in the two immediately preceding examples, and from which a destructive device may be readily assembled; (7) any bludgeon, sandclub, metal knuckles or throwing star; (8) any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement; (9) any electronic device designed to discharge immobilizing levels of electricity, commonly known as a stun gun. The term “weapon” does not include within its meaning (1) an antique firearm; (2) any device which is neither designed nor redesigned for use as a weapon; (3) any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; (4) surplus ordinance sold, loaned, or given by the secretary of the army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10 of the United States Code; (5) class C common fireworks.

(g) “Controlled substance” has the meaning ascribed thereto in ~~K.S.A. 65-4101~~ *section 1*, and amendments thereto.

(h) “Illegal drug” means a controlled substance but does not include a controlled substance that is legally possessed, used under the supervision of a licensed health-care professional or used under authority of any federal or state law.

(i) “Possession of a weapon or illegal drug” means knowingly having direct physical control over a weapon or illegal drug or knowingly having

the power and the intention at a given time to exercise dominion or control over a weapon or illegal drug.

(j) “Law enforcement agency” means the police department of a city if the school safety violation occurs within the corporate limits of a city or the office of the county sheriff if the school safety violation occurs outside the corporate limits of a city.

(k) “Division” means the division of motor vehicles of the Kansas department of revenue.

Sec. 60. K.S.A. 2008 Supp. 75-7c04 is hereby amended to read as follows: 75-7c04. (a) The attorney general shall issue a license pursuant to this act if the applicant:

(1) Is a resident of the county where application for licensure is made and has been a resident of the state for six months or more immediately preceding the filing of the application, residency to be determined in accordance with K.S.A. 77-201, and amendments thereto;

(2) is 21 years or more of age;

(3) does not suffer from a physical infirmity which prevents the safe handling of a weapon;

(4) (A) has been convicted or placed on diversion for an act that constitutes a felony under the laws of this state or any other jurisdiction and: (i) Such felony is expungeable pursuant to K.S.A. 21-4619, and amendments thereto, or similar provision from another jurisdiction; (ii) such felony has been expunged; and (iii) the requirements of subsection (d) are otherwise met;

(B) has not been convicted or placed on diversion, in this or any other jurisdiction, for an act that constitutes a felony under the laws of this state and such felony is not subject to expungement pursuant to K.S.A. 21-4619, and amendments thereto, or adjudicated, in this or any other jurisdiction, of committing as a juvenile an act that would be a felony under the laws of this state if committed by an adult;

(5) has never been convicted, in this or any other jurisdiction, for an act that constitutes a misdemeanor crime of domestic violence, as defined by 18 U.S.C. 921(a)(33)(A) or adjudicated, in this or any other jurisdiction, of committing as a juvenile an act that would be a misdemeanor crime of domestic violence under 18 U.S.C. 921(a)(33)(A) if committed by an adult;

(6) has not been, during the five years immediately preceding the date the application is submitted: (A) Convicted or placed on diversion, in this or any other jurisdiction, for an act that constitutes a misdemeanor under the provisions of ~~the uniform controlled substances act~~ *sections 1 through 17, and amendments thereto*, or adjudicated, in this or any other jurisdiction, of committing as a juvenile an act that would be a misdemeanor under such act if committed by an adult; (B) convicted or placed on diversion, in this or any other jurisdiction, two or more times for an act that constitutes a violation of K.S.A. 8-1567, and amendments thereto; (C) convicted or placed on diversion, in this or any other jurisdiction, for an act that constitutes a domestic violence misdemeanor under any municipal ordinance or article 34 or 35 of chapter 21 of the Kansas Statutes Annotated or adjudicated, in this or any other jurisdiction, of committing as a juvenile an act that would be a domestic violence misdemeanor under article 34 or 35 of chapter 21 of the Kansas Statutes Annotated if committed by an adult; or (D) convicted or placed on diversion, in this or any other jurisdiction, for an act that constitutes a violation of K.S.A. 2008 Supp. 75-7c12, and amendments thereto, or a violation of subsection (a)(4) of K.S.A. 21-4201, and amendments thereto, or adjudicated, in this or any other jurisdiction, of committing as a juvenile an act that would be a violation of K.S.A. 2008 Supp. 75-7c12, and amendments thereto, or a violation of subsection (a)(4) of K.S.A. 21-4201, and amendments thereto, if committed by an adult;

(7) has not been charged with a crime which would render the applicant, if convicted, ineligible for a license or, if so charged, final disposition of the charge has occurred and no other charges are pending which would cause the applicant to be ineligible for a license;

(8) has not been ordered by a court to receive treatment for mental illness pursuant to K.S.A. 59-2966, and amendments thereto, or for an alcohol or substance abuse problem pursuant to K.S.A. 59-29b66, and amendments thereto, or, if a court has ordered such treatment, has not

been issued a certificate of restoration pursuant to K.S.A. 2008 Supp. 75-7c26, and amendments thereto, not less than five years before the date of the application;

(9) desires a legal means to carry a concealed weapon for lawful self-defense;

(10) except as provided by subsection (g) of K.S.A. 2008 Supp. 75-7c05, and amendments thereto, presents evidence satisfactory to the attorney general that the applicant has satisfactorily completed a weapons safety and training course approved by the attorney general pursuant to subsection (b);

(11) has not been adjudged a disabled person under the act for obtaining a guardian or conservator, or both, or under a similar law of another state or the District of Columbia, unless the applicant was ordered restored to capacity three or more years before the date on which the application is submitted;

(12) has not been dishonorably discharged from military service;

(13) is a citizen of the United States;

(14) is not subject to a restraining order issued under the protection from abuse act, under the protection from stalking act or pursuant to K.S.A. 60-1607, K.S.A. 2008 Supp. 38-2242, 38-2243 or 38-2255, and amendments thereto, or any equivalent order entered in another state or jurisdiction which is entitled to full faith and credit in Kansas; and

(15) is not in contempt of court in a child support proceeding.

(b) (1) The attorney general shall adopt rules and regulations establishing procedures and standards as authorized by this act for an eight-hour weapons safety and training course required by this section. Such standards shall include: (A) A requirement that trainees receive training in the safe storage of weapons, actual firing of weapons and instruction in the laws of this state governing the carrying of a concealed weapon and the use of deadly force; (B) general guidelines for courses which are compatible with the industry standard for basic firearms training for civilians; (C) qualifications of instructors; and (D) a requirement that the course be: (i) A weapons course certified or sponsored by the attorney general; or (ii) a weapons course certified or sponsored by the national rifle association or by a law enforcement agency, college, private or public institution or organization or weapons training school, if the attorney general determines that such course meets or exceeds the standards required by rules and regulations adopted by the attorney general and is taught by instructors certified by the attorney general or by the national rifle association, if the attorney general determines that the requirements for certification of instructors by such association meet or exceed the standards required by rules and regulations adopted by the attorney general. Any person wanting to be certified by the attorney general as an instructor shall submit to the attorney general an application in the form required by the attorney general and a fee not to exceed \$150.

(2) The cost of the weapons safety and training course required by this section shall be paid by the applicant. The following shall constitute satisfactory evidence of satisfactory completion of an approved weapons safety and training course: (A) Evidence of completion of the course, in the form provided by rules and regulations adopted by the attorney general; or (B) an affidavit from the instructor, school, club, organization or group that conducted or taught such course attesting to the completion of the course by the applicant.

(c) In addition to the requirements of subsection (a), a person holding a license pursuant to this act, prior to renewal of the license provided herein, shall submit evidence satisfactory to the attorney general that the licensee has requalified by completion of an approved course given by an instructor of an approved weapons safety and training course under subsection (b).

(d) If an applicant has had a conviction or diversion described in subsection (a)(4)(A) or (a)(6) expunged pursuant to K.S.A. 12-4516 or 21-4619, and amendments thereto, or similar provision from another jurisdiction, and the applicant has been eligible for expungement for five years or more immediately preceding the date the application for licensure is submitted, the applicant shall not be disqualified from being issued a license if the applicant is otherwise qualified for licensure pursuant to this section.

Sec. 61. K.S.A. 2008 Supp. 75-52,144 is hereby amended to read as follows: 75-52,144. (a) Drug abuse treatment programs certified in accordance with subsection (b) shall provide:

(1) Presentence drug abuse assessments of any person who is convicted of a felony violation of K.S.A. 65-4160 or 65-4162, *prior to such sections repeal or section 6*, and amendments thereto, and meets the requirements of K.S.A. 21-4729, and amendments thereto;

(2) treatment of all persons who are convicted of a felony violation of K.S.A. 65-4160 or 65-4162, *prior to such sections repeal or section 6*, and amendments thereto, meet the requirements of K.S.A. 21-4729, and amendments thereto, and whose sentence requires completion of a certified drug abuse treatment program, as provided in this section;

(3) one or more treatment options in the continuum of services needed to reach recovery: Detoxification, rehabilitation, continuing care and aftercare, and relapse prevention;

(4) treatment options to incorporate family and auxiliary support services; and

(5) treatment options for alcohol abuse when indicated by the assessment of the offender or required by the court.

(b) The presentence criminal risk-need assessment shall be conducted by a court services officer or a community corrections officer. The presentence drug abuse treatment program placement assessment shall be conducted by a drug abuse treatment program certified in accordance with the provisions of this subsection to provide assessment and treatment services. A drug abuse treatment program shall be certified by the secretary of corrections. The secretary may establish qualifications for the certification of programs, which may include requirements for supervision and monitoring of clients; fee reimbursement procedures; handling of conflicts of interest; delivery of services to clients unable to pay; and other matters relating to quality and delivery of services by the program. Drug abuse treatment may include community based and faith based programs. The certification shall be for a four-year period. Recertification of a program shall be by the secretary. To be eligible for certification under this subsection, the secretary shall determine that a drug abuse treatment program: (1) Meets the qualifications established by the secretary; (2) is capable of providing the assessments, supervision and monitoring required under subsection (a); (3) has employed or contracted with certified treatment providers; and (4) meets any other functions and duties specified by law.

(c) Any treatment provider who is employed or has contracted with a certified drug abuse treatment program who provides services to offenders shall be certified by the secretary of corrections. The secretary shall require education and training which shall include, but not be limited to, case management and cognitive behavior training. The duties of providers who prepare the presentence drug abuse assessment may also include appearing at sentencing and probation hearings in accordance with the orders of the court, monitoring offenders in the treatment programs, notifying the probation department and the court of any offender failing to meet the conditions of probation or referrals to treatment, appearing at revocation hearings as may be required and providing assistance and data reporting and program evaluation.

(d) The cost for all drug abuse assessments and certified drug abuse treatment programs for any person shall be paid by the Kansas sentencing commission from funds appropriated for such purpose. The Kansas sentencing commission shall contract for payment for such services with the supervising agency. The sentencing court shall determine the extent, if any, that such person is able to pay for such assessment and treatment. Such payments shall be used by the supervising agency to offset costs to the state. If such financial obligations are not met or cannot be met, the sentencing court shall be notified for the purpose of collection or review and further action on the offender's sentence.

(e) The community corrections staff shall work with the substance abuse treatment staff to ensure effective supervision and monitoring of the offender.

(f) The secretary of corrections is hereby authorized to adopt rules and regulations to carry out the provisions of this section.

Sec. 62. K.S.A. 2008 Supp. 76-11a13 is hereby amended to read as follows: 76-11a13. (a) (1) Subject to the provisions of subsection (b), the provisions of K.S.A. 76-11a06 through 76-11a11, and amendments thereto, apply only to: (A) Teachers who have completed not less than three consecutive years of employment, and been offered a contract for a fourth year of employment, at the state school in which the teacher is currently employed; and (B) teachers who have completed not less than two consecutive years of employment, and been offered a contract for a third year of employment, at the state school in which the teacher is currently employed if at any time prior to the current employment the teacher has completed the years of employment requirement of subpart (A) at the other state school.

(2) The state board may waive, at any time, the years of employment requirements of provision (1) for any teachers employed at a state school.

(3) The provisions of this subsection are subject to the provisions of K.S.A. 76-11a14, and amendments thereto.

(b) The provisions of K.S.A. 76-11a06 through 76-11a11, and amendments thereto, do not apply to any teacher whose certificate has been nonrenewed or revoked by the state board for the reason that the teacher: (1) Has been convicted of a felony under ~~the uniform controlled substances act sections 1 through 17, and amendments thereto~~; (2) has been convicted of a felony described in any section of article 34 of chapter 21 of the Kansas Statutes Annotated or an act described in K.S.A. 21-3412 and amendments thereto, if the victim is a minor or student; (3) has been convicted of a felony described in any section of article 35 of chapter 21 of the Kansas Statutes Annotated, or has been convicted of an act described in K.S.A. 21-3517 and amendments thereto, if the victim is a minor or student; (4) has been convicted of any act described in any section of article 36 of chapter 21 of the Kansas Statutes Annotated; (5) has been convicted of a felony described in article 37 of chapter 21 of the Kansas Statutes Annotated; (6) has been convicted of an attempt under K.S.A. 21-3301, and amendments thereto, to commit any act specified in this subsection; (7) has been convicted of any act which is described in K.S.A. 21-4301, 21-4301a or 21-4301c, and amendments thereto; (8) has been convicted in another state or by the federal government of an act similar to any act described in this subsection; or (9) has entered into a criminal diversion agreement after having been charged with any offense described in this subsection.

Sec. 63. K.S.A. 79-5201 is hereby amended to read as follows: 79-5201. As used in this act:

(a) “Marijuana” means any marijuana, whether real or counterfeit, as defined by ~~subsection (c) of K.S.A. 65-4101~~ *section 1*, and amendments thereto, which is held, possessed, transported, transferred, sold or offered to be sold in violation of the laws of Kansas;

(b) “controlled substance” means any drug or substance, whether real or counterfeit, as defined by ~~subsection (c) of K.S.A. 65-4101~~ *section 1*, and amendments thereto, which is held, possessed, transported, transferred, sold or offered to be sold in violation of the laws of Kansas. Such term shall not include marijuana;

(c) “dealer” means any person who, in violation of Kansas law, manufactures, produces, ships, transports or imports into Kansas or in any manner acquires or possesses more than 28 grams of marijuana, or more than one gram of any controlled substance, or 10 or more dosage units of any controlled substance which is not sold by weight;

(d) “domestic marijuana plant” means any cannabis plant at any level of growth which is harvested or tended, manicured, irrigated, fertilized or where there is other evidence that it has been treated in any other way in an effort to enhance growth.

Sec. 64. K.S.A. 12-4419, 12-4509, 21-2501, 21-3436, 21-3608a, 21-3718, 21-3826, 21-4203, 21-4204, 21-4214, 21-4215, 21-4226, 21-4502, 21-4603d, 21-4708, 21-4713, 21-4717, 21-4729, 22-2512, 22-2515, 22-2909, 22-3901, 36-601, 36-604, 60-427, 65-4102, 65-4105a, 65-4127c, 65-4127d, 65-4139, 65-4141, 65-4142, 65-4155, 65-4158, 65-4164, 65-4165 and 79-5201 and K.S.A. 2008 Supp. 8-2,128, 8-1567, 12-4104, 21-4704, 21-4705, 21-4714, 22-4902, 38-2255, 44-706, 59-2132, 59-29b46, 60-4104, 65-516, 65-4150, 65-4151, 65-4152, 65-4153, 65-4159, 65-4159a, 65-4160, 65-4161, 65-4162, 65-4163, 65-4166, 65-4168, 65-4168a, 65-

7006, 72-1397, 72-5445, 72-89c01, 75-7c04, 75-52,144 and 76-11a13 are hereby repealed.

Sec. 65. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.