

As Amended by House Committee

(Corrected)

Session of 2009

HOUSE BILL No. 2332

By Committee on Federal and State Affairs

2-12

11 AN ACT concerning crimes, punishment and criminal procedure;  
12 amending K.S.A. 9-2012, 12-4419, 12-4509, 16-305, 17-12a508, 17-  
13 1311a, 19-3519, 21-2501, 21-2511, 21-3301, 21-3302, 21-3303, 21-  
14 3411, 21-3413, 21-3414, 21-3415, 21-3421, 21-3435, 21-3436, 21-3437,  
15 ~~21-3447~~, 21-3451, 21-3608a, 21-3609, 21-3701, 21-3704, 21-3707, 21-  
16 3710, 21-3718, 21-3720, 21-3729, 21-3734, 21-3761, 21-3763, 21-3812,  
17 21-3826, 21-3846, 21-3902, 21-3904, 21-3905, 21-3910, 21-4018, 21-  
18 4105, 21-4111, 21-4203, 21-4204, 21-4226, 21-4232, 21-4318, 21-4502,  
19 21-4503a, 21-4603d, 21-4611, 21-4638, 21-4643, 21-4703, 21-4706, 21-  
20 4707, 21-4709, 21-4710, 21-4711, 21-4713, 21-4717, 21-4720, 21-4722,  
21 21-4729, 22-2512, 22-2515, 22-2802, 22-2908, 22-2909, 22-3303, 22-  
22 3412, 22-3604, 22-3901, 22-4405, 22-4903, 22-4906, 36-601, 36-604,  
23 39-720, 41-405, 47-421, 58-3315, 60-427, **65-6a40**, 65-2859, 65-4102,  
24 65-4127c, 65-4139, 65-5709, 75-4228, 75-4314 and 79-5201 and K.S.A.  
25 2008 Supp. 8-2,128, 8-1567, 9-2203, 12-4104, 21-3412a, ~~21-3419a~~, 21-  
26 3705, 21-3811, 21-4310, 21-4619, 21-4704, 21-4714, 22-3716, 22-3717,  
27 22-4902, 38-2255, 38-2346, 38-2347, 38-2369, 38-2374, 38-2376, 38-  
28 2377, 39-717, 40-247, 40-2,118, 40-5013, 44-5,125, 44-619, 44-706, 44-  
29 719, 47-1827, 59-2132, 59-29b46, 60-4104, 65-516, 65-3235, 65-3236,  
30 65-4167, 72-1397, 72-5445, 72-89c01 74-9101, 75-7c04, 75-5291, 75-  
31 52,144, 76-11a13, 79-15,235 and 79-3228 and repealing the existing  
32 sections; also repealing K.S.A. 21-4214, 21-4215, 21-4708, 21-4724,  
33 65-4105a, 65-4127d, 65-4141, 65-4142, 65-4155, 65-4158, 65-4164 and  
34 65-4165 and K.S.A. 2008 Supp. **21-4619d**, 21-4705, 65-4150, 65-4151,  
35 65-4152, 65-4153, 65-4159, 65-4159a, 65-4160, 65-4161, 65-4162, 65-  
36 4163, 65-4166, 65-4168, 65-4168a and 65-7006.

37

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

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

41 (a) "Controlled substance" means any drug, substance or immediate  
42 precursor included in any of the schedules designated in K.S.A. 65-4105,  
43 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

- 1 (b) (1) “Controlled substance analog” means a substance that is in-  
2 tended for human consumption, and:
- 3 (A) The chemical structure of which is substantially similar to the  
4 chemical structure of a controlled substance listed in or added to the  
5 schedules designated in K.S.A. 65-4105 or 65-4107, and amendments  
6 thereto;
- 7 (B) which has a stimulant, depressant or hallucinogenic effect on the  
8 central nervous system substantially similar to the stimulant, depressant  
9 or hallucinogenic effect on the central nervous system of a controlled  
10 substance included in the schedules designated in K.S.A. 65-4105 or 65-  
11 4107, and amendments thereto; or
- 12 (C) with respect to a particular individual, which the individual rep-  
13 represents or intends to have a stimulant, depressant or hallucinogenic effect  
14 on the central nervous system substantially similar to the stimulant, de-  
15 pressant or hallucinogenic effect on the central nervous system of a con-  
16 trolled substance included in the schedules designated in K.S.A. 65-4105  
17 or 65-4107, and amendments thereto.
- 18 (2) “Controlled substance analog” does not include:
- 19 (A) A controlled substance;
- 20 (B) a substance for which there is an approved new drug application;
- 21 or
- 22 (C) a substance with respect to which an exemption is in effect for  
23 investigational use by a particular person under section 505 of the federal  
24 food, drug, and cosmetic act (21 U.S.C. 355) to the extent conduct with  
25 respect to the substance is permitted by the exemption.
- 26 (c) “Cultivate” means the planting or promotion of growth of five or  
27 more plants which contain or can produce controlled substances.
- 28 (d) “Distribute” means the actual, constructive or attempted transfer  
29 from one person to another of some item whether or not there is an  
30 agency relationship. “Distribute” includes, but is not limited to, sale, offer  
31 for sale or any act that causes some item to be transferred from one person  
32 to another. “Distribute” does not include acts of administering, dispens-  
33 ing or prescribing a controlled substance as authorized by the pharmacy  
34 act of the state of Kansas, the uniform controlled substances act, or oth-  
35 erwise authorized by law.
- 36 (e) “Drug” means:
- 37 (1) Substances recognized as drugs in the official United States phar-  
38 macopoeia, official homeopathic pharmacopoeia of the United States or  
39 official national formulary or any supplement to any of them;
- 40 (2) substances intended for use in the diagnosis, cure, mitigation,  
41 treatment or prevention of disease in man or animals;
- 42 (3) substances, other than food, intended to affect the structure or  
43 any function of the body of man or animals; and

- 1 (4) substances intended for use as a component of any article speci-  
2 fied in paragraph (1), (2) or (3). It does not include devices or their  
3 components, parts or accessories.
- 4 (f) “Drug paraphernalia” means all equipment and materials of any  
5 kind which are used, or primarily intended or designed for use in planting,  
6 propagating, cultivating, growing, harvesting, manufacturing, compound-  
7 ing, converting, producing, processing, preparing, testing, analyzing,  
8 packaging, repackaging, storing, containing, concealing, injecting, ingest-  
9 ing, inhaling or otherwise introducing into the human body a controlled  
10 substance and in violation of this act. “Drug paraphernalia” shall include,  
11 but is not limited to:
- 12 (1) Kits used or intended for use in planting, propagating, cultivating,  
13 growing or harvesting any species of plant which is a controlled substance  
14 or from which a controlled substance can be derived;
- 15 (2) kits used or intended for use in manufacturing, compounding,  
16 converting, producing, processing or preparing controlled substances;
- 17 (3) isomerization devices used or intended for use in increasing the  
18 potency of any species of plant which is a controlled substance;
- 19 (4) testing equipment used or intended for use in identifying or in  
20 analyzing the strength, effectiveness or purity of controlled substances;
- 21 (5) scales and balances used or intended for use in weighing or meas-  
22 uring controlled substances;
- 23 (6) diluents and adulterants, including, but not limited to, quinine  
24 hydrochloride, mannitol, mannite, dextrose and lactose, which are used  
25 or intended for use in cutting controlled substances;
- 26 (7) separation gins and sifters used or intended for use in removing  
27 twigs and seeds from or otherwise cleaning or refining marijuana;
- 28 (8) blenders, bowls, containers, spoons and mixing devices used or  
29 intended for use in compounding controlled substances;
- 30 (9) capsules, balloons, envelopes, bags and other containers used or  
31 intended for use in packaging small quantities of controlled substances;
- 32 (10) containers and other objects used or intended for use in storing  
33 or concealing controlled substances;
- 34 (11) hypodermic syringes, needles and other objects used or intended  
35 for use in parenterally injecting controlled substances into the human  
36 body;
- 37 (12) objects used or primarily intended or designed for use in in-  
38 gesting, inhaling or otherwise introducing marijuana, cocaine, hashish,  
39 hashish oil, phencyclidine (PCP), methamphetamine or amphetamine  
40 into the human body, such as:
- 41 (A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with  
42 or without screens, permanent screens, hashish heads or punctured metal  
43 bowls;

- 1 (B) water pipes, bongs or smoking pipes designed to draw smoke  
2 through water or another cooling device;
- 3 (C) carburetion pipes, glass or other heat resistant tubes or any other  
4 device used or intended to be used, designed to be used to cause vapor-  
5 ization of a controlled substance for inhalation;
- 6 (D) smoking and carburetion masks;
- 7 (E) roach clips, objects used to hold burning material, such as a ma-  
8 rijuana cigarette, that has become too small or too short to be held in the  
9 hand;
- 10 (F) miniature cocaine spoons and cocaine vials;
- 11 (G) chamber smoking pipes;
- 12 (H) carburetor smoking pipes;
- 13 (I) electric smoking pipes;
- 14 (J) air-driven smoking pipes;
- 15 (K) chillums;
- 16 (L) bongs;
- 17 (M) ice pipes or chillers;
- 18 (N) any smoking pipe manufactured to disguise its intended purpose;
- 19 (O) wired cigarette papers; or
- 20 (P) cocaine freebase kits.
- 21 (g) “Immediate precursor” means a substance which the board of  
22 pharmacy has found to be and by rules and regulations designates as being  
23 the principal compound commonly used or produced primarily for use  
24 and which is an immediate chemical intermediary used or likely to be  
25 used in the manufacture of a controlled substance, the control of which  
26 is necessary to prevent, curtail or limit manufacture.
- 27 (h) “Isomer” means all enantiomers and diastereomers.
- 28 (i) “Manufacture” means the production, preparation, propagation,  
29 compounding, conversion or processing of a controlled substance either  
30 directly or indirectly or by extraction from substances of natural origin or  
31 independently by means of chemical synthesis or by a combination of  
32 extraction and chemical synthesis. “Manufacture” does not include:
- 33 (1) The preparation or compounding of a controlled substance by an  
34 individual for the individual’s own lawful use or the preparation, com-  
35 pounding, packaging or labeling of a controlled substance:
- 36 (A) By a practitioner or the practitioner’s agent pursuant to a lawful  
37 order of a practitioner as an incident to the practitioner’s administering  
38 or dispensing of a controlled substance in the course of the practitioner’s  
39 professional practice; or
- 40 (B) by a practitioner or by the practitioner’s authorized agent under  
41 such practitioner’s supervision for the purpose of or as an incident to  
42 research, teaching or chemical analysis or by a pharmacist or medical care  
43 facility as an incident to dispensing of a controlled substance; or

- 1 (2) the addition of diluents and adulterants, including, but not limited  
2 to, quinine hydrochloride, mannitol, mannite, extrose and lactose, which  
3 are intended for use in cutting controlled substances
- 4 (j) “Marijuana” means all parts of all varieties of the plant Cannabis  
5 whether growing or not, the seeds thereof, the resin extracted from any  
6 part of the plant and every compound, manufacture, salt, derivative, mix-  
7 ture or preparation of the plant, its seeds or resin. “Marijuana” does not  
8 include the mature stalks of the plant, fiber produced from the stalks, oil  
9 or cake made from the seeds of the plant, any other compound, manu-  
10 facture, salt, derivative, mixture or preparation of the mature stalks, ex-  
11 cept the resin extracted therefrom, fiber, oil or cake or the sterilized seed  
12 of the plant which is incapable of germination.
- 13 (k) “Minor” means a person under 18 years of age.
- 14 (l) “Narcotic drug” means any of the following whether produced  
15 directly or indirectly by extraction from substances of vegetable origin or  
16 independently by means of chemical synthesis or by a combination of  
17 extraction and chemical synthesis:
- 18 (1) Opium and opiate and any salt, compound, derivative or prepa-  
19 ration of opium or opiate;
- 20 (2) any salt, compound, isomer, derivative or preparation thereof  
21 which is chemically equivalent or identical with any of the substances  
22 referred to in paragraph (1) but not including the isoquinoline alkaloids  
23 of opium;
- 24 (3) opium poppy and poppy straw;
- 25 (4) coca leaves and any salt, compound, derivative or preparation of  
26 coca leaves and any salt, compound, isomer, derivative or preparation  
27 thereof which is chemically equivalent or identical with any of these sub-  
28 stances, but not including decocainized coca leaves or extractions of coca  
29 leaves which do not contain cocaine or ecgonine.
- 30 (m) “Opiate” means any substance having an addiction-forming or  
31 addiction-sustaining liability similar to morphine or being capable of con-  
32 version into a drug having addiction-forming or addiction-sustaining li-  
33 ability. “Opiate” does not include, unless specifically designated as con-  
34 trolled under K.S.A. 65-4102, and amendments thereto, the  
35 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts  
36 (dextromethorphan). “Opiate” does include its racemic and levorotatory  
37 forms.
- 38 (n) “Opium poppy” means the plant of the species *Papaver somni-*  
39 *ferum* L. except its seeds.
- 40 (o) “Person” means individual, corporation, government or govern-  
41 mental subdivision or agency, business trust, estate, trust, partnership,  
42 association or any other legal entity.
- 43 (p) “Poppy straw” means all parts, except the seeds, of the opium

1 poppy, after mowing.

2 (q) “Possession” means having joint or exclusive control over an item  
3 with knowledge of and intent to have such control or knowingly keeping  
4 some item in a place where the person has some measure of access and  
5 right of control.

6 (r) “Presence of a minor” means:

7 (1) A minor is within close proximity to the illegal activity;

8 (2) the illegal activity is conducted in a place where minors can rea-  
9 sonably be expected to be present; or

10 (3) in the minor’s dwelling.

11 This definition shall not be construed as requiring that a defendant  
12 actually be aware of the presence of a minor or a minor actually be aware  
13 of the illegal activity.

14 (s) **“School property” means property upon which is located a**  
15 **structure used by a unified school district or an accredited non-**  
16 **public school for student instruction or attendance or extracurric-**  
17 **ular activities of pupils enrolled in kindergarten or any of the**  
18 **grades one through 12. This definition shall not be construed as**  
19 **requiring that school be in session or that classes are actually being**  
20 **held at the time of the offense or that children must be present**  
21 **within the structure or on the property during the time of any**  
22 **alleged criminal act. If the structure or property meets the above**  
23 **definition, the actual use of that structure or property at the time**  
24 **alleged shall not be a defense to the crime charged or the sentence**  
25 **imposed.**

26 ~~(s)~~ (t) “Simulated controlled substance” means any product which  
27 identifies itself by a common name or slang term associated with a con-  
28 trolled substance and which indicates on its label or accompanying pro-  
29 motional material that the product simulates the effect of a controlled  
30 substance.

31 New Sec. 2. (a) Prosecutions for crimes committed prior to July 1,  
32 ~~2009~~ **2010**, shall be governed by the law in effect at the time the crime  
33 was committed. For purposes of this section, a crime was committed prior  
34 to July 1, ~~2009~~ **2010**, if any element of the crime occurred prior thereto.

35 (b) The prohibitions of this act shall apply unless the conduct pro-  
36 hibited is authorized by the pharmacy act of the state of Kansas, the  
37 uniform controlled substances act or otherwise authorized by law.

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

40 (b) Violation or attempted violation of subsection (a) is a severity level  
41 5, person felony, except that, violation of subsection (a) is a severity level  
42 3, person felony if such substance being manufactured or attempted to  
43 be manufactured is any methamphetamine as defined by subsection

- 1 (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto.
- 2 (c) The provisions of subsection (d) of K.S.A. 21-3301, and amend-  
3 ments thereto, shall not apply to a violation of attempting to unlawfully  
4 manufacture any controlled substance pursuant to this section.
- 5 (d) For persons arrested and charged under this section, bail shall be  
6 at least \$50,000 cash or surety, unless the court determines, on the record,  
7 that the defendant is not likely to re-offend, the court imposes pretrial  
8 supervision, or the defendant agrees to participate in a licensed or cer-  
9 tified drug treatment program.
- 10 (e) The sentence of a person who violates this section shall not be  
11 subject to statutory provisions for suspended sentence, community serv-  
12 ice work or probation.
- 13 (f) The sentence of a person who violates this section or K.S.A. 65-  
14 4159 prior to its repeal, shall not be reduced because these sections pro-  
15 hibit conduct identical to that prohibited by K.S.A. 65-4161 or 65-4163,  
16 prior to such sections repeal, or section 5, and amendments thereto.
- 17 New Sec. 4. All costs and expenses resulting from the seizure, dis-  
18 position and decontamination of an unlawful manufacturing site shall be  
19 assessed as costs against the defendant.
- 20 New Sec. 5. (a) It shall be unlawful for any person to distribute or  
21 possess with the intent to distribute any of the following controlled sub-  
22 stances or controlled substance analogs thereof:
- 23 (1) Opiates, opium or narcotic drugs, or any stimulant designated in  
24 subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments  
25 thereto;
- 26 (2) any depressant designated in subsection (e) of K.S.A. 65-4105,  
27 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109  
28 or subsection (b) of K.S.A. 65-4111, and amendments thereto;
- 29 (3) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-  
30 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.  
31 65-4109, and amendments thereto;
- 32 (4) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-  
33 4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-  
34 4109, and amendments thereto;
- 35 (5) any substance designated in subsection (g) of K.S.A. 65-4105 and  
36 subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments  
37 thereto; or
- 38 (6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-  
39 4109, and amendments thereto.
- 40 (b) It shall be unlawful for any person to distribute or possess with  
41 the intent to distribute a controlled substance or a controlled substance  
42 analog designated in K.S.A. 65-4113, and amendments thereto.
- 43 (c) It shall be unlawful for any person to cultivate any controlled

- 1 substance or controlled substance analog designated in subsection (a).  
2 (d) Except as further provided:  
3 (1) Violation of subsection (a) is a:  
4 (A) Severity level 9, person felony if the quantity of the material is  
5 less than 3.5 grams;  
6 (B) severity level 7, person felony if the quantity of the material is  
7 3.5 grams or more but less than 100 grams;  
8 (C) severity level 4, person felony if the quantity of the material is  
9 100 grams or more but less than 1 kilograms; or  
10 (D) severity level 3, person felony if the quantity of the material is 1  
11 kilogram or more.  
12 (2) Violation of subsection (a), with respect to material containing any  
13 quantity of marijuana, or an analog thereof, is a:  
14 (A) Severity level 9, person felony if the quantity of the material is  
15 less than 25 grams;  
16 (B) severity level 7, person felony if the quantity of the material is 25  
17 grams or more but less than 450 grams;  
18 (C) severity level 4, person felony if the quantity of the material is  
19 450 grams or more but less than 30 kilograms; or  
20 (D) severity level 3, person felony if the quantity of the material is  
21 30 kilograms or more.  
22 (3) Violation of subsection (a), with respect to material containing any  
23 quantity of heroin, or an analog thereof, is a:  
24 (A) Severity level 9, person felony if the quantity of the material is 1  
25 gram or less;  
26 (B) severity level 7, person felony if the quantity of the material is  
27 more than 1 gram but less than 3.5 grams;  
28 (C) severity level 4, person felony if the quantity of the material is  
29 3.5 grams or more but less than 100 grams; or  
30 (D) severity level 3, person felony if the quantity of the material is  
31 100 grams or more.  
32 (4) Violation of subsection (a), with respect to material containing any  
33 quantity of a controlled substance or controlled substance analog desig-  
34 nated in K.S.A. 65-4105, 65-4107, 65-4109 or 65-4111, and amendments  
35 thereto, distributed by dosage unit, is a:  
36 (A) Severity level 9, person felony if the number of dosage units is  
37 fewer than 10;  
38 (B) severity level 7, person felony if the number of dosage units is 10  
39 or more but fewer than 100;  
40 (C) severity level 4, person felony if the number of dosage units is  
41 100 or more but fewer than 1,000; or  
42 (D) severity level 3, person felony if the number of dosage units is  
43 1,000 or more.

- 1 (5) For any violation of subsection (a), the severity level of the offense  
2 shall be increased one level if the offender is 18 or more years of age and  
3 the controlled substance or controlled substance analog is distributed or  
4 possessed with the intent to distribute to a minor ~~or~~, in the presence of  
5 a minor **or on or within 450 feet of any school property**.
- 6 (6) Violation of subsection (b) is a class A person misdemeanor, ex-  
7 cept that violation of subsection (b) is a severity level 7, person felony if  
8 the substance is distributed to or possessed with the intent to distribute  
9 to a minor.
- 10 (7) Violation of subsection (c) is a:
- 11 (A) Severity level 7, person felony if the number of plants cultivated  
12 is greater than 4 but fewer than 50;
- 13 (B) a severity level 5, person felony if the number of plants cultivated  
14 is 50 or more but fewer than 100;
- 15 (C) a severity level 3, person felony if the number of plants cultivated  
16 is 100 or more.
- 17 (e) In any prosecution under this section, there shall be a rebuttable  
18 presumption of an intent to distribute if any person possesses the quan-  
19 tities of the following controlled substances or analogs thereof in the fol-  
20 lowing amounts:
- 21 (1) 450 grams or more of marijuana;
- 22 (2) 3.5 grams or more of heroin;
- 23 (3) 100 dosage units or more containing a controlled substance; or
- 24 (4) 100 grams or more of any other controlled substance.
- 25 (f) It shall not be a defense to charges arising under this section that  
26 the defendant:
- 27 (1) Is acting in an agency relationship on behalf of any other party in  
28 a transaction involving a controlled substance;
- 29 (2) did not know the quantity of the controlled substance; or
- 30 (3) did not know the specific controlled substance contained in the  
31 material that is distributed or possessed with the intent of distribution.
- 32 (g) As used in this section:
- 33 (1) “Material” means the total amount of any substance, including a  
34 compound or a mixture, which contains any quantity of a controlled  
35 substance.
- 36 (2) “Dosage unit” means a controlled substance distributed or pos-  
37 sessed with the intent to distribute as a discrete unit, including, but not  
38 limited to, one pill, one capsule or one microdot, and not distributed by  
39 weight.
- 40 (A) For steroids, or controlled substances in liquid solution legally  
41 manufactured for prescription use, “dosage unit” means the smallest  
42 medically-approved dosage unit, as determined by the label, materials  
43 provided by the manufacturer, a prescribing authority, licensed health

- 1 care professional or other qualified health authority.
- 2 (B) Except as provided further, for illegally manufactured controlled  
3 substances in liquid solution or controlled substances in liquid products  
4 not intended for human ingestion, “dosage unit” means 10 milligrams,  
5 including the liquid carrier medium for controlled substances.
- 6 (C) For lysergic acid diethylamide (LSD) in liquid form, a “dosage  
7 unit” means .4 milligrams, including the liquid carrier medium.
- 8 New Sec. 6. (a) It shall be unlawful for any person to possess any  
9 opiates, opium or narcotic drugs, or any stimulant designated in subsec-  
10 tion (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto,  
11 or a controlled substance analog thereof.
- 12 (b) It shall be unlawful for any person to possess any of the following  
13 controlled substances or controlled substance analogs thereof:
- 14 (1) Any depressant designated in subsection (e) of K.S.A. 65-4105,  
15 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109  
16 or subsection (b) of K.S.A. 65-4111, and amendments thereto;
- 17 (2) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-  
18 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.  
19 65-4109, and amendments thereto;
- 20 (3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-  
21 4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-  
22 4109, and amendments thereto;
- 23 (4) any substance designated in subsection (g) of K.S.A. 65-4105 and  
24 subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments  
25 thereto; or
- 26 (5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-  
27 4109, and amendments thereto.
- 28 (c) (1) Violation of subsection (a) is a severity level 10, nonperson  
29 felony;
- 30 (2) violation of subsection (b) is a class A nonperson misdemeanor,  
31 except that, violation of subsection (b) is a severity level 10, nonperson  
32 felony if that person has a prior conviction under such subsection, under  
33 K.S.A. 65-4162 prior to its repeal, under a substantially similar offense  
34 from another jurisdiction, or under any city ordinance or county resolu-  
35 tion for a substantially similar offense if the substance involved was 3, 4-  
36 methylenedioxymethamphetamine (MDMA), marijuana or tetrahydro-  
37 cannabinal as designated in subsection (d) of K.S.A. 65-4105, and  
38 amendments thereto.
- 39 (d) It shall not be a defense to charges arising under this section that  
40 the defendant was acting in an agency relationship on behalf of any other  
41 party in a transaction involving a controlled substance.
- 42 New Sec. 7. (a) It shall be unlawful for any person to knowingly or  
43 intentionally use any communication facility:

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (c) As used in this section:

39 (1) “Pharmacist,” “practitioner,” “mid-level practitioner” and “pre-  
40 scription-only drug” shall have the meanings ascribed thereto by K.S.A.  
41 65-1626, and amendments thereto.

42 (2) “Prescription order” means an order transmitted in writing, orally,  
43 telephonically or by other means of communication for a prescription-

1 only drug to be filled by a pharmacist. “Prescription order” does not mean  
2 a drug dispensed pursuant to such an order.

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

6 New Sec. 9. (a) Any person who possesses ephedrine, pseudoephed-  
7 rine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous  
8 ammonia, pressurized ammonia or phenylpropanolamine, or their salts,  
9 isomers or salts of isomers with intent to use the product to manufacture  
10 a controlled substance or controlled substance analog is guilty of at-  
11 tempted violation of subsection (a) of section 3, and amendments thereto.

12 (b) Any person who possesses drug paraphernalia with the intent to  
13 manufacture a controlled substance or a controlled substance analog shall  
14 be guilty of attempted violation of subsection (a) of section 3, and amend-  
15 ments thereto.

16 (c) Any person who possesses any drug paraphernalia with the intent  
17 to distribute or cultivate a controlled substance designated in subsection  
18 (a) of section 5, and amendments thereto, or a controlled substance analog  
19 thereof is guilty of attempted violation of subsection (a) of section 5, and  
20 amendments thereto.

21 (d) Any person who possesses any drug paraphernalia with the intent  
22 to distribute a controlled substance or controlled substance analog des-  
23 ignated in K.S.A. 65-4113, and amendments thereto, shall be guilty of  
24 attempted violation of subsection (b) of section 5, and amendments  
25 thereto.

26 (e) Any person who possesses any drug paraphernalia with the intent  
27 to possess or have under such person’s control any controlled substance  
28 designated in subsection (a) of section 6, and amendments thereto, or a  
29 controlled substance analog thereof is guilty of attempted violation of  
30 subsection (a) of section 6, and amendments thereto.

31 (f) Any person who possesses any drug paraphernalia with the intent  
32 to possess or have under such person’s control any controlled substance  
33 designated in subsection (b) of section 6, and amendments thereto, or a  
34 controlled substance analog thereof is guilty of attempted violation of  
35 subsection (b) of section 6, and amendments thereto.

36 (g) This section does not preclude a person from conviction of at-  
37 tempted manufacture, distribution, or possession of a controlled sub-  
38 stance or a controlled substance analog based upon overt acts other than  
39 those herein mentioned.

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

42 (1) Any product containing ephedrine, pseudoephedrine, red phos-  
43 phorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pres-

- 1 surized ammonia or phenylpropanolamine or their salts, isomers or salts  
2 of isomers if the person knows or reasonably should know that the pur-  
3 chaser will use the product to manufacture a controlled substance; or
- 4 (2) any product containing ephedrine, pseudoephedrine or phenyl-  
5 propanolamine, or their salts, isomers or salts of isomers for indication of  
6 stimulation, mental alertness, weight loss, appetite control, energy or  
7 other indications not approved pursuant to the pertinent federal over-  
8 the-counter drug final monograph or tentative final monograph or ap-  
9 proved new drug application.
- 10 (b) It shall be unlawful for any person to market, distribute or man-  
11 ufacture with intent to distribute any drug paraphernalia, knowing or  
12 under circumstances where one reasonably should know that it will be  
13 used to manufacture or distribute a controlled substance in violation of  
14 sections 1 through 17, and amendments thereto.
- 15 (c) It shall be unlawful for any person to distribute, possess with in-  
16 tent to distribute or manufacture with intent to distribute any drug par-  
17 aphernalia, knowing or under circumstances where one reasonably should  
18 know, that it will be used as such in violation of sections 1 through 17,  
19 and amendments thereto, except subsection (b) of section 6, and amend-  
20 ments thereto.
- 21 (d) It shall be unlawful for any person to distribute, possess with  
22 intent to distribute or manufacture with intent to distribute any drug  
23 paraphernalia, knowing, or under circumstances where one reasonably  
24 should know, that it will be used as such in violation of subsection (b) of  
25 section 6, and amendments thereto.
- 26 (e) (1) Violation of subsection (a) is a severity level 6, nonperson  
27 felony.
- 28 (2) Violation of subsection (b) is a severity level 9, nonperson felony.
- 29 (3) Violation of subsection (c) is a level 9, nonperson felony, except  
30 that violation of subsection (c) is a severity level 8, nonperson felony if  
31 that person distributes or causes drug paraphernalia to be distributed to  
32 a minor ~~or~~, in the presence of a minor **or on or within 450 feet of any**  
33 **school.**
- 34 (4) Violation of subsection (d) is a class A nonperson misdemeanor,  
35 except that violation of subsection (d) is a ~~nondrug~~ severity level 9, non-  
36 person felony if that person distributes or causes drug paraphernalia to  
37 be distributed to a minor ~~or~~, in the presence of a minor **or on or within**  
38 **450 feet of any school.**
- 39 (f) For persons arrested and charged under subsection (a), bail shall  
40 be at least \$50,000 cash or surety, unless the court determines, on the  
41 record, that the defendant is not likely to re-offend, the court imposes  
42 pretrial supervision or the defendant agrees to participate in a licensed  
43 or certified drug treatment program.

- 1 (g) As used in this section, “or under circumstances where one rea-  
2 sonably should know” that an item will be used in violation of this section,  
3 shall include, but not be limited to, the following:
- 4 (1) Actual knowledge from prior experience or statements by  
5 customers;
  - 6 (2) inappropriate or impractical design for alleged legitimate use;
  - 7 (3) receipt of packaging material, advertising information or other  
8 manufacturer supplied information regarding the item’s use as drug par-  
9 aphernalia; or
  - 10 (4) receipt of a written warning from a law enforcement or prose-  
11 cutorial agency having jurisdiction that the item has been previously de-  
12 termined to have been designed specifically for use as drug paraphernalia.
- 13 New Sec. 11. (a) In determining whether an object is drug para-  
14 paraphernalia, a court or other authority shall consider, in addition to all other  
15 logically relevant factors, the following:
- 16 (1) Statements by an owner or person in control of the object con-  
17 cerning its use;
  - 18 (2) prior convictions, if any, of an owner or person in control of the  
19 object, under any state or federal law relating to any controlled substance;
  - 20 (3) the proximity of the object, in time and space, to a direct violation  
21 of sections 1 through 17, and amendments thereto;
  - 22 (4) the proximity of the object to controlled substances;
  - 23 (5) the existence of any residue of controlled substances on the  
24 object;
  - 25 (6) direct or circumstantial evidence of the intent of an owner or  
26 person in control of the object, to deliver it to a person the owner or  
27 person in control of the object knows, or should reasonably know, intends  
28 to use the object to facilitate a violation of sections 1 through 17, and  
29 amendments thereto. The innocence of an owner or person in control of  
30 the object as to a direct violation of sections 1 through 17, and amend-  
31 ments thereto, shall not prevent a finding that the object is intended for  
32 use as drug paraphernalia;
  - 33 (7) oral or written instructions provided with the object concerning  
34 its use;
  - 35 (8) descriptive materials accompanying the object which explain or  
36 depict its use;
  - 37 (9) national and local advertising concerning the object’s use;
  - 38 (10) the manner in which the object is displayed for sale;
  - 39 (11) whether the owner or person in control of the object is a legit-  
40 imate supplier of similar or related items to the community, such as a  
41 distributor or dealer of tobacco products;
  - 42 (12) direct or circumstantial evidence of the ratio of sales of the object  
43 or objects to the total sales of the business enterprise;

1 (13) the existence and scope of legitimate uses for the object in the  
2 community;

3 (14) expert testimony concerning the object's use;

4 (15) any evidence that alleged paraphernalia can or has been used to  
5 store a controlled substance or to introduce a controlled substance into  
6 the human body as opposed to any legitimate use for the alleged para-  
7 phernalia; or

8 (16) advertising of the item in magazines or other means which spe-  
9 cifically glorify, encourage or espouse the illegal use, manufacture, dis-  
10 tribution or cultivation of controlled substances.

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

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

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

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

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

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

31 (1) Alcohols, including methyl, isopropyl, propyl or butyl;

32 (2) aliphatic acetates, including ethyl, methyl, propyl or methyl cel-  
33 losolve acetate;

34 (3) acetone;

35 (4) benzene;

36 (5) carbon tetrachloride;

37 (6) cyclohexane;

38 (7) freons, including freon 11 and freon 12;

39 (8) hexane;

40 (9) methyl ethyl ketone;

41 (10) methyl isobutyl ketone;

42 (11) naptha;

43 (12) perchlorethylene;

- 1 (13) toluene;  
2 (14) trichloroethane; or  
3 (15) xylene.
- 4 (f) In a prosecution for a violation of this section, evidence that a  
5 container lists one or more of the substances described in subsection (e)  
6 as one of its ingredients shall be prima facie evidence that the substance  
7 in such container contains toxic vapors.
- 8 New Sec. 13. (a) It shall be unlawful for any person to distribute,  
9 possess with the intent to distribute, or manufacture with the intent to  
10 distribute any simulated controlled substance.
- 11 (b) It shall be unlawful for any person to use or possess with intent  
12 to use any simulated controlled substance.
- 13 (c) (1) Violation of subsection (a) is a ~~nondrug~~ severity level 9, non-  
14 person felony, except that violation of subsection (a) is a ~~nondrug~~ severity  
15 level 7, nonperson felony if that person is 18 or more years of age and  
16 the person distributes, possesses with the intent to distribute or manu-  
17 factures with the intent to distribute to a minor ~~or~~, in the presence of a  
18 minor **or on or within 450 feet of any school property**.
- 19 (2) Violation of subsection (b) is a class A nonperson misdemeanor.
- 20 New Sec. 14. (a) It shall be unlawful for any person to distribute or  
21 possess with the intent to distribute any substance which is not a con-  
22 trolled substance:
- 23 (1) Upon an express representation that the substance is a controlled  
24 substance or that the substance is of such nature or appearance that the  
25 recipient will be able to distribute the substance as a controlled substance;  
26 or
- 27 (2) under circumstances which would give a reasonable person reason  
28 to believe that the substance is a controlled substance.
- 29 (b) Violation of subsection (a) is a class A nonperson misdemeanor,  
30 except that violation of subsection (a) is a ~~nondrug~~ severity level 9, non-  
31 person felony if the distributor is 18 or more years of age, distributing to  
32 a minor and at least three years older than the minor to whom the dis-  
33 tribution is made.
- 34 (c) If any one of the following factors is established, there shall be a  
35 presumption that distribution of a substance was under circumstances  
36 which would give a reasonable person reason to believe that a substance  
37 is a controlled substance:
- 38 (1) The substance was packaged in a manner normally used for the  
39 illegal distribution of controlled substances;
- 40 (2) the distribution of the substance included an exchange of or de-  
41 mand for money or other consideration for distribution of the substance  
42 and the amount of the consideration was substantially in excess of the  
43 reasonable value of the substance; or

1 (3) the physical appearance of the capsule or other material contain-  
2 ing the substance is substantially identical to a specific controlled  
3 substance.

4 (d) A person who violates the provisions of this section also may be  
5 prosecuted for, convicted of and punished for theft by deception.

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

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

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

30 (c) It shall be unlawful for any person to direct, plan, organize, ini-  
31 tiate, finance, manage, supervise or facilitate the transportation or transfer  
32 of proceeds known to be derived from commission of any crime in sec-  
33 tions 1 through 17, and amendments thereto.

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

42 (e) Violation of this section, if the value of the proceeds is:

43 (1) \$100,000 or more is a severity level 5, nonperson felony.

- 1 (2) At least \$75,000 but less than \$100,000 is a severity level 6, non-  
2 person felony.
- 3 (3) At least \$50,000 but less than \$75,000 is a severity level 7, non-  
4 person felony.
- 5 (4) At least \$25,000 but less than \$50,000 is a severity level 8, non-  
6 person felony.
- 7 (5) At least \$2,000 but less than \$25,000 is a severity level 9, non-  
8 person felony.
- 9 (6) At least \$1,000 but less than \$2,000 is a severity level 10, non-  
10 person felony.
- 11 (7) At least \$500 but less than \$1,000 is a class A nonperson  
12 misdemeanor.
- 13 (8) Less than \$500 is a class B nonperson misdemeanor.
- 14 New Sec. 17. The statutes listed below shall be applicable and uni-  
15 form throughout this state and in all cities and counties therein. No city  
16 or county shall enact or enforce any law, ordinance, rule, regulation or  
17 resolution in conflict with, in addition to, or supplemental to, the provi-  
18 sions listed below unless expressly authorized by law to do so:
- 19 (a) Subsection (c) of K.S.A. 21-2501a, and amendments thereto;
- 20 (b) subsections (k) and (l) of K.S.A. 65-1643, and amendments  
21 thereto;
- 22 (c) subsections (e), (f) and (g) of K.S.A. 65-4113, and amendments  
23 thereto;
- 24 (d) subsection (c) of section 3, and amendments thereto;
- 25 (e) subsection (f) of section 9, and amendments thereto;
- 26 (f) subsection (f) of section 10, and amendments thereto.
- 27 Sec. 18. K.S.A. 2008 Supp. 8-2,128 is hereby amended to read as  
28 follows: 8-2,128. As used in this act:
- 29 (a) “Alcohol” means any substance containing any form of alcohol  
30 including, but not limited to, ethanol, methanol, propanol and  
31 isopropanol;
- 32 (b) “alcohol concentration” means:
- 33 (1) The number of grams of alcohol per 100 milliliters of blood; or
- 34 (2) the number of grams of alcohol per 210 liters of breath;
- 35 (c) “commercial driver’s license” means a commercial license issued  
36 pursuant to K.S.A. 8-234b, and amendments thereto;
- 37 (d) “commercial driver license system” means the information system  
38 established pursuant to the commercial motor vehicle safety act of 1986  
39 to serve as a clearinghouse for locating information related to the licensing  
40 and identification of commercial motor vehicle drivers;
- 41 (e) “instruction permit” means a permit issued pursuant to K.S.A. 8-  
42 294, and amendments thereto;
- 43 (f) “commercial motor vehicle” means a motor vehicle designed or

1 used to transport passengers or property, if:

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

6 (2) the vehicle is designed to transport 16 or more passengers, in-  
7 cluding the driver; or

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

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

12 (h) “conviction” means an unvacated adjudication of guilt or a deter-  
13 mination that a person has violated or failed to comply with the law and  
14 in a court of original jurisdiction or an administrative proceeding, an un-  
15 vacated forfeiture of bail or collateral deposited to secure the person’s  
16 appearance in court, a plea of guilty or nolo contendere accepted by the  
17 court, the payment of a fine or court cost, or violation of a condition of  
18 release without bail, regardless of whether the penalty is rebated, sus-  
19 pended or probated;

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

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

23 (2) any withdrawal of a person’s privileges to drive a commercial mo-  
24 tor vehicle by a state or other jurisdiction as the result of a violation of  
25 state or local law relating to motor vehicle traffic control, other than park-  
26 ing, vehicle weight or vehicle defect violations;

27 (3) a determination by the federal motor carrier safety administration  
28 that a person is not qualified to operate a commercial motor vehicle under  
29 49 C.F.R. 391;

30 (j) “drive” means to drive, operate or be in physical control of a motor  
31 vehicle in any place open to the general public for purposes of vehicular  
32 traffic. For purposes of K.S.A. 8-2,137, 8-2,138, 8-2,142, 8-2,144 and 8-  
33 2,145, and amendments thereto, “drive” includes operation or physical  
34 control of a motor vehicle anywhere in the state;

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

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

42 (1) Any temporary license or instruction;

43 (2) the privilege of any person to drive a motor vehicle whether or

- 1 not such person holds a valid license; or
- 2 (3) any nonresident's operating privilege;
- 3 (m) "employer" means any person, including the United States, a  
4 state or a political subdivision of a state, who owns or leases a commercial  
5 motor vehicle or assigns a person to drive a commercial motor vehicle;
- 6 (n) "endorsement" means an authorization to an individual's com-  
7 mercial driver's license required to permit the individual to operate cer-  
8 tain types of commercial motor vehicles;
- 9 (o) "felony" means any offense under state or federal law that is pun-  
10 ishable by death or imprisonment for a term exceeding one year;
- 11 (p) "gross vehicle weight rating" means the value specified by the  
12 manufacturer as the maximum loaded weight of a single or a combination  
13 (articulated) vehicle. The gross vehicle weight rating of a combination  
14 (articulated) vehicle (commonly referred to as the "gross combination  
15 weight rating") is the gross vehicle weight rating of the power unit plus  
16 the gross vehicle weight rating of the towed unit or units;
- 17 (q) "hazardous materials" means any material that has been desig-  
18 nated as hazardous under 49 U.S.C. 5103 and is required to be placarded  
19 under subpart F of 49 C.F.R. part 172 or any quantity of a material listed  
20 as a select agent or toxin in 42 C.F.R. part 73;
- 21 (r) "motor vehicle" means every vehicle which is self-propelled, and  
22 every vehicle which is propelled by electric power obtained from over-  
23 head trolley wires but not operated upon rails, except vehicles moved  
24 solely by human power and motorized wheel chairs;
- 25 (s) "out-of-service order" means a temporary prohibition against driv-  
26 ing a commercial motor vehicle, which is imposed when a driver has any  
27 measured or detected alcohol concentration while on duty, or operating,  
28 or in physical control of a commercial motor vehicle or a declaration by  
29 an authorized enforcement officer of a federal, state, Canadian, Mexican  
30 or local jurisdiction that a driver, a commercial motor vehicle or a motor  
31 carrier operation, is out-of-service pursuant to 49 C.F.R. Part 386.72,  
32 392.5, 395.13, 396.9 or such compatible laws, or the North American out-  
33 of-service criteria;
- 34 (t) "residence" means the place which is adopted by a person as the  
35 person's place of habitation and to which, whenever the person is absent,  
36 the person has the intention of returning. When a person eats at one  
37 place and sleeps at another, the place where the person sleeps shall be  
38 considered the person's residence;
- 39 (u) "secretary" means the secretary of the Kansas department of  
40 revenue;
- 41 (v) "serious traffic violation" means:
- 42 (1) Excessive speeding, is defined as 15 miles per hour or more over  
43 the posted speed limit;

- 1 (2) reckless driving, as defined under K.S.A. 8-1566, and amend-  
2 ments thereto;
- 3 (3) a violation of any state or local law relating to motor vehicle traffic  
4 control, other than a parking violation, arising in connection with an ac-  
5 cident or collision resulting in death to any person;
- 6 (4) changing lanes of traffic illegally or erratically, as defined under  
7 K.S.A. 8-1548, and amendments thereto;
- 8 (5) following another vehicle too closely, as defined under K.S.A. 8-  
9 1523, and amendments thereto;
- 10 (6) a violation of subsection (a) of K.S.A. 8-2,132, and amendments  
11 thereto; or
- 12 (7) any other violation of a state or local law relating to motor vehicle  
13 traffic control, other than a parking violation, which the secretary deter-  
14 mines by rule and regulation to be serious;
- 15 (w) “state” means a state of the United States and the District of  
16 Columbia;
- 17 (x) “state of domicile” means that state where a person has such per-  
18 son’s true, fixed and permanent home and principal residence and to  
19 which such person has the intention of returning whenever such person  
20 is absent;
- 21 (y) “tank vehicle” means any commercial motor vehicle that is de-  
22 signed to transport any liquid or gaseous material within a tank that is  
23 either permanently or temporarily attached to the vehicle or the chassis.  
24 Such vehicles include, but are not limited to, cargo tanks, as defined in  
25 49 C.F.R. 171. However, this definition does not include portable tanks  
26 having a rated capacity under 1,000 gallons;
- 27 (z) “United States” means the 50 states and the District of Columbia;
- 28 (aa) “division” means the division of vehicles of the Kansas depart-  
29 ment of revenue;
- 30 (bb) “director” means the director of the division of vehicles of the  
31 Kansas department of revenue;
- 32 (cc) “foreign country” means any jurisdiction other than the United  
33 States;
- 34 (dd) “nonresident commercial driver’s license” means a license is-  
35 sued pursuant to K.S.A. 8-2,148, and amendments thereto;
- 36 (ee) “fatality” means the death of a person as a result of a motor  
37 vehicle accident;
- 38 (ff) “noncommercial motor vehicle” means a motor vehicle or com-  
39 bination of motor vehicles not defined by the term commercial motor  
40 vehicle in subsection (f);
- 41 (gg) “school bus” means a commercial motor vehicle used to trans-  
42 port preprimary, primary or secondary school students from home to  
43 school, from school to home or to and from school-sponsored events.

1 School bus does not include a bus used as a common carrier.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (g) (1) On the fourth or subsequent conviction of a violation of this  
12 section, a person shall be guilty of a nonperson felony and sentenced to  
13 not less than 90 days nor more than one year's imprisonment and fined  
14 \$2,500. The person convicted shall not be eligible for release on proba-  
15 tion, suspension or reduction of sentence or parole until the person has  
16 served at least 90 days' imprisonment. The 90 days' imprisonment man-  
17 dated by this paragraph may be served in a work release program only  
18 after such person has served 72 consecutive hours' imprisonment, pro-  
19 vided such work release program requires such person to return to con-  
20 finement at the end of each day in the work release program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (3) As used in this subsection, the convicted person's motor vehicle  
2 or vehicles shall include any vehicle leased by such person. If the lease  
3 on the convicted person's motor vehicle subject to impoundment or im-  
4 mobilization expires in less than two years from the date of the impound-  
5 ment or immobilization, the time of impoundment or immobilization of  
6 such vehicle shall be the amount of time remaining on the lease.
- 7 (m) The court shall report every conviction of a violation of this sec-  
8 tion and every diversion agreement entered into in lieu of further criminal  
9 proceedings or a complaint alleging a violation of this section to the di-  
10 vision. Prior to sentencing under the provisions of this section, the court  
11 shall request and shall receive from the division a record of all prior  
12 convictions obtained against such person for any violations of any of the  
13 motor vehicle laws of this state.
- 14 (n) For the purpose of determining whether a conviction is a first,  
15 second, third, fourth or subsequent conviction in sentencing under this  
16 section:
- 17 (1) "Conviction" includes being convicted of a violation of this section  
18 or entering into a diversion agreement in lieu of further criminal pro-  
19 ceedings on a complaint alleging a violation of this section;
- 20 (2) "conviction" includes being convicted of a violation of a law of  
21 another state or an ordinance of any city, or resolution of any county,  
22 which prohibits the acts that this section prohibits or entering into a di-  
23 version agreement in lieu of further criminal proceedings in a case alleg-  
24 ing a violation of such law, ordinance or resolution;
- 25 (3) any convictions occurring during a person's lifetime shall be taken  
26 into account when determining the sentence to be imposed for a first,  
27 second, third, fourth or subsequent offender;
- 28 (4) it is irrelevant whether an offense occurred before or after con-  
29 viction for a previous offense; and
- 30 (5) a person may enter into a diversion agreement in lieu of further  
31 criminal proceedings for a violation of this section, and amendments  
32 thereto, or an ordinance which prohibits the acts of this section, and  
33 amendments thereto, only once during the person's lifetime.
- 34 (o) Upon conviction of a person of a violation of this section or a  
35 violation of a city ordinance or county resolution prohibiting the acts  
36 prohibited by this section, the division, upon receiving a report of con-  
37 viction, shall suspend, restrict or suspend and restrict the person's driving  
38 privileges as provided by K.S.A. 8-1014, and amendments thereto.
- 39 (p) (1) Nothing contained in this section shall be construed as pre-  
40 venting any city from enacting ordinances, or any county from adopting  
41 resolutions, declaring acts prohibited or made unlawful by this act as  
42 unlawful or prohibited in such city or county and prescribing penalties  
43 for violation thereof. Except as specifically provided by this subsection,

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

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

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

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

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

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

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

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

41 (q) No plea bargaining agreement shall be entered into nor shall any  
42 judge approve a plea bargaining agreement entered into for the purpose  
43 of permitting a person charged with a violation of this section, or a vio-

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

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

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

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

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

25 (3) "Drug" includes toxic vapors as such term is defined in ~~K.S.A. 65-~~  
 26 ~~4165~~ section 12, and amendments thereto.

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

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

41 Sec. 20. K.S.A. 9-2012 is hereby amended to read as follows: 9-2012.  
 42 ~~Every~~ (a) *It shall be unlawful for a president, director, cashier, assistant*  
 43 *cashier, teller, clerk, officer or agent of any bank or trust company who*

1 ~~embezzles, abstracts~~ *with the intent to injure, defraud or deceive any*  
 2 *individual, bank, trust company, business entity or agent appointed to*  
 3 *examine the affairs of the bank or trust company to:*  
 4 (1) ~~Embezzle, abstract or willfully misapplies~~ *misapply* any of the  
 5 moneys, funds, securities or credits of the bank or trust company, ~~or who~~  
 6 ~~issues or puts;~~  
 7 (2) *issue or put* forth any certificate of deposit, draws any draft or bill  
 8 of exchange, makes any acceptance, assigns any note, bond, draft, bill of  
 9 exchange, ~~or who makes; or~~  
 10 (3) *make* use of the name of the bank or trust company in any manner;  
 11 ~~with intent in either case to injure or defraud the bank or trust company~~  
 12 ~~or any individual, person, partnership, company or corporation, or to de-~~  
 13 ~~ceive any officer of the bank or trust company or any agent appointed to~~  
 14 ~~examine the affairs of the bank or trust company, and any person who~~  
 15 ~~with like intent aids or abets.~~  
 16 (b) *It shall be unlawful for a person to aid or abet* any officer, clerk  
 17 or agent in violation of this act, ~~upon conviction shall be guilty of a severity~~  
 18 ~~level 7, nonperson felony~~  
 19 (c) *Violation of this section in an amount of:*  
 20 (1) *\$100,000 or more is a severity level 5, nonperson felony.*  
 21 (2) *At least \$75,000 but less than \$100,000 is a severity level 6, non-*  
 22 *person felony.*  
 23 (3) *At least \$50,000 but less than \$75,000 is a severity level 7, non-*  
 24 *person felony.*  
 25 (4) *At least \$25,000 but less than \$50,000 is a severity level 8, non-*  
 26 *person felony.*  
 27 (5) *At least \$2,000 but less than \$25,000 is a severity level 9, nonper-*  
 28 *son felony.*  
 29 (6) *At least \$1,000 but less than \$2,000 is a severity level 10, nonper-*  
 30 *son felony.*  
 31 (7) *At least \$500 but less than \$1,000 is a class A nonperson*  
 32 *misdemeanor.*  
 33 (8) *Less than \$500 is a class B nonperson misdemeanor.*  
 34 Sec. 21. K.S.A. 2008 Supp. 9-2203 is hereby amended to read as  
 35 follows: 9-2203. (a) Mortgage business shall only be conducted in this  
 36 state at or from a mortgage company licensed by the commissioner as  
 37 required by this act. A licensee shall be responsible for all mortgage busi-  
 38 ness conducted on their behalf by loan originators or other employees.  
 39 (b) Mortgage business involving loan origination shall only be con-  
 40 ducted in this state by an individual who has first been registered with  
 41 the commissioner as a loan originator as required by this act. Loan ori-  
 42 gination shall only be conducted at or from a mortgage company and a  
 43 registrant shall only engage in mortgage business on behalf of one mort-

1 gage company.

2 (c) Any person who willfully or knowingly violates any of the provi-  
3 sions of ~~this the Kansas mortgage business act, any rule and regulation~~  
4 ~~rules and regulations~~ adopted or order issued under ~~this such~~ act commits  
5 a severity level ~~7 8~~, nonperson felony. A second or subsequent conviction  
6 of ~~this such act, regardless of its location on the sentencing grid block,~~  
7 ~~shall have a presumptive sentence of shall be presumed~~ imprisonment.

8 (d) No prosecution for any crime under this act may be commenced  
9 more than five years after the alleged violation. A prosecution is com-  
10 menced when a complaint or information is filed, or an indictment re-  
11 turned, and a warrant thereon is delivered to the sheriff or other officer  
12 for execution, except that no prosecution shall be deemed to have been  
13 commenced if the warrant so issued is not executed without unreasonable  
14 delay.

15 (e) Nothing in this act limits the power of the state to punish any  
16 person for any conduct which constitutes a crime by statute.

17 Sec. 22. K.S.A. 2008 Supp. 12-4104 is hereby amended to read as  
18 follows: 12-4104. (a) The municipal court of each city shall have jurisdic-  
19 tion to hear and determine cases involving violations of the ordinances of  
20 the city, including concurrent jurisdiction to hear and determine a vio-  
21 lation of an ordinance when the elements of such ordinance violation are  
22 the same as the elements of a violation of one of the following state  
23 statutes and would constitute, and be punished as, a felony if charged in  
24 district court:

25 (1) K.S.A. 8-1567, and amendments thereto, driving under the  
26 influence;

27 (2) K.S.A. 21-3412a, and amendments thereto, domestic battery;

28 (3) K.S.A. 21-3701, and amendments thereto, theft;

29 (4) K.S.A. 21-3707, and amendments thereto, giving a worthless  
30 check; or

31 (5) ~~K.S.A. 65-4162~~ *Section 6*, and amendments thereto, possession of  
32 marijuana.

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

34 Sec. 23. K.S.A. 12-4419 is hereby amended to read as follows: 12-  
35 4419. (a) Except as provided in subsection (b), if a diversion agreement  
36 between a city attorney and a defendant is entered into in lieu of further  
37 criminal proceedings alleging a violation by the defendant, while under  
38 21 years of age, of an ordinance prohibiting an act prohibited by ~~the~~  
39 ~~uniform substances act (K.S.A. 65-4101 et seq. and amendments thereto)~~  
40 *sections 1 through 17, and amendments thereto*, or K.S.A. 41-719, 41-  
41 727, 41-804, 41-2719; or 41-2720, ~~65-4152, 65-4153, 65-4154 or 65-4155,~~  
42 and amendments thereto, the agreement shall require the defendant to  
43 submit to and complete an alcohol and drug evaluation by a community-

1 based alcohol and drug safety action program certified pursuant to K.S.A.  
2 8-1008, and amendments thereto, and to pay a fee not to exceed the fee  
3 established by that statute for such evaluation. If the city attorney finds  
4 that the defendant is indigent, the fee may be waived.

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

9 Sec. 24. K.S.A. 12-4509 is hereby amended to read as follows: 12-  
10 4509. (a) Whenever a person is found guilty of the violation of an ordi-  
11 nance, the municipal judge may:

12 (1) Release the person without imposition of sentence;

13 (2) release the person on probation after the imposition of sentence,  
14 without imprisonment or the payment of a fine or a portion thereof,  
15 subject to conditions imposed by the court as provided in subsection (e);  
16 or

17 (3) impose such sentence of fine or imprisonment, or both, as au-  
18 thorized for the ordinance violation.

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

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

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

43 (e) The court may impose any conditions of probation or suspension

1 of sentence that the court deems proper, including, but not limited to,  
2 requiring that the defendant:

- 3 (1) Avoid such injurious or vicious habits, as directed by the court or  
4 the probation officer;
- 5 (2) avoid such persons or places of disreputable or harmful character,  
6 as directed by the court or the probation officer;
- 7 (3) report to the probation officer as directed;
- 8 (4) permit the probation officer to visit the defendant at home or  
9 elsewhere;
- 10 (5) work faithfully at suitable employment insofar as possible;
- 11 (6) remain within the state unless the court grants permission to  
12 leave;
- 13 (7) pay a fine or costs, applicable to the ordinance violation, in one  
14 or several sums and in the manner as directed by the court;
- 15 (8) support the defendant's dependents;
- 16 (9) reside in a residential facility located in the community and par-  
17 ticipate in educational counseling, work and other correctional or reha-  
18 bilitative programs;
- 19 (10) perform community or public service work for local govern-  
20 mental agencies, private corporations organized not for profit, or chari-  
21 table or social service organizations performing services for the  
22 community;
- 23 (11) perform services under a system of day fines whereby the de-  
24 fendant is required to satisfy fines, costs or reparation or restitution ob-  
25 ligations by performing services for a period of days determined by the  
26 court on the basis of ability to pay, standard of living, support obligations  
27 and other factors;
- 28 (12) make reparation or restitution to the aggrieved party for the  
29 damage or loss caused by the defendant's crime, in an amount and man-  
30 ner determined by the court and to the person specified by the court; or
- 31 (13) reimburse the city, in accordance with any order made under  
32 subsection (f), for all or a part of the reasonable expenditures by the city  
33 to provide counsel and other defense services to the defendant.

34 (f) In addition to or in lieu of any other sentence authorized by law,  
35 whenever a person is found guilty of the violation of an ordinance the  
36 judge may order such person to reimburse the city for all or a part of the  
37 reasonable expenditures by the city to provide counsel and other defense  
38 services to the defendant. In determining the amount and method of  
39 payment of such sum, the court shall take account of the financial re-  
40 sources of the defendant and the nature of the burden that payment of  
41 such sum will impose. A defendant who has been required to pay such  
42 sum and who is not willfully in default in the payment thereof may at any  
43 time petition the court which sentenced the defendant to waive payment

1 of such sum or of any unpaid portion thereof. If it appears to the satis-  
 2 faction of the court that payment of the amount due will impose manifest  
 3 hardship on the defendant or the defendant's immediate family, the court  
 4 may waive payment of all or part of the amount due or modify the method  
 5 of payment.

6 Sec. 25. K.S.A. 16-305 is hereby amended to read as follows: 16-305.  
 7 Every person who violates any provision of this act: (a) Other than by  
 8 misappropriating funds in violation of an agreement ~~shall be~~ is guilty of  
 9 a *class C nonperson* misdemeanor, ~~and, upon conviction shall be fined~~  
 10 ~~not less than \$100 nor more than \$500, or shall be imprisoned for not~~  
 11 ~~less than 10 days nor more than 90 days, or both;~~ and (b) by misappro-  
 12 priating funds in violation of an agreement in an amount of:

13 (1) ~~Of \$25,000 or more shall be guilty of a severity level 7, nonperson~~  
 14 ~~felony;~~

15 ~~(2) of at least \$1,000 but less than \$25,000 shall be guilty of a severity~~  
 16 ~~level 9, nonperson felony; or~~

17 ~~(3) of less than \$1,000 shall be guilty of a class A nonperson misde-~~  
 18 ~~memeanor. \$100,000 or more is guilty of a severity level 5, nonperson felony.~~

19 (2) *At least \$75,000 but less than \$100,000 is guilty of a severity level*  
 20 *6, nonperson felony.*

21 (3) *At least \$50,000 but less than \$75,000 is guilty of a severity level*  
 22 *7, nonperson felony.*

23 (4) *At least \$25,000 but less than \$50,000 is guilty of a severity level*  
 24 *8, nonperson felony.*

25 (5) *At least \$2,000 but less than \$25,000 is guilty of a severity level*  
 26 *9, nonperson felony.*

27 (6) *At least \$1,000 but less than \$2,000 is guilty of a severity level 10,*  
 28 *nonperson felony.*

29 (7) *At least \$500 but less than \$1,000 is guilty of a class A nonperson*  
 30 *misdemeanor.*

31 (8) *Less than \$500 is guilty of a class B nonperson misdemeanor.*

32 Sec. 26. K.S.A. 17-12a508 is hereby amended to read as follows: 17-  
 33 12a508. (a) *Criminal penalties.* (1) Except as provided in subsections  
 34 (a)(2) ~~through (a)(4) and (a)(3)~~ **through (a)(4)**, a conviction for an inten-  
 35 tional violation of ~~this~~ *the Kansas uniform securities act*, or a rule adopted  
 36 or order issued under this act, except K.S.A. 17-12a504, and amendments  
 37 thereto, or the notice filing requirements of K.S.A. 17-12a302 or 17-  
 38 12a405, and amendments thereto, is a severity level ~~7~~ **8**, nonperson  
 39 felony. An individual convicted of violating a rule or order under this act  
 40 may be fined, but may not be imprisoned, if the individual did not have  
 41 knowledge of the rule or order.

42 (2) ~~A conviction for an intentional violation of K.S.A. 17-12a501 or~~  
 43 ~~17-12a502, and amendments thereto, is:~~

- 1 ~~(A) A severity level 4, nonperson felony if the violation resulted in a~~  
 2 ~~loss of \$100,000 or more;~~
- 3 ~~(B) a severity level 5, nonperson felony if the violation resulted in a~~  
 4 ~~loss of at least \$25,000 but less than \$100,000; or~~
- 5 ~~(C) a severity level 7, nonperson felony if the violation resulted in a~~  
 6 ~~loss of less than \$25,000.~~
- 7 ~~(3) A conviction for an intentional violation of K.S.A. 17-12a501~~  
 8 ~~or 17-12a502, and amendments thereto, if the violation resulted~~  
 9 ~~in a loss of an amount of:~~
- 10 (A) **\$1,000,000 or more is a severity level 2, nonperson felony.**
- 11 (B) **At least \$250,000 but less than \$1,000,000 is a severity level**  
 12 **3, nonperson felony.**
- 13 (C) **At least \$100,000 but less than \$250,000 is a severity level**  
 14 **4, nonperson felony.**
- 15 (D) **At least \$75,000 but less than \$100,000 is a severity level**  
 16 **5, nonperson felony.**
- 17 (E) **At least \$50,000 but less than \$75,000 is a severity level 6,**  
 18 **nonperson felony.**
- 19 (F) **At least \$25,000 but less than \$50,000 is a severity level 7,**  
 20 **nonperson felony.**
- 21 (G) **At least \$25,000 but less than \$1,000 is a severity level 8,**  
 22 **nonperson felony.**
- 23 (3) A conviction for an intentional violation of K.S.A. 17-12a301, 17-  
 24 12a401(a), ~~17-12a401(c), 17-12a402(a), 17-12a402(d), 17-12a403(a), 17-~~  
 25 ~~12a403(c), 17-12a403(d), or 17-12a404(a), or 17-12a404(e), 17-12a501 or~~  
 26 ~~17-12a502, and amendments thereto, is if the violation resulted in a loss~~  
 27 ~~of an amount of:~~
- 28 (A) ~~\$100,000 or more is a severity level 5, nonperson felony if the~~  
 29 ~~violation resulted in a loss of \$100,000 or more;~~
- 30 (B) ~~At least \$75,000 but less than \$100,000 is a severity level 6, non-~~  
 31 ~~person felony if the violation resulted in a loss of at least \$25,000 but less~~  
 32 ~~than \$100,000; or.~~
- 33 (C) ~~At least \$50,000 but less than \$75,000 is a severity level 7, non-~~  
 34 ~~person felony if the violation resulted in a loss of less than \$25,000;~~
- 35 (D) ~~At least \$25,000 but less than \$50,000 is a severity level 8, non-~~  
 36 ~~person felony.~~
- 37 (E) ~~At least \$2,000 but less than \$25,000 is a severity level 9, non-~~  
 38 ~~person felony.~~
- 39 (F) ~~At least \$1,000 but less~~ **Less than \$2,000 is a severity level 10,**  
 40 **nonperson felony.**
- 41 (G) ~~At least \$500 but less than \$1,000 is a class A nonperson~~  
 42 ~~misdemeanor.~~
- 43 (H) ~~Less than \$500 is a class B nonperson misdemeanor.~~

- 1     ~~(4)~~ (3) A conviction for an intentional violation of:
- 2     **(A) K.S.A. 17-12a404(e)**, 17-12a505 or 17-12a506, and amendments
- 3     thereto, **or an order to cease and desist issued by the administrator**
- 4     **pursuant to K.S.A. 17-12a412(c) or 17-12a604(a), and amendments**
- 5     **thereto**, is a severity level ~~8~~ **6**, nonperson felony.
- 6     **(B) K.S.A. 17-12a401(c) or 17-12a403(c), and amendments**
- 7     **thereto, is a severity level 7, nonperson felony.**
- 8     ~~(5)~~ (4) Any violation of K.S.A. 17-12a301, 17-12a401(a), ~~17-~~
- 9     ~~12a401(c)~~, 17-12a402(a), ~~17-12a402(d)~~, 17-12a403(a), ~~17-12a403(c)~~, ~~17-~~
- 10     ~~12a403(d)~~, 17-12a404(a), ~~17-12a404(c)~~, 17-12a501 or 17-12a502, and
- 11     amendments thereto, resulting in a loss of ~~\$25,000~~ ~~\$100,000~~ **\$25,000** or
- 12     more shall ~~have a presumptive sentence of~~ *be presumed* imprisonment
- 13     ~~regardless of its location on the sentencing grid block.~~
- 14     (b) *Statute of Limitations.* Except as provided by subsection (9) of
- 15     K.S.A. 21-3106, and amendments thereto, no prosecution for any crime
- 16     under this act may be commenced more than 10 years after the alleged
- 17     violation if the victim is the Kansas public employees retirement system
- 18     and no prosecution for any other crime under this act may be commenced
- 19     more than five years after the alleged violation. A prosecution is com-
- 20     menced when a complaint or information is filed, or an indictment re-
- 21     turned, and a warrant thereon is delivered to the sheriff or other officer
- 22     for execution, except that no prosecution shall be deemed to have been
- 23     commenced if the warrant so issued is not executed without unreasonable
- 24     delay.
- 25     (c) *Criminal reference.* The administrator may refer such evidence as
- 26     may be available concerning violations of this act or of any rules and
- 27     regulations or order hereunder to the attorney general or the proper
- 28     county or district attorney, who may in the prosecutor's discretion, with
- 29     or without such a reference, institute the appropriate criminal proceed-
- 30     ings under this act. Upon receipt of such reference, the attorney general
- 31     or the county attorney or district attorney may request that a duly em-
- 32     ployed attorney of the administrator prosecute or assist in the prosecution
- 33     of such violation or violations on behalf of the state. Upon approval of the
- 34     administrator, such employee shall be appointed a special prosecutor for
- 35     the attorney general or the county attorney or district attorney to serve
- 36     without compensation from the attorney general or the county attorney
- 37     or district attorney. Such special prosecutor shall have all the powers and
- 38     duties prescribed by law for assistant attorneys general or assistant county
- 39     or district attorneys and such other powers and duties as are lawfully
- 40     delegated to such special prosecutor by the attorney general or the county
- 41     attorney or district attorney. If an attorney employed by the administrator
- 42     acts as a special prosecutor, the administrator may pay extradition and
- 43     witness expenses associated with the case.

1 (d) *No limitation on other criminal enforcement.* This act does not  
2 limit the power of this state to punish a person for conduct that constitutes  
3 a crime under other laws of this state.

4 Sec. 27. K.S.A. 17-1311a is hereby amended to read as follows: 17-  
5 1311a. (a) Misuse of the permanent maintenance fund or any money  
6 belonging thereto is using, lending or permitting another to use, moneys  
7 in the fund in a manner not authorized by law, by a custodian or other  
8 person having charge or control of such fund or moneys by virtue of his  
9 position.

10 (b) Misuse of the permanent maintenance fund ~~is a severity level 7,~~  
11 ~~nonperson felony.~~ *in an amount of:*

12 (1) *\$100,000 or more is a severity level 5, nonperson felony.*

13 (2) *At least \$75,000 but less than \$100,000 is a severity level 6, non-*  
14 *person felony.*

15 (3) *At least \$50,000 but less than \$75,000 is a severity level 7, non-*  
16 *person felony.*

17 (4) *At least \$25,000 but less than \$50,000 is a severity level 8, non-*  
18 *person felony.*

19 (5) *At least \$2,000 but less than \$25,000 is a severity level 9, nonper-*  
20 *son felony.*

21 (6) *At least \$1,000 but less than \$2,000 is a severity level 10, nonper-*  
22 *son felony.*

23 (7) *At least \$500 but less than \$1,000 is a class A nonperson*  
24 *misdemeanor.*

25 (8) *Less than \$500 is a class B nonperson misdemeanor.*

26 Sec. 28. K.S.A. 19-3519 is hereby amended to read as follows: 19-  
27 3519. (a) All claims, accounts and necessary expenses of the water district  
28 lawfully incurred and approved shall be paid from appropriate available  
29 funds in bank accounts of the water district by voucher check supported  
30 by an appropriate purchase order or statement of service. All such claims  
31 shall be presented in writing with a full account of the items and may be  
32 the usual statement of account of the vendor or party rendering a service  
33 or other written statement showing the required information.

34 (b) ~~(1)~~ Any person who obtains money from the district by intention-  
35 ally making a fraudulent claim for a sum of less than \$1,000 is guilty of a  
36 class A nonperson misdemeanor.

37 ~~—(2)— Any person who obtains money from the district by intentionally~~  
38 ~~making a fraudulent claim for at least \$1,000 but less than \$25,000 is~~  
39 ~~guilty of a severity level 9, nonperson felony.~~

40 ~~—(3)— Any person who obtains money from the district by intentionally~~  
41 ~~making a fraudulent claim for \$25,000 or more is guilty of a severity level~~  
42 ~~7, nonperson felony.~~ *in an amount of:*

43 (1) *\$100,000 or more is guilty of a severity level 5, nonperson felony.*

- 1     (2) *At least \$75,000 but less than \$100,000 is guilty of a severity level*  
 2 *6, nonperson felony.*
- 3     (3) *At least \$50,000 but less than \$75,000 is guilty of a severity level*  
 4 *7, nonperson felony.*
- 5     (4) *At least \$25,000 but less than \$50,000 is guilty of a severity level*  
 6 *8, nonperson felony.*
- 7     (5) *At least \$2,000 but less than \$25,000 is guilty of a severity level*  
 8 *9, nonperson felony.*
- 9     (6) *At least \$1,000 but less than \$2,000 is guilty of a severity level 10,*  
 10 *nonperson felony.*
- 11     (7) *At least \$500 but less than \$1,000 is guilty of a class A nonperson*  
 12 *misdemeanor.*
- 13     (8) *Less than \$500 is guilty of a class B nonperson misdemeanor.*
- 14     (c) The water district board shall see that there is kept a correct rec-  
 15 ord of all voucher checks issued showing the number, date and amount  
 16 thereof and the name of the person or persons to whom such checks are  
 17 made payable and with appropriate reference to the applicable purchase  
 18 order or other claim, account or expense record, including payroll re-  
 19 cords. Any employee or officer authorized to sign or countersign voucher  
 20 checks shall be covered by a surety bond in the form and amount as  
 21 determined by the board.
- 22     Sec. 29. K.S.A. 21-2501 is hereby amended to read as follows: 21-  
 23 2501. (a) It is hereby made the duty of every sheriff, police department  
 24 or countywide law enforcement agency in the state, immediately to cause  
 25 two sets of fingerprint impressions and one set of palm print impressions  
 26 to be made of a person who is arrested if the person:
- 27     (1) Is wanted for the commission of a felony. On or after July 1, 1993,  
 28 fingerprints and palm prints shall be taken if the person is wanted for the  
 29 commission of a felony or a class A or B misdemeanor or assault as defined  
 30 in K.S.A. 21-3408 and amendments thereto or a violation of a county  
 31 resolution which would be the equivalent of a class A or B misdemeanor  
 32 or assault as defined in K.S.A. 21-3408 and amendments thereto under  
 33 state law;
- 34     (2) is believed to be a fugitive from justice;
- 35     (3) may be in the possession at the time of arrest of any goods or  
 36 property reasonably believed to have been stolen by the person;
- 37     (4) is in possession of firearms or other concealed weapons, burglary  
 38 tools, high explosives or other appliances believed to be used solely for  
 39 criminal purposes;
- 40     (5) is wanted for any offense which involves sexual conduct prohibited  
 41 by law or for violation of ~~the uniform controlled substances act sections~~  
 42 *1 through 17, and amendments thereto; or*
- 43     (6) is suspected of being or known to be a habitual criminal or violator

1 of the intoxicating liquor law.

2 (b) The court shall ensure, upon the offender's first appearance, or  
3 in any event before final disposition of a felony or an A or B misdemeanor  
4 or a violation of a county resolution which prohibits an act which is pro-  
5 hibited by a class A or B misdemeanor, that the offender has been proc-  
6 essed, fingerprinted and palm printed.

7 (c) Impressions taken pursuant to this section shall be made on the  
8 forms provided by the department of justice of the United States or the  
9 Kansas bureau of investigation. The sheriff, police department or coun-  
10 tywide law enforcement agency shall cause the impressions to be for-  
11 forwarded to the Kansas bureau of investigation at Topeka, Kansas, which  
12 shall forward one set of the impressions to the federal bureau of inves-  
13 tigation, department of justice, at Washington, D.C. A comprehensive  
14 description of the person arrested and such other data and information  
15 as to the identification of such person as the department of justice and  
16 bureau of investigation require shall accompany the impressions.

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

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

25 Sec. 30. K.S.A. 21-2511 is hereby amended to read as follows: 21-  
26 2511. (a) Any person convicted as an adult or adjudicated as a juvenile  
27 offender because of the commission of any felony; a violation of subsec-  
28 tion (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508; a violation of  
29 K.S.A. 21-4310; a violation of K.S.A. 21-3424, and amendments thereto  
30 when the victim is less than 18 years of age; a violation of K.S.A. 21-3507,  
31 and amendments thereto, when one of the parties involved is less than  
32 18 years of age; a violation of subsection (b)(1) of K.S.A. 21-3513, and  
33 amendments thereto, when one of the parties involved is less than 18  
34 years of age; a violation of K.S.A. 21-3515, and amendments thereto,  
35 when one of the parties involved is less than 18 years of age; or a violation  
36 of K.S.A. 21-3517, and amendments thereto; including an attempt, con-  
37 spiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or  
38 21-3303 and amendments thereto, of any such offenses provided in this  
39 subsection regardless of the sentence imposed, shall be required to sub-  
40 mit specimens of blood or an oral or other biological sample authorized  
41 by the Kansas bureau of investigation to the Kansas bureau of investiga-  
42 tion in accordance with the provisions of this act, if such person is:

43 (1) Convicted as an adult or adjudicated as a juvenile offender be-

- 1 cause of the commission of a crime specified in subsection (a) on or after  
2 the effective date of this act;
- 3 (2) ordered institutionalized as a result of being convicted as an adult  
4 or adjudicated as a juvenile offender because of the commission of a crime  
5 specified in subsection (a) on or after the effective date of this act; or
- 6 (3) convicted as an adult or adjudicated as a juvenile offender because  
7 of the commission of a crime specified in this subsection before the ef-  
8 fective date of this act and is presently confined as a result of such con-  
9 viction or adjudication in any state correctional facility or county jail or is  
10 presently serving a sentence under K.S.A. 21-4603, 21-4603d, 22-3717 or  
11 K.S.A. 2008 Supp. 38-2361, and amendments thereto.
- 12 (b) Notwithstanding any other provision of law, the Kansas bureau of  
13 investigation is authorized to obtain fingerprints and other identifiers for  
14 all persons, whether juveniles or adults, covered by this act.
- 15 (c) Any person required by paragraphs (a)(1) and (a)(2) to provide  
16 such specimen or sample shall be ordered by the court to have such  
17 specimen or sample collected within 10 days after sentencing or  
18 adjudication:
- 19 (1) If placed directly on probation, that person must provide such  
20 specimen or sample, at a collection site designated by the Kansas bureau  
21 of investigation. Collection of specimens shall be conducted by qualified  
22 volunteers, contractual personnel or employees designated by the Kansas  
23 bureau of investigation. Failure to cooperate with the collection of the  
24 specimens and any deliberate act by that person intended to impede,  
25 delay or stop the collection of the specimens shall be punishable as con-  
26 tempt of court and constitute grounds to revoke probation;
- 27 (2) if sentenced to the secretary of corrections, such specimen or  
28 sample will be obtained as soon as practical upon arrival at the correc-  
29 tional facility; or
- 30 (3) if a juvenile offender is placed in the custody of the commissioner  
31 of juvenile justice, in a youth residential facility or in a juvenile correc-  
32 tional facility, such specimen or sample will be obtained as soon as prac-  
33 tical upon arrival.
- 34 (d) Any person required by paragraph (a)(3) to provide such speci-  
35 men or sample shall be required to provide such samples prior to final  
36 discharge or conditional release at a collection site designated by the  
37 Kansas bureau of investigation. Collection of specimens shall be con-  
38 ducted by qualified volunteers, contractual personnel or employees des-  
39 ignated by the Kansas bureau of investigation.
- 40 (e) (1) ~~On and after January 1, 2007 through June 30, 2008, any adult~~  
41 ~~arrested or charged or juvenile placed in custody for or charged with the~~  
42 ~~commission or attempted commission of any person felony or drug se-~~  
43 ~~verity level 1 or 2 felony shall be required to submit such specimen or~~

1 ~~sample at the same time such person is fingerprinted pursuant to the~~  
2 ~~booking procedure.~~

3 ~~(2)~~ On and after July 1, 2008, except as provided further, any adult  
4 arrested or charged or juvenile placed in custody for or charged with the  
5 commission or attempted commission of any felony; a violation of sub-  
6 section (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508; a violation  
7 of K.S.A. 21-4310; a violation of K.S.A. 21-3424, and amendments  
8 thereto, when the victim is less than 18 years of age; a violation of K.S.A.  
9 21-3507, and amendments thereto, when one of the parties involved is  
10 less than 18 years of age; a violation of subsection (b)(1) of K.S.A. 21-  
11 3513, and amendments thereto, when one of the parties involved is less  
12 than 18 years of age; a violation of K.S.A. 21-3515, and amendments  
13 thereto, when one of the parties involved is less than 18 years of age; or  
14 a violation of K.S.A. 21-3517, and amendments thereto; shall be required  
15 to submit such specimen or sample at the same time such person is fin-  
16 gerprinted pursuant to the booking procedure.

17 ~~(3)~~ (2) Prior to taking such samples, the arresting, charging or cus-  
18 todial law enforcement agency shall search the Kansas criminal history  
19 files through the Kansas criminal justice information system to determine  
20 if such person's sample is currently on file with the Kansas bureau of  
21 investigation. In the event that it cannot reasonably be established that a  
22 DNA sample for such person is on file at the Kansas bureau of investi-  
23 gation, the arresting, charging or custodial law enforcement agency shall  
24 cause a sample to be collected. If such person's sample is on file with the  
25 Kansas bureau of investigation, the law enforcement agency is not re-  
26 quired to take the sample.

27 ~~(4)~~ (3) If a court later determines that there was not probable cause  
28 for the arrest, charge or placement in custody or the charges are otherwise  
29 dismissed, and the case is not appealed, the Kansas bureau of investiga-  
30 tion, upon petition by such person, shall expunge both the DNA sample  
31 and the profile record of such person.

32 ~~(5)~~ (4) If a conviction against a person, who is required to submit  
33 such specimen or sample, is expunged or a verdict of acquittal with regard  
34 to such person is returned, the Kansas bureau of investigation shall, upon  
35 petition by such person, expunge both the DNA sample and the profile  
36 record of such person.

37 (f) All persons required to register as offenders pursuant to K.S.A.  
38 22-4901 et seq., and amendments thereto, shall be required to submit  
39 specimens of blood or an oral or other biological sample authorized by  
40 the Kansas bureau of investigation to the Kansas bureau of investigation  
41 in accordance with the provisions of this act.

42 (g) The Kansas bureau of investigation shall provide all specimen vi-  
43 als, mailing tubes, labels and instructions necessary for the collection of

1 blood, oral or other biological samples. The collection of samples shall be  
2 performed in a medically approved manner. No person authorized by this  
3 section to withdraw blood, and no person assisting in the collection of  
4 these samples shall be liable in any civil or criminal action when the act  
5 is performed in a reasonable manner according to generally accepted  
6 medical practices. The withdrawal of blood for purposes of this act may  
7 be performed only by: (1) A person licensed to practice medicine and  
8 surgery or a person acting under the supervision of any such licensed  
9 person; (2) a registered nurse or a licensed practical nurse; or (3) any  
10 qualified medical technician including, but not limited to, an emergency  
11 medical technician-intermediate or mobile intensive care technician, as  
12 those terms are defined in K.S.A. 65-6112, and amendments thereto, or  
13 a phlebotomist. The samples shall thereafter be forwarded to the Kansas  
14 bureau of investigation. The bureau shall analyze the samples to the ex-  
15 tent allowed by funding available for this purpose.

16 (h) The DNA (deoxyribonucleic acid) records and DNA samples shall  
17 be maintained by the Kansas bureau of investigation. The Kansas bureau  
18 of investigation shall establish, implement and maintain a statewide au-  
19 tomated DNA databank and DNA database capable of, but not limited  
20 to, searching, matching and storing DNA records. The DNA database as  
21 established by this act shall be compatible with the procedures specified  
22 by the federal bureau of investigation's combined DNA index system  
23 (CODIS). The Kansas bureau of investigation shall participate in the  
24 CODIS program by sharing data and utilizing compatible test procedures,  
25 laboratory equipment, supplies and computer software.

26 (i) The DNA records obtained pursuant to this act shall be confiden-  
27 tial and shall be released only to authorized criminal justice agencies. The  
28 DNA records shall be used only for law enforcement identification pur-  
29 poses or to assist in the recovery or identification of human remains from  
30 disasters or for other humanitarian identification purposes, including  
31 identification of missing persons.

32 (j) (1) The Kansas bureau of investigation shall be the state central  
33 repository for all DNA records and DNA samples obtained pursuant to  
34 this act. The Kansas bureau of investigation shall promulgate rules and  
35 regulations for: (A) The form and manner of the collection and mainte-  
36 nance of DNA samples;

37 (B) a procedure which allows the defendant to petition to expunge  
38 and destroy the DNA samples and profile record in the event of a dis-  
39 missal of charges, expungement or acquittal at trial; and

40 (C) other procedures for the operation of this act.

41 (2) These rules and regulations also shall require compliance with  
42 national quality assurance standards to ensure that the DNA records sat-  
43 isfy standards of acceptance of such records into the national DNA iden-

1 tification index.

2 (3) The provisions of the Kansas administrative procedure act shall  
3 apply to all actions taken under the rules and regulations so promulgated.

4 (k) The Kansas bureau of investigation is authorized to contract with  
5 third parties for the purposes of implementing this section. Any other  
6 party contracting to carry out the functions of this section shall be subject  
7 to the same restrictions and requirements of this section, insofar as ap-  
8 plicable, as the bureau, as well as any additional restrictions imposed by  
9 the bureau.

10 (l) In the event that a person's DNA sample is lost or is not adequate  
11 for any reason, the person shall provide another sample for analysis.

12 (m) Any person who is subject to the requirements of this section,  
13 and who, after receiving notification of the requirement to provide a DNA  
14 specimen, knowingly refuses to provide such DNA specimen, shall be  
15 guilty of a class A nonperson misdemeanor.

16 Sec. 31. K.S.A. 21-3301 is hereby amended to read as follows: 21-  
17 3301. (a) An attempt is any overt act toward the perpetration of a crime  
18 done by a person who intends to commit such crime but fails in the  
19 perpetration thereof or is prevented or intercepted in executing such  
20 crime.

21 (b) It shall not be a defense to a charge of attempt that the circum-  
22 stances under which the act was performed or the means employed or  
23 the act itself were such that the commission of the crime was not possible.

24 (c) An attempt to commit an off-grid felony shall be ranked at ~~non-~~  
25 ~~drug~~ severity level 1. An attempt to commit any other ~~nondrug~~ felony  
26 shall be ranked on the ~~nondrug~~ scale at two severity levels below the  
27 appropriate level for the underlying or completed crime. The lowest se-  
28 verity level for an attempt to commit a ~~nondrug~~ felony shall be level 10.  
29 The provisions of this subsection shall not apply to a violation of attempt-  
30 ing to commit the crime of terrorism pursuant to K.S.A. 21-3449, and  
31 amendments thereto, or of illegal use of weapons of mass destruction  
32 pursuant to K.S.A. 21-3450, and amendments thereto.

33 ~~(d) An attempt to commit a felony which prescribes a sentence on~~  
34 ~~the drug grid shall reduce the prison term prescribed in the drug grid~~  
35 ~~block for an underlying or completed crime by six months.~~

36 ~~(e)~~ An attempt to commit a class A person misdemeanor is a class B  
37 person misdemeanor. An attempt to commit a class A nonperson mis-  
38 demeanor is a class B nonperson misdemeanor.

39 ~~(f)~~ (e) An attempt to commit a class B or C misdemeanor is a class C  
40 misdemeanor.

41 Sec. 32. K.S.A. 21-3302 is hereby amended to read as follows: 21-  
42 3302. (a) A conspiracy is an agreement with another person to commit a  
43 crime or to assist in committing a crime. No person may be convicted of

1 a conspiracy unless an overt act in furtherance of such conspiracy is al-  
2 leged and proved to have been committed by such person or by a co-  
3 conspirator.

4 (b) It shall be a defense to a charge of conspiracy that the accused  
5 voluntarily and in good faith withdrew from the conspiracy, and com-  
6 municated the fact of such withdrawal to one or more of the accused  
7 person's co-conspirators, before any overt act in furtherance of the con-  
8 spiracy was committed by the accused or by a co-conspirator.

9 (c) Conspiracy to commit an off-grid felony shall be ranked at ~~non-~~  
10 ~~drug~~ severity level 2. Conspiracy to commit any other ~~non~~~~drug~~ felony  
11 shall be ranked on the ~~non~~~~drug~~ scale at two severity levels below the  
12 appropriate level for the underlying or completed crime. The lowest se-  
13 verity level for conspiracy to commit a ~~non~~~~drug~~ felony shall be level 10.  
14 The provisions of this subsection shall not apply to a violation of conspir-  
15 acy to commit the crime of terrorism pursuant to K.S.A. 21-3449, and  
16 amendments thereto, or of illegal use of weapons of mass destruction  
17 pursuant to K.S.A. 21-3450, and amendments thereto.

18 (d) ~~Conspiracy to commit a felony which prescribes a sentence on~~  
19 ~~the drug grid shall reduce the prison term prescribed in the drug grid~~  
20 ~~block for an underlying or completed crime by six months.~~

21 ~~(e)~~ A conspiracy to commit a misdemeanor is a class C misdemeanor.

22 Sec. 33. K.S.A. 21-3303 is hereby amended to read as follows: 21-  
23 3303. (a) Criminal solicitation is commanding, encouraging or requesting  
24 another person to commit a felony, attempt to commit a felony or aid and  
25 abet in the commission or attempted commission of a felony for the pur-  
26 pose of promoting or facilitating the felony.

27 (b) It is immaterial under subsection (a) that the actor fails to com-  
28 municate with the person solicited to commit a felony if the person's  
29 conduct was designed to effect a communication.

30 (c) It is an affirmative defense that the actor, after soliciting another  
31 person to commit a felony, persuaded that person not to do so or oth-  
32 erwise prevented the commission of the felony, under circumstances  
33 manifesting a complete and voluntary renunciation of the actor's criminal  
34 purposes.

35 (d) Criminal solicitation to commit an off-grid felony shall be ranked  
36 at ~~non~~~~drug~~ severity level 3. Criminal solicitation to commit any other  
37 ~~non~~~~drug~~ felony shall be ranked on the ~~non~~~~drug~~ scale at three severity  
38 levels below the appropriate level for the underlying or completed crime.  
39 The lowest severity level for criminal solicitation to commit a ~~non~~~~drug~~  
40 felony shall be level 10. The provisions of this subsection shall not apply  
41 to a violation of criminal solicitation to commit the crime of terrorism  
42 pursuant to K.S.A. 21-3449, and amendments thereto, or of illegal use of  
43 weapons of mass destruction pursuant to K.S.A. 21-3450, and amend-

1 ments thereto.

2 ~~(c) Criminal solicitation to commit a felony which prescribes a sen-~~  
3 ~~tence on the drug grid shall reduce the prison term prescribed in the~~  
4 ~~drug grid block for an underlying or completed crime by six months.~~

5 Sec. 34. K.S.A. 21-3411 is hereby amended to read as follows: 21-  
6 3411. (a) Aggravated assault of a law enforcement officer is an aggravated  
7 assault, as defined in K.S.A. 21-3410 and amendments thereto:

8 (1) Committed against a uniformed or properly identified state,  
9 county or city law enforcement officer while such officer is engaged in  
10 the performance of such officer's duty; or

11 (2) committed against a uniformed or properly identified university  
12 or campus police officer while such officer is engaged in the performance  
13 of such officer's duty.

14 (b) Aggravated assault of a law enforcement officer is a severity level  
15 6, person felony. ~~A person convicted of aggravated assault of a law en-~~  
16 ~~forcement officer shall be subject to the provisions of subsection (g) of~~  
17 ~~K.S.A. 21-4704, and amendments thereto.~~

18 Sec. 35. K.S.A. 2008 Supp. 21-3412a is hereby amended to read as  
19 follows: 21-3412a. (a) Domestic battery is:

20 (1) Intentionally or recklessly causing bodily harm by a family or  
21 household member against a family or household member; or

22 (2) intentionally causing physical contact with a family or household  
23 member by a family or household member when done in a rude, insulting  
24 or angry manner.

25 (b) (1) Upon a first conviction of a violation of domestic battery, a  
26 person shall be guilty of a class B person misdemeanor and sentenced to  
27 not less than 48 consecutive hours nor more than six months' imprison-  
28 ment and fined not less than \$200, nor more than \$500 or in the court's  
29 discretion the court may enter an order which requires the person enroll  
30 in and successfully complete a **behavior modification treatment pro-**  
31 **gram for domestic violence prevention program.**

32 ~~(2) If, within five years immediately preceding commission of the~~  
33 ~~crime, a person is convicted of a violation of domestic battery a second~~  
34 ~~time, such~~ *Upon a second conviction of a violation of domestic battery, a*  
35 *person shall be guilty of a class A person misdemeanor and sentenced to*  
36 *not less than 90 days nor more than one year's imprisonment and fined*  
37 *not less than \$500 nor more than \$1,000. The five days' imprisonment*  
38 *mandated by this subsection may be served in a work release program*  
39 *only after such person has served 48 consecutive hours' imprisonment,*  
40 *provided such work release program requires such person to return to*  
41 *confinement at the end of each day in the work release program. The*  
42 *person convicted must serve at least five consecutive days' imprisonment*  
43 *before the person is granted probation, suspension or reduction of sen-*

1 tence or parole or is otherwise released. **Such probation or parole shall**  
 2 **be supervised by court services.** As a condition of any grant of pro-  
 3 bation, suspension of sentence or parole or of any other release, the per-  
 4 son shall be required to enter into and complete a **behavior modifica-**  
 5 **tion** treatment program for domestic violence ~~prevention.~~

6 ~~(3) If, within five years immediately preceding commission of the~~  
 7 ~~crime, a person is convicted of a violation of domestic battery Upon a~~  
 8 ~~third or subsequent time, such conviction of a violation of domestic bat-~~  
 9 ~~tery, a person shall be guilty of a severity level 7, person felony and~~  
 10 ~~sentenced to not less than 90 days nor more than one year's imprisonment~~  
 11 ~~and fined not less than \$1,000 nor more than \$7,500. The person con-~~  
 12 ~~victed shall not be eligible for release on probation, suspension or reduc-~~  
 13 ~~tion of sentence or parole until the person has served at least 90 days'~~  
 14 ~~imprisonment.~~

15 ~~(A) If within five years immediately preceding the commission of the~~  
 16 ~~crime, a person is convicted of domestic battery:~~

17 ~~(i) A third time and is sentenced to probation, such person shall~~  
 18 ~~be sentenced to serve not less than 30 days imprisonment as a condition~~  
 19 ~~of probation. The person convicted shall not be eligible for release on~~  
 20 ~~probation, suspension or reduction of sentence or parole until the person~~  
 21 ~~has served at least 30 days' imprisonment.~~

22 ~~(ii) A fourth time and is sentenced to probation, such person shall~~  
 23 ~~be sentenced to serve not less than 90 days imprisonment as a condition~~  
 24 ~~of probation. The person convicted shall not be eligible for release on~~  
 25 ~~probation, suspension or reduction of sentence or parole until the person~~  
 26 ~~has served at least 90 days' imprisonment.~~

27 ~~—(iii) A fifth or subsequent time and is sentenced to probation, such~~  
 28 ~~person shall be sentenced to serve not less than one year imprisonment~~  
 29 ~~as a condition of probation. The person convicted shall not be eligible~~  
 30 ~~for release on probation, suspension or reduction of sentence or parole~~  
 31 ~~until the person has served at least one year imprisonment.~~

32 **(B) If the offender is sentenced to probation pursuant to this**  
 33 **paragraph, such offender shall be supervised by community cor-**  
 34 **rectional services upon release.**

35 ~~(c) On a third or subsequent conviction of domestic battery, within five~~  
 36 ~~years immediately preceding the commission of the crime, the court shall~~  
 37 ~~require as a condition of probation or parole that such person enter into~~  
 38 ~~and complete a behavior modification treatment program for domestic~~  
 39 ~~violence. If the person does not enter into and complete a behavior~~  
 40 ~~modification treatment program for domestic violence, the person shall~~  
 41 ~~serve not less than 180 days nor more than one year's imprisonment. The~~  
 42 ~~underlying prison sentence. The 90 days' imprisonment mandated by~~  
 43 ~~this subsection may be served in a work release program only after such~~

1 ~~person has served 48 consecutive hours' imprisonment, provided such~~  
2 ~~work release program requires such person to return to confinement at~~  
3 ~~the end of each day in the work release program.~~

4 ~~—(e) (d) As used in this section:~~

5 (1) Family or household member means persons 18 years of age or  
6 older who are spouses, former spouses, parents or stepparents and chil-  
7 dren or stepchildren, and persons who are presently residing together or  
8 who have resided together in the past, and persons who have a child in  
9 common regardless of whether they have been married or who have lived  
10 together at any time. Family or household member also includes a man  
11 and woman if the woman is pregnant and the man is alleged to be the  
12 father, regardless of whether they have been married or have lived to-  
13 gether at any time; and

14 (2) for the purpose of determining whether a conviction is a first,  
15 second, third or subsequent conviction in sentencing under this section:

16 (A) "Conviction" includes being convicted of a violation of this sec-  
17 tion or entering into a diversion or deferred judgment agreement in lieu  
18 of further criminal proceedings on a complaint alleging a violation of this  
19 section;

20 (B) "conviction" includes being convicted of a violation of a law of  
21 another state, or an ordinance of any city, or resolution of any county,  
22 which prohibits the acts that this section prohibits or entering into a di-  
23 version or deferred judgment agreement in lieu of further criminal pro-  
24 ceedings in a case alleging a violation of such law, ordinance or resolution;

25 (C) only convictions occurring in the immediately preceding five  
26 years including prior to the effective date of this act shall be taken into  
27 account, but the court may consider other prior convictions in determin-  
28 ing the sentence to be imposed within the limits provided for a first,  
29 second, third or subsequent offender, whichever is applicable; and

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

32 (E) A person may enter into a diversion agreement in lieu of further  
33 criminal proceedings for a violation of this section or an ordinance of any  
34 city or resolution of any county which prohibits the acts that this section  
35 prohibits only twice during any three-year period.

36 ~~(e) Persons serving the mandatory sentence shall be supervised by~~  
37 ~~community correctional services upon release. Subject to availability, such~~  
38 ~~supervision shall include the offender participating in a behavior modi-~~  
39 ~~fication treatment program.~~

40 Sec. 36. K.S.A. 21-3413 is hereby amended to read as follows: 21-  
41 3413. (a) Battery against a law enforcement officer is:

42 (1) Battery, as defined in subsection (a)(2) of K.S.A. 21-3412, and  
43 amendments thereto, committed against: (A) A uniformed or properly

1 identified university or campus police officer while such officer is engaged  
2 in the performance of such officer's duty; or (B) a uniformed or properly  
3 identified state, county or city law enforcement officer, other than a state  
4 correctional officer or employee, a city or county correctional officer or  
5 employee, a juvenile correctional facility officer or employee or a juvenile  
6 detention facility officer or employee, while such officer is engaged in the  
7 performance of such officer's duty; or  
8 (2) battery, as defined in subsection (a)(1) of K.S.A. 21-3412, and  
9 amendments thereto, committed against: (A) A uniformed or properly  
10 identified university or campus police officer while such officer is engaged  
11 in the performance of such officer's duty; or (B) a uniformed or properly  
12 identified state, county or city law enforcement officer, other than a state  
13 correctional officer or employee, a city or county correctional officer or  
14 employee, a juvenile correctional facility officer or employee or a juvenile  
15 detention facility officer or employee, while such officer is engaged in the  
16 performance of such officer's duty; or  
17 (3) battery, as defined in K.S.A. 21-3412, and amendments thereto,  
18 committed against: (A) A state correctional officer or employee by a per-  
19 son in custody of the secretary of corrections, while such officer or em-  
20 ployee is engaged in the performance of such officer's or employee's duty;  
21 (B) committed against a juvenile correctional facility officer or em-  
22 ployee by a person confined in such juvenile correctional facility, while  
23 such officer or employee is engaged in the performance of such officer's  
24 or employee's duty;  
25 (C) committed against a juvenile detention facility officer or em-  
26 ployee by a person confined in such juvenile detention facility, while such  
27 officer or employee is engaged in the performance of such officer's or  
28 employee's duty; or  
29 (D) committed against a city or county correctional officer or em-  
30 ployee by a person confined in a city holding facility or county jail facility,  
31 while such officer or employee is engaged in the performance of such  
32 officer's or employee's duty.  
33 (b) Battery against a law enforcement officer as defined in subsection  
34 (a)(1) is a class A person misdemeanor. Battery against a law enforcement  
35 officer as defined in subsection (a)(2) is a severity level 7, person felony.  
36 Battery against a law enforcement officer as defined in subsection (a)(3)  
37 is a severity level 9, person felony *and such sentence shall be presumed*  
38 *imprisonment.*  
39 (c) As used in this section:  
40 (1) "Correctional institution" means any institution or facility under  
41 the supervision and control of the secretary of corrections.  
42 (2) "State correctional officer or employee" means any officer or em-  
43 ployee of the Kansas department of corrections or any independent con-

1 tractor, or any employee of such contractor, working at a correctional  
2 institution.

3 (3) “Juvenile correctional facility officer or employee” means any of-  
4 ficer or employee of the juvenile justice authority or any independent  
5 contractor, or any employee of such contractor, working at a juvenile  
6 correctional facility, as defined in K.S.A. 2008 Supp. 38-2302, and amend-  
7 ments thereto.

8 (4) “Juvenile detention facility officer or employee” means any officer  
9 or employee of a juvenile detention facility as defined in K.S.A. 2008  
10 Supp. 38-2302, and amendments thereto.

11 (5) “City or county correctional officer or employee” means any cor-  
12 rectional officer or employee of the city or county or any independent  
13 contractor, or any employee of such contractor, working at a city holding  
14 facility or county jail facility.

15 Sec. 37. K.S.A. 21-3414 is hereby amended to read as follows: 21-  
16 3414. (a) Aggravated battery is:

17 (1) (A) Intentionally causing great bodily harm to another person or  
18 disfigurement of another person; or

19 (B) intentionally causing bodily harm to another person with a deadly  
20 weapon, or in any manner whereby great bodily harm, disfigurement or  
21 death can be inflicted; or

22 (C) intentionally causing physical contact with another person when  
23 done in a rude, insulting or angry manner with a deadly weapon, or in  
24 any manner whereby great bodily harm, disfigurement or death can be  
25 inflicted; or

26 (2) (A) recklessly causing great bodily harm to another person or dis-  
27 figurement of another person; or

28 (B) recklessly causing bodily harm to another person with a deadly  
29 weapon, or in any manner whereby great bodily harm, disfigurement or  
30 death can be inflicted.

31 (b) Aggravated battery as described in subsection (a)(1)(A) is a se-  
32 verity level 4, person felony. Aggravated battery as described in subsec-  
33 tions (a)(1)(B) and (a)(1)(C) is a severity level 7, person felony. Aggravated  
34 battery as described in subsection (a)(2)(A) is a severity level ~~5~~ 6, person  
35 felony. Aggravated battery as described in subsection (a)(2)(B) is a sever-  
36 ity level ~~8~~ 9, person felony. A person convicted of aggravated battery shall  
37 be subject to the provisions of subsection (h) of K.S.A. 21-4704, and  
38 amendments thereto.

39 Sec. 38. K.S.A. 21-3415 is hereby amended to read as follows: 21-  
40 3415. (a) Aggravated battery against a law enforcement officer is:

41 (1) An aggravated battery, as defined in subsection (a)(1)(A) of K.S.A.  
42 21-3414, and amendments thereto, committed against: (A) A uniformed  
43 or properly identified state, county or city law enforcement officer while

1 the officer is engaged in the performance of the officer's duty; or (B) a  
 2 uniformed or properly identified university or campus police officer while  
 3 such officer is engaged in the performance of such officer's duty;

4 (2) an aggravated battery, as defined in subsection (a)(1)(B) or  
 5 (a)(1)(C) of K.S.A. 21-3414, and amendments thereto, committed against:  
 6 (A) A uniformed or properly identified state, county or city law enforce-  
 7 ment officer while the officer is engaged in the performance of the offi-  
 8 cer's duty; or (B) a uniformed or properly identified university or campus  
 9 police officer while such officer is engaged in the performance of such  
 10 officer's duty; or

11 (3) intentionally causing, with a motor vehicle, bodily harm to: (A) A  
 12 uniformed or properly identified state, county or city law enforcement  
 13 officer while the officer is engaged in the performance of the officer's  
 14 duty; or (B) a uniformed or properly identified university or campus po-  
 15 lice officer while such officer is engaged in the performance of such of-  
 16 ficer's duty.

17 (b) (1) Aggravated battery against a law enforcement officer as de-  
 18 scribed in subsection (a)(1) or (a)(3) is a severity level 3, person felony.

19 (2) Aggravated battery against a law enforcement officer as described  
 20 in subsection (a)(2) is a severity level ~~4~~ 5, person felony.

21 ~~(3) A person convicted of aggravated battery against a law enforce-~~  
 22 ~~ment officer shall be subject to the provisions of subsection (g) of K.S.A.~~  
 23 ~~21-4704, and amendments thereto.~~

24 ~~Sec. 39. K.S.A. 2008 Supp. 21-3419a is hereby amended to read as~~  
 25 ~~follows: 21-3419a. (a) Aggravated criminal threat is the commission of~~  
 26 ~~one or more crimes of criminal threat, as defined in K.S.A. 21-3419 and~~  
 27 ~~amendments thereto, when a public, commercial or industrial building,~~  
 28 ~~place of assembly or facility of transportation is evacuated as a result of~~  
 29 ~~the threat or threats.~~

30 ~~—(b) Aggravated criminal threat is a severity level 5, person felony,~~  
 31 ~~when the value of the loss of productivity is in an amount of:~~

32 ~~—(1) \$100,000 or more, is a severity level 5, nonperson felony.~~

33 ~~—(2) At least \$75,000 but less than \$100,000, is a severity level 6, non-~~  
 34 ~~person felony.~~

35 ~~—(3) At least \$50,000 but less than \$75,000, is a severity level 7, non-~~  
 36 ~~person felony.~~

37 ~~—(4) At least \$25,000 but less than \$50,000, is a severity level 8, non-~~  
 38 ~~person felony.~~

39 ~~—(5) At least \$2,000 but less than \$25,000, is a severity level 9, non-~~  
 40 ~~person felony.~~

41 ~~—(6) At least \$1,000 but less than \$2,000, is a severity level 10, non-~~  
 42 ~~person felony.~~

43 ~~—(7) At least \$500 but less than \$1,000, is a class A nonperson~~

1 ~~misdemeanor.~~

2 ~~—(8) Less than \$500 is a class B nonperson misdemeanor.~~

3 Sec. ~~40~~ **39**. K.S.A. 21-3421 is hereby amended to read as follows:  
4 21-3421. Aggravated kidnapping is kidnapping, as defined in K.S.A. 21-  
5 3420 and amendments thereto, when bodily harm is inflicted upon the  
6 person kidnapped.

7 Aggravated kidnapping is a severity level ~~±~~ 2, person felony.

8 Sec. ~~41~~ **40**. K.S.A. 21-3435 is hereby amended to read as follows:  
9 21-3435. (a) It is unlawful for an individual who knows oneself to be  
10 infected with a life threatening communicable disease knowingly:

11 (1) To engage in sexual intercourse or sodomy with another individual  
12 with the intent to expose that individual to that life threatening commu-  
13 nicable disease;

14 (2) to sell or donate one's own blood, blood products, semen, tissue,  
15 organs or other body fluids with the intent to expose the recipient to a  
16 life threatening communicable disease;

17 (3) to share with another individual a hypodermic needle, syringe, or  
18 both, for the introduction of drugs or any other substance into, or for the  
19 withdrawal of blood or body fluids from, the other individual's body with  
20 the intent to expose another person to a life threatening communicable  
21 disease.

22 (b) As used in this section, the term "sexual intercourse" shall not  
23 include penetration by any object other than the male sex organ; the term  
24 "sodomy" shall not include the penetration of the anal opening by any  
25 object other than the male sex organ.

26 (c) Violation of this section is a severity level ~~7~~ 6, person felony.

27 Sec. ~~42~~ **41**. K.S.A. 21-3436 is hereby amended to read as follows:  
28 21-3436. (a) Any of the following felonies shall be deemed an inherently  
29 dangerous felony whether or not such felony is so distinct from the homi-  
30 cide alleged to be a violation of subsection (b) of K.S.A. 21-3401, and  
31 amendments thereto, as not to be an ingredient of the homicide alleged  
32 to be a violation of subsection (b) of K.S.A. 21-3401, and amendments  
33 thereto:

34 (1) Kidnapping, as defined in K.S.A. 21-3420, and amendments  
35 thereto;

36 (2) aggravated kidnapping, as defined in K.S.A. 21-3421, and amend-  
37 ments thereto;

38 (3) robbery, as defined in K.S.A. 21-3426, and amendments thereto;

39 (4) aggravated robbery, as defined in K.S.A. 21-3427, and amend-  
40 ments thereto;

41 (5) rape, as defined in K.S.A. 21-3502, and amendments thereto;

42 (6) aggravated criminal sodomy, as defined in K.S.A. 21-3506, and  
43 amendments thereto;

- 1 (7) abuse of a child, as defined in K.S.A. 21-3609, and amendments  
2 thereto;
- 3 (8) felony theft under subsection (a) or (c) of K.S.A. 21-3701, and  
4 amendments thereto;
- 5 (9) burglary, as defined in K.S.A. 21-3715, and amendments thereto;
- 6 (10) aggravated burglary, as defined in K.S.A. 21-3716, and amend-  
7 ments thereto;
- 8 (11) arson, as defined in K.S.A. 21-3718, and amendments thereto;
- 9 (12) aggravated arson, as defined in K.S.A. 21-3719, and amendments  
10 thereto;
- 11 (13) treason, as defined in K.S.A. 21-3801, and amendments thereto;
- 12 (14) any felony offense as provided in ~~K.S.A. 65-4127a, 65-4127b or~~  
13 ~~65-4159 or 65-4160 through 65-4164~~ section 3, 5 or 6, and amendments  
14 thereto;
- 15 (15) any felony offense as provided in K.S.A. 21-4219, and amend-  
16 ments thereto;
- 17 (16) endangering the food supply as defined in K.S.A. 21-4221, and  
18 amendments thereto;
- 19 (17) aggravated endangering the food supply as defined in K.S.A. 21-  
20 4222, and amendments thereto;
- 21 (18) fleeing or attempting to elude a police officer, as defined in sub-  
22 section (b) of K.S.A. 8-1568, and amendments thereto; or
- 23 (19) aggravated endangering a child, as defined in subsection (a)(1)  
24 of K.S.A. 21-3608a, and amendments thereto.
- 25 (b) Any of the following felonies shall be deemed an inherently dan-  
26 gerous felony only when such felony is so distinct from the homicide  
27 alleged to be a violation of subsection (b) of K.S.A. 21-3401, and amend-  
28 ments thereto, as to not be an ingredient of the homicide alleged to be  
29 a violation of subsection (b) of K.S.A. 21-3401, and amendments thereto:
  - 30 (1) Murder in the first degree, as defined in subsection (a) of K.S.A.  
31 21-3401, and amendments thereto;
  - 32 (2) murder in the second degree, as defined in subsection (a) of  
33 K.S.A. 21-3402, and amendments thereto;
  - 34 (3) voluntary manslaughter, as defined in subsection (a) of K.S.A. 21-  
35 3403, and amendments thereto;
  - 36 (4) aggravated assault, as defined in K.S.A. 21-3410, and amendments  
37 thereto;
  - 38 (5) aggravated assault of a law enforcement officer, as defined in  
39 K.S.A. 21-3411, and amendments thereto;
  - 40 (6) aggravated battery, as defined in subsection (a)(1) of K.S.A. 21-  
41 3414, and amendments thereto; or
  - 42 (7) aggravated battery against a law enforcement officer, as defined  
43 in K.S.A. 21-3415, and amendments thereto.

- 1 (c) This section shall be part of and supplemental to the Kansas crim-  
2 inal code.
- 3 Sec. ~~43~~ **42**. K.S.A. 21-3437 is hereby amended to read as follows:  
4 21-3437. (a) Mistreatment of a dependent adult is knowingly and inten-  
5 tionally committing one or more of the following acts:
- 6 (1) Infliction of physical injury, unreasonable confinement or cruel  
7 punishment upon a dependent adult;
- 8 (2) taking unfair advantage of a dependent adult's physical or financial  
9 resources for another individual's personal or financial advantage by the  
10 use of undue influence, coercion, harassment, duress, deception, false  
11 representation or false pretense by a caretaker or another person; or
- 12 (3) omitting or depriving treatment, goods or services by a caretaker  
13 or another person which are necessary to maintain physical or mental  
14 health of a dependent adult.
- 15 (b) No dependent adult is considered to be mistreated for the sole  
16 reason that such dependent adult relies upon or is being furnished treat-  
17 ment by spiritual means through prayer in lieu of medical treatment in  
18 accordance with the tenets and practices of a recognized church or relig-  
19 ious denomination of which such dependent adult is a member or  
20 adherent.
- 21 (c) For purposes of this section: "Dependent adult" means an indi-  
22 vidual 18 years of age or older who is unable to protect their own interest.  
23 Such term shall include:
- 24 (1) Any resident of an adult care home including but not limited to  
25 those facilities defined by K.S.A. 39-923 and amendments thereto;
- 26 (2) any adult cared for in a private residence;
- 27 (3) any individual kept, cared for, treated, boarded or otherwise ac-  
28 commodated in a medical care facility;
- 29 (4) any individual with mental retardation or a developmental disa-  
30 bility receiving services through a community mental retardation facility  
31 or residential facility licensed under K.S.A. 75-3307b and amendments  
32 thereto;
- 33 (5) any individual with a developmental disability receiving services  
34 provided by a community service provider as provided in the develop-  
35 mental disability reform act; or
- 36 (6) any individual kept, cared for, treated, boarded or otherwise ac-  
37 commodated in a state psychiatric hospital or state institution for the  
38 mentally retarded.
- 39 (d) (1) Mistreatment of a dependent adult as defined in subsection  
40 (a)(1) is a severity level 6, person felony.
- 41 (2) Mistreatment of a dependent adult as defined in subsection (a)(2)  
42 ~~is a severity level 6, person felony if the aggregate amount of the value~~  
43 ~~of the resources is \$100,000 or more.~~

- 1 ~~—(3)—~~ Mistreatment of a dependent adult as defined in subsection (a)(2)  
 2 is a severity level 7, person felony if the aggregate amount of the value  
 3 of the resources is at least \$25,000 but less than \$100,000.
- 4 ~~—(4)—~~ Mistreatment of a dependent adult as defined in subsection (a)(2)  
 5 is a severity level 9, person felony if the aggregate amount of the value  
 6 of the resources is at least \$1,000 but less than \$25,000.
- 7 ~~—(5)—~~ Mistreatment of a dependent adult as defined in subsection (a)(2)  
 8 is a class A person misdemeanor if the aggregate amount of the value of  
 9 the resources is less than \$1,000, *if the aggregate amount of the value of*  
 10 *the resources is:*
- 11 (A) \$100,000 or more is a severity level 5, nonperson felony.  
 12 (B) At least \$75,000 but less than \$100,000 is a severity level 6, non-  
 13 person felony.  
 14 (C) At least \$50,000 but less than \$75,000 is a severity level 7, non-  
 15 person felony.  
 16 (D) At least \$25,000 but less than \$50,000 is a severity level 8, non-  
 17 person felony.  
 18 (E) At least \$2,000 but less than \$25,000 is a severity level 9, non-  
 19 person felony.  
 20 (F) At least \$1,000 but less than \$2,000 is a severity level 10, non-  
 21 person felony.  
 22 (G) At least \$500 but less than \$1,000 is a class A nonperson  
 23 misdemeanor.  
 24 (H) Less than \$500 is a class B nonperson misdemeanor.
- 25 ~~(6)~~ (3) Mistreatment of a dependent adult as defined in subsection  
 26 (a)(3) is a class A person misdemeanor.
- 27 ~~(7)~~ (4) Mistreatment of a dependent adult as defined in subsection  
 28 (a)(2) is a severity level 9, person felony if the aggregate amount of the  
 29 value of the resources is less than \$1,000 and committed by a person who  
 30 has, within five years immediately preceding commission of the crime,  
 31 been convicted of mistreatment of a dependent adult two or more times.
- 32 See. 44. K.S.A. 21-3447 is hereby amended to read as follows: 21-  
 33 3447. (a) Aggravated trafficking is:
- 34 ~~—(1)—~~ Trafficking, as defined in K.S.A. 21-3446, and amendments  
 35 thereto:
- 36 ~~—(A)—~~ Involving the commission or attempted commission of kidnap-  
 37 ping, as defined in K.S.A. 21-3420, and amendments thereto;  
 38 ~~—(B)—~~ committed in whole or in part for the purpose of the sexual grat-  
 39 ification of the defendant or another; or  
 40 ~~—(C)—~~ resulting in a death; or  
 41 ~~—(2)—~~ recruiting, harboring, transporting, providing or obtaining, by any  
 42 means, a person under 18 years of age knowing that the person, with or  
 43 without force, fraud, threat or coercion, will be used to engage in forced

1 ~~labor, involuntary servitude or sexual gratification of the defendant or~~  
2 ~~another.~~

3 ~~—(b) Except as provided further, aggravated trafficking is a severity~~  
4 ~~level 1 2, person felony. When the offender is 18 years of age or older,~~  
5 ~~aggravated trafficking, if the victim is less than 14 years of age, is an off-~~  
6 ~~grid person felony.~~

7 ~~—(c) This section shall be part of and supplemental to the Kansas crim-~~  
8 ~~inal code.~~

9 ~~Sec. 45. 43.~~ K.S.A. 21-3451 is hereby amended to read as follows:  
10 21-3451. (a) It is unlawful for any person knowingly or intentionally to  
11 receive or acquire property, or engage in transactions involving property,  
12 for the purpose of committing or furthering the commission of any vio-  
13 lation of K.S.A. 21-3449 or 21-3450, and amendments thereto. The pro-  
14 visions of this subsection do not apply to any transaction between an  
15 individual and that individual's counsel necessary to preserve that indi-  
16 vidual's right to representation, as guaranteed by section 10 of the bill of  
17 rights of the constitution of the state of Kansas and by the sixth amend-  
18 ment to the United States constitution. This exception does not create  
19 any presumption against or prohibition of the right of the state to seek  
20 and obtain forfeiture of any proceeds derived from a violation of K.S.A.  
21 21-3449 or 21-3450, and amendments thereto.

22 (b) It is unlawful for any person knowingly or intentionally to give,  
23 sell, transfer, trade, invest, conceal, transport or maintain an interest in  
24 or otherwise make available any property which that person knows is  
25 intended to be used for the purpose of committing or furthering the  
26 commission of any violation of K.S.A. 21-3449 or 21-3450, and amend-  
27 ments thereto.

28 (c) It is unlawful for any person knowingly or intentionally to direct,  
29 plan, organize, initiate, finance, manage, supervise or facilitate the trans-  
30 portation or transfer of property known to be for the purpose of com-  
31 mitting or furthering the commission of K.S.A. 21-3449 or 21-3450, and  
32 amendments thereto.

33 (d) It is unlawful for any person knowingly or intentionally to conduct  
34 a financial transaction involving property for the purpose of committing  
35 or furthering the commission of any violation of K.S.A. 21-3449 or 21-  
36 3450, and amendments thereto, when the transaction is designed in whole  
37 or in part to conceal or disguise the nature, location, source, ownership  
38 or control of the property known to be for the purpose of committing or  
39 furthering the commission of any violation of K.S.A. 21-3449 or 21-3450,  
40 and amendments thereto, or to avoid a transaction reporting requirement  
41 under state or federal law.

42 (e) A person who violates this section is guilty of ~~a severity level 1,~~  
43 ~~an off-grid person felony.~~

1 (f) As used in this section:

2 (1) “Property” means anything of value, and includes any interest in  
3 property, including any benefit, privilege, claim or right with respect to  
4 anything of value, whether real or personal, tangible or intangible;

5 (2) “transaction” includes a purchase, sale, trade, loan, pledge, in-  
6 vestment, gift, transfer, transmission, delivery, deposit, withdrawal, pay-  
7 ment, transfer between accounts, exchange of currency, extension of  
8 credit, purchase, or sale of any monetary instrument, use of a safe deposit  
9 box, or any other acquisition or disposition of property whatever means  
10 effected.

11 Sec. ~~46.~~ **44.** K.S.A. 21-3608a is hereby amended to read as follows:  
12 21-3608a. (a) Aggravated endangering a child is:

13 (1) Intentionally causing or permitting a child under the age of 18  
14 years to be placed in a situation in which the child’s life, body or health  
15 is ~~injured or~~ endangered;

16 (2) recklessly causing or permitting a child under the age of 18 years  
17 to be placed in a situation in which the child’s life, body or health is  
18 ~~injured or~~ endangered;

19 (3) causing or permitting such child to be in an environment where  
20 a person is ~~selling, offering for sale or having in such person’s possession~~  
21 ~~with intent to sell, deliver, distribute, prescribe, administer, dispense,~~  
22 ~~manufacture or attempt~~ **distributing, possessing with the intent to**  
23 **distribute, manufacturing or attempting** to manufacture any meth-  
24 amphetamine as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107,  
25 and amendments thereto; or

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

31 (b) Aggravated endangering a child is a severity level ~~9~~ 7, person  
32 felony.

33 (c) As used in this section:

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

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

38 (d) This section shall be part of and supplemental to the Kansas crim-  
39 inal code.

40 Sec. ~~47.~~ **45.** K.S.A. 21-3609 is hereby amended to read as follows:  
41 21-3609. (a) Abuse of a child is intentionally:

42 (1) Torturing, cruelly beating; *or* shaking which results in great bodily  
43 harm upon any child under the age of 18 years; or

- 1 (2) inflicting cruel and inhuman corporal punishment upon any child  
 2 under the age of 18 years.
- 3 (b) Abuse of a child *as described in subsection (a)(1)* is a severity level  
 4 ~~5~~ 3, person felony. *Abuse of a child as described in subsection (a)(2) is a*  
 5 *severity level 6, person felony.*
- 6 Sec. ~~48~~ 46. K.S.A. 21-3701 is hereby amended to read as follows:  
 7 21-3701. (a) Theft is any of the following acts done with intent to deprive  
 8 the owner permanently of the possession, use or benefit of the owner's  
 9 property:
- 10 (1) Obtaining or exerting unauthorized control over property;  
 11 (2) obtaining by deception control over property;  
 12 (3) obtaining by threat control over property; or  
 13 (4) obtaining control over stolen property knowing the property to  
 14 have been stolen by another.
- 15 (b) (1) Theft of property of the value of:
- 16 (A) \$100,000 or more is a severity level 5, nonperson felony.  
 17 ~~(2) Theft of property of the value of at least \$25,000 but less than~~  
 18 ~~\$100,000 is a severity level 7, nonperson felony.~~  
 19 ~~(3) Theft of property of the value of at least \$1,000 but less than~~  
 20 ~~\$25,000 is a severity level 9, nonperson felony.~~
- 21 (B) *At least \$75,000 but less than \$100,000 is a severity level 6, non-*  
 22 *person felony.*
- 23 (C) *At least \$50,000 but less than \$75,000 is a severity level 7, non-*  
 24 *person felony.*
- 25 (D) *At least \$25,000 but less than \$50,000 is a severity level 8, non-*  
 26 *person felony.*
- 27 (E) *At least \$2,000 but less than \$25,000 is a severity level 9, non-*  
 28 *person felony.*
- 29 (F) *At least \$1,000 but less than \$2,000 is a severity level 10, non-*  
 30 *person felony.*
- 31 (G) *At least \$500 but less than \$1,000 is a class A nonperson*  
 32 *misdemeanor.*
- 33 (H) *Less than \$500 is a class B nonperson misdemeanor.*
- 34 ~~(4)~~ (3) Theft of property regardless of the value from three separate  
 35 mercantile establishments within a period of 72 hours as part of the same  
 36 act or transaction or in two or more acts or transactions connected to-  
 37 gether or constituting parts of a common scheme or course of conduct is  
 38 a severity level 9, nonperson felony.
- 39 ~~(5) Theft of property of the value of less than \$1,000 is a class A~~  
 40 ~~nonperson misdemeanor.~~
- 41 ~~(6)~~ (4) Theft of property of the value of less than \$1,000 is a severity  
 42 level 9, nonperson felony if committed by a person who has been con-  
 43 victed of theft two or more times.

1 (c) Conviction of a violation of a municipal ordinance prohibiting acts  
2 which constitute theft as defined by this section shall be considered a  
3 conviction of theft for the purpose of determining the number of prior  
4 convictions and the classification of the crime under this section.

5 Sec. ~~49~~ 47. K.S.A. 21-3704 is hereby amended to read as follows:  
6 21-3704. (a) Theft of services is obtaining services from another by de-  
7 ception, threat, coercion, stealth, tampering or use of false token or  
8 device.

9 (b) “Services” within the meaning of this section, includes, but is not  
10 limited to, labor, professional service, cable television service, public or  
11 municipal utility or transportation service, telephone service, lodging, en-  
12 tertainment and the supplying of equipment for use. For purposes of this  
13 section, rural water districts and rural electric cooperatives shall be con-  
14 sidered public utilities.

15 (c) “Tampering” within the meaning of this section, includes, but is  
16 not limited to:

17 (1) Making a connection of any wire, conduit or device, to any service  
18 or transmission line owned by a public or municipal utility, or by a cable  
19 television service provider;

20 (2) defacing, puncturing, removing, reversing or altering any meter  
21 or any connections, for the purpose of securing unauthorized or unmea-  
22 sured electricity, natural gas, water, telephone service or cable television  
23 service;

24 (3) preventing any such meters from properly measuring or  
25 registering;

26 (4) knowingly taking, receiving, using or converting to such person’s  
27 own use, or the use of another, any electricity, water or natural gas which  
28 has not been measured; or any telephone or cable television service which  
29 has not been authorized; or

30 (5) causing, procuring, permitting, aiding or abetting any person to  
31 do any of the preceding acts.

32 (d) In any prosecution under this section, the existence of any of the  
33 connections of meters, alterations or use of unauthorized or unmeasured  
34 electricity, natural gas, water, telephone service or cable television serv-  
35 ice, specified in subsection (c), shall be prima facie evidence of intent to  
36 violate the provisions of this section by the person or persons using or  
37 receiving the direct benefits from the use of the electricity, natural gas,  
38 water, telephone service or cable television service passing through such  
39 connections or meters, or using the electricity, natural gas, water, tele-  
40 phone service or cable television service which has not been authorized  
41 or measured.

42 (e) (1) Theft of services of the value of:

43 (A) \$100,000 or more is a severity level 5, nonperson felony.

1 ~~(2) Theft of services of the value of at least \$25,000 but less than~~  
 2 ~~\$100,000 is a severity level 7, nonperson felony.~~

3 ~~(3) Theft of services of the value of at least \$1,000 but less than~~  
 4 ~~\$25,000 is a severity level 9, nonperson felony.~~

5 ~~(4) Theft of services of the value of less than \$1,000 is a class A~~  
 6 ~~nonperson misdemeanor.~~

7 (B) *At least \$75,000 but less than \$100,000 is a severity level 6, non-*  
 8 *person felony.*

9 (C) *At least \$50,000 but less than \$75,000 is a severity level 7, non-*  
 10 *person felony.*

11 (D) *At least \$25,000 but less than \$50,000 is a severity level 8, non-*  
 12 *person felony.*

13 (E) *At least \$2,000 but less than \$25,000 is a severity level 9, non-*  
 14 *person felony.*

15 (F) *At least \$1,000 but less than \$2,000 is a severity level 10, non-*  
 16 *person felony.*

17 (G) *At least \$500 but less than \$1,000 is a class A nonperson*  
 18 *misdemeanor.*

19 (H) *Less than \$500 is a class B nonperson misdemeanor.*

20 ~~Sec. 50.~~ **48.** K.S.A. 2008 Supp. 21-3705 is hereby amended to read  
 21 as follows: 21-3705. (a) Criminal deprivation of property is obtaining or  
 22 exerting unauthorized control over property, with intent to deprive the  
 23 owner of the temporary use thereof, without the owner's consent but not  
 24 with the intent of depriving the owner permanently of the possession, use  
 25 or benefit of such owner's property.

26 (b) Criminal deprivation of property that is a motor vehicle, as de-  
 27 fined in K.S.A. 8-1437, and amendments thereto:

28 (1) Upon a first ~~or second~~ conviction is a class A nonperson misde-  
 29 meanor. Upon a first conviction of this paragraph, a person shall be sen-  
 30 tenced to not less than 30 days nor more than one year's imprisonment  
 31 and fined not less than \$100. ~~Upon a second conviction of this paragraph,~~  
 32 ~~a person shall be sentenced to not less than 60 days nor more than one~~  
 33 ~~year's imprisonment and fined not less than \$200.~~ The person convicted  
 34 shall not be eligible for release on probation, suspension or reduction of  
 35 sentence or parole until the person has served the minimum mandatory  
 36 sentence as provided herein. The mandatory provisions of this subsection  
 37 shall not apply to any person where such application would result in a  
 38 manifest injustice; and

39 (2) upon a ~~third~~ *second* or subsequent conviction is a severity level 9  
 40 8, nonperson felony.

41 (c) Criminal deprivation of property other than a motor vehicle, as  
 42 defined in K.S.A. 8-1437, and amendments thereto, is a class A nonperson  
 43 misdemeanor. Upon a second or subsequent conviction of this subsection,

1 a person shall be sentenced to not less than 30 days imprisonment and  
2 fined not less than \$100, except that the provisions of this subsection  
3 relating to a second or subsequent conviction shall not apply to any person  
4 where such application would result in a manifest injustice.

5 ~~Sec. 51. 49.~~ K.S.A. 21-3707 is hereby amended to read as follows:  
6 21-3707. (a) Giving a worthless check is the making, drawing, issuing or  
7 delivering or causing or directing the making, drawing, issuing or deliv-  
8 ering of any check, order or draft on any bank, credit union, savings and  
9 loan association or depository for the payment of money or its equivalent  
10 with intent to defraud and knowing, at the time of the making, drawing,  
11 issuing or delivering of such check, order or draft, that the maker or  
12 drawer has no deposit in or credits with the drawee or has not sufficient  
13 funds in, or credits with, the drawee for the payment of such check, order  
14 or draft in full upon its presentation.

15 (b) In any prosecution against the maker or drawer of a check, order  
16 or draft payment, of which has been refused by the drawee on account  
17 of insufficient funds, the making, drawing, issuing or delivering of such  
18 check shall be prima facie evidence of intent to defraud and of knowledge  
19 of insufficient funds in, or on deposit with, the drawee: (1) Unless the  
20 maker or drawer pays the holder thereof the amount due thereon and a  
21 service charge not exceeding \$30 for each check, within seven days after  
22 notice has been given to the maker or drawer that such check, draft or  
23 order has not been paid by the drawee. As used in this section, “notice”  
24 includes oral or written notice to the person entitled thereto. Written  
25 notice shall be presumed to have been given when deposited as restricted  
26 matter in the United States mail, addressed to the person to be given  
27 notice at such person’s address as it appears on such check, draft or order;  
28 or (2) if a postdated date is placed on the check, order or draft without  
29 the knowledge or consent of the payee.

30 (c) In addition to all other costs and fees allowed by law, each pros-  
31 ecuting attorney who takes any action under the provisions of this section  
32 may collect from the issuer in such action an administrative handling cost,  
33 except in cases filed in a court of appropriate jurisdiction. The cost shall  
34 not exceed \$10 for each check. If the issuer of the check is convicted in  
35 district court, the administrative handling costs may be assessed as part  
36 of the court costs in the matter. The moneys collected pursuant to this  
37 subsection shall be deposited into a trust fund which shall be administered  
38 by the board of county commissioners. The funds shall be expended only  
39 with the approval of the board of county commissioners, but may be used  
40 to help fund the normal operating expenses of the county or district at-  
41 torney’s office.

42 (d) It shall not be a defense to a prosecution under this section that  
43 the check, draft or order upon which such prosecution is based:

- 1 (1) Was postdated, unless such check, draft or order was presented  
 2 for payment prior to the postdated date; or
- 3 (2) was given to a payee who had knowledge or had been informed,  
 4 when the payee accepted such check, draft or order, that the maker did  
 5 not have sufficient funds in the hands of the drawee to pay such check,  
 6 draft or order upon presentation, unless such check, draft or order was  
 7 presented for payment prior to the date the maker informed the payee  
 8 there would be sufficient funds.
- 9 (e) (1) ~~(A) Giving a worthless check is a severity level 7, nonperson~~  
 10 ~~felony, if the check, draft or order is drawn for \$25,000 or more.~~
- 11 (A) *\$100,000 or more is a severity level 5, nonperson felony.*
- 12 (B) *At least \$75,000 but less than \$100,000 is a severity level 6, non-*  
 13 *person felony.*
- 14 (C) *At least \$50,000 but less than \$75,000 is a severity level 7, non-*  
 15 *person felony.*
- 16 (D) *At least \$25,000 but less than \$50,000 is a severity level 8, non-*  
 17 *person felony.*
- 18 (E) *At least \$2,000 but less than \$25,000 is a severity level 9, non-*  
 19 *person felony.*
- 20 (F) *At least \$1,000 but less than \$2,000 is a severity level 10, non-*  
 21 *person felony.*
- 22 (G) *At least \$500 but less than \$1,000 is a class A nonperson*  
 23 *misdemeanor.*
- 24 (H) *Less than \$500 is a class B nonperson misdemeanor.*
- 25 ~~(B) (2) Giving a worthless check more than once within a seven-day~~  
 26 ~~period is a severity level 7, nonperson felony, if the combined total of the~~  
 27 ~~checks, drafts or orders is \$25,000 or more.~~
- 28 (A) *At least \$1,000 but less than \$2,000 is a severity level 10, non-*  
 29 *person felony.*
- 30 (B) *At least \$500 but less than \$1,000 is a class A nonperson*  
 31 *misdemeanor.*
- 32 ~~(2) (A) Giving a worthless check is a severity level 9, nonperson fel-~~  
 33 ~~ony if the check, draft or order is drawn for at least \$1,000 but less than~~  
 34 ~~\$25,000.~~
- 35 ~~(B) Giving a worthless check more than once within a seven-day pe-~~  
 36 ~~riod is a severity level 9, nonperson felony, if the combined total of the~~  
 37 ~~checks, drafts or orders is at least \$1,000 but less than \$25,000.~~
- 38 ~~(3) Giving a worthless check is a class A nonperson misdemeanor if~~  
 39 ~~the check, draft or order is drawn for less than \$1,000.~~
- 40 ~~(4) (3) Giving a worthless check, draft or order drawn for less than~~  
 41 ~~\$1,000 is a severity level 9, nonperson felony if committed by a person~~  
 42 ~~who has, within five years immediately preceding commission of the~~  
 43 ~~crime, been convicted of giving a worthless check two or more times.~~

1     Sec. ~~52~~ **50**. K.S.A. 21-3710 is hereby amended to read as follows:  
2 21-3710. (a) Forgery is knowingly and with intent to defraud:

3     (1) Making, altering or endorsing any written instrument in such  
4 manner that it purports to have been made, altered or endorsed by an-  
5 other person, either real or fictitious, and if a real person without the  
6 authority of such person; or altering any written instrument in such man-  
7 ner that it purports to have been made at another time or with different  
8 provisions without the authority of the maker thereof; or making, altering  
9 or endorsing any written instrument in such manner that it purports to  
10 have been made, altered or endorsed with the authority of one who did  
11 not give such authority;

12     (2) issuing or delivering such written instrument knowing it to have  
13 been thus made, altered or endorsed; or

14     (3) possessing, with intent to issue or deliver, any such written in-  
15 strument knowing it to have been thus made, altered or endorsed.

16     (b) (1) Forgery is a severity level 8, nonperson felony.

17     (2) On a first conviction of a violation of this section, in addition to  
18 any other sentence imposed, a person shall be fined the lesser of the  
19 amount of the forged instrument or \$500.

20     (3) On a second conviction of a violation of this section, a person shall  
21 be required to serve at least 30 days' imprisonment as a condition of  
22 probation, and fined the lesser of the amount of the forged instrument  
23 or \$1,000.

24     (4) On a third or subsequent conviction of a violation of this section,  
25 a person shall be ~~required to serve at least 45 days' imprisonment as a~~  
26 ~~condition of probation~~ *sentenced pursuant to the sentencing guidelines*  
27 *grid*, and fined the lesser of the amount of the forged instrument or  
28 \$2,500.

29     (5) The person convicted shall not be eligible for release on proba-  
30 tion, suspension or reduction of sentence or parole until the person has  
31 served the mandatory sentence as provided herein.

32     (c) In any prosecution under this section, it may be alleged in the  
33 complaint or information that it is not known whether a purported person  
34 is real or fictitious, and in such case there shall be a rebuttable presump-  
35 tion that such purported person is fictitious.

36     Sec. ~~53~~ **51**. K.S.A. 21-3718 is hereby amended to read as follows:  
37 21-3718. (a) Arson is: (1) Knowingly, by means of fire or explosive:

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

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

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

- 1 person; or
- 2 (D) damaging any building or property which is not a dwelling with
- 3 intent to injure or defraud an insurer or lienholder;
- 4 (2) accidentally, by means of fire or explosive as a result of manufac-
- 5 turing or attempting to manufacture ~~a~~ *any* controlled substance or *con-*
- 6 *trolled substance analog* in violation of ~~K.S.A. 65-4159~~ *section 3*, and
- 7 amendments thereto, damaging any building or property which is a dwell-
- 8 ing; or
- 9 (3) accidentally, by means of fire or explosive as a result of manufac-
- 10 turing or attempting to manufacture ~~a~~ *any* controlled substance or *con-*
- 11 *trolled substance analog* in violation of ~~K.S.A. 65-4159~~ *section 3*, and
- 12 amendments thereto, damaging any building or property which is not a
- 13 dwelling.
- 14 (b) (1) Arson, as described in subsection (a)(1)(A) or (a)(1)(B), is a
- 15 severity level 6, person felony.
- 16 (2) Arson, as described in subsection (a)(1)(C), (a)(1)(D) or (a)(3), is
- 17 a severity level 7, nonperson felony.
- 18 (3) Arson, as described in subsection (a)(2), is a severity level 7, per-
- 19 son felony.
- 20 ~~Sec. 54.~~ **52.** K.S.A. 21-3720 is hereby amended to read as follows:
- 21 21-3720. (a) Criminal damage to property is by means other than by fire
- 22 or explosive:
- 23 (1) Intentionally injuring, damaging, mutilating, defacing, destroying,
- 24 or substantially impairing the use of any property in which another has
- 25 an interest without the consent of such other person; or
- 26 (2) injuring, damaging, mutilating, defacing, destroying, or substan-
- 27 tially impairing the use of any property with intent to injure or defraud
- 28 an insurer or lienholder.
- 29 (b) (1) Criminal damage to property is a severity level 7, nonperson
- 30 felony, if the property is damaged to the extent of ~~\$25,000 or more.~~
- 31 ~~(2) Criminal damage to property is a severity level 9, nonperson fel-~~
- 32 ~~ony if the property is damaged to the extent of at least \$1,000 but less~~
- 33 ~~than \$25,000.:~~
- 34 (A) *\$100,000 or more is a severity level 5, nonperson felony.*
- 35 (B) *At least \$75,000 but less than \$100,000 is a severity level 6, non-*
- 36 *person felony.*
- 37 (C) *At least \$50,000 but less than \$75,000 is a severity level 7, non-*
- 38 *person felony.*
- 39 (D) *At least \$25,000 but less than \$50,000 is a severity level 8, non-*
- 40 *person felony.*
- 41 (E) *At least \$2,000 but less than \$25,000 is a severity level 9, non-*
- 42 *person felony.*
- 43 (F) *At least \$1,000 but less than \$2,000 is a severity level 10 nonper-*

1 *son felony.*

2 (G) *At least \$500 but less than \$1,000 is a class A nonperson*  
3 *misdemeanor.*

4 (H) *Less than \$500 is a class B nonperson misdemeanor.*

5 ~~(2)~~ (2) Criminal damage to property is a class B nonperson misde-  
6 meanor if the property damaged is of the value of less than ~~\$1,000~~ \$500  
7 or is of the value of ~~\$1,000~~ \$500 or more and is damaged to the extent  
8 of less than ~~\$1,000~~ \$500.

9 Sec. ~~55.~~ **53.** K.S.A. 21-3729 is hereby amended to read as follows:  
10 21-3729. (a) Criminal use of a financial card is any of the following acts  
11 done with intent to defraud and for the purpose of obtaining money,  
12 goods, property, services or communication services:

- 13 (1) Using a financial card without the consent of the cardholder; or  
14 (2) knowingly using a financial card, or the number or description  
15 thereof, which has been revoked or canceled; or  
16 (3) using a falsified, mutilated, altered or nonexistent financial card  
17 or a number or description thereof.

18 (b) For the purposes of this section:

19 (1) “Financial card” means an identification card, plate, instrument,  
20 device or number issued by a business organization authorizing the card-  
21 holder to purchase, lease or otherwise obtain money, goods, property,  
22 services or communication services or to conduct other financial  
23 transactions.

24 (2) “Cardholder” means the person or entity to whom or for whose  
25 benefit a financial card is issued.

26 (c) For the purposes of subsection (a)(2), a financial card shall be  
27 deemed canceled or revoked when notice in writing thereof has been  
28 received by the named holder thereof as shown on such financial card or  
29 by the records of the company.

30 (d) ~~(1)~~ Criminal use of a financial card is a severity level 7, nonperson  
31 felony, if the money, goods, property, services or communication services  
32 obtained within any seven-day period are of the value of ~~\$25,000 or more.~~

33 ~~—(2)—~~ Criminal use of a financial card is a severity level 9, nonperson  
34 felony if the money, goods, property, services or communication services  
35 obtained within any seven-day period are of the value of at least \$1,000  
36 but less than \$25,000.

37 ~~—(3)—~~ Criminal use of a financial card is a class A nonperson misde-  
38 meanor if the money, goods, property, services or communication services  
39 obtained within a seven-day period are of the value of less than \$1,000.

40 (1) *\$100,000 or more is a severity level 5, nonperson felony.*

41 (2) *At least \$75,000 but less than \$100,000 is a severity level 6, non-*  
42 *person felony.*

43 (3) *At least \$50,000 but less than \$75,000 is a severity level 7, non-*

1 *person felony.*

2 (4) *At least \$25,000 but less than \$50,000 is a severity level 8, non-*  
3 *person felony.*

4 (5) *At least \$2,000 but less than \$25,000 is a severity level 9, nonper-*  
5 *son felony.*

6 (6) *At least \$1,000 but less than \$2,000 is a severity level 10, nonper-*  
7 *son felony.*

8 (7) *At least \$500 but less than \$1,000 is a class A nonperson*  
9 *misdemeanor.*

10 (8) *Less than \$500 is a class B nonperson misdemeanor.*

11 Sec. ~~56.~~ **54.** K.S.A. 21-3734 is hereby amended to read as follows:  
12 21-3734. (a) Impairing a security interest is:

13 (1) Damaging, destroying or concealing any personal property subject  
14 to a security interest with intent to defraud the secured party;

15 (2) selling, exchanging or otherwise disposing of any personal prop-  
16 erty subject to a security interest without the written consent of the se-  
17 cured party, where such sale, exchange or other disposition is not au-  
18 thorized by the secured party under the terms of the security agreement;  
19 or

20 (3) failure to account to the secured party for the proceeds of the  
21 sale, exchange or other disposition of any personal property subject to a  
22 security interest, where such sale, exchange or other disposition is au-  
23 thorized and such accounting for proceeds is required by the secured  
24 party under the terms of the security agreement or otherwise.

25 (b) ~~(1)~~ Impairing a security interest ~~is a severity level 7, nonperson~~  
26 ~~felony~~, when the personal property subject to the security interest is of  
27 the value of ~~\$25,000 or more and is subject to a security interest of~~  
28 ~~\$25,000 or more.~~

29 ~~—(2)—~~ Impairing a security interest is a severity level 9, nonperson felony  
30 when the personal property subject to the security interest is of the value  
31 of at least \$1,000 and is subject to a security interest of at least \$1,000  
32 and either the value of the property or the security interest is less than  
33 \$25,000.

34 ~~—(3)—~~ Impairing a security interest is a class A nonperson misdemeanor  
35 when the personal property subject to the security interest is of the value  
36 of less than \$1,000, or of the value of \$1,000 or more but subject to a  
37 security interest of less than \$1,000.:

38 (1) *\$100,000 or more and is subject to a security interest of \$100,000*  
39 *is a severity level 5, nonperson felony.*

40 (2) *At least \$75,000 and is subject to a security interest of at least*  
41 *\$75,000 and either the value of the property or the security interest is less*  
42 *than \$100,000 is a severity level 6, nonperson felony.*

43 (3) *At least \$50,000 and is subject to a security interest of at least*

- 1 \$50,000 and either the value of the property or the security interest is less  
2 than \$75,000 is a severity level 7, nonperson felony.
- 3 (4) At least \$25,000 and is subject to a security interest of at least  
4 \$25,000 and either the value of the property or the security interest is less  
5 than \$50,000 is a severity level 8, nonperson felony.
- 6 (5) At least \$2,000 and is subject to a security interest of at least  
7 \$2,000 and either the value of the property or the security interest is less  
8 than \$25,000 is a severity level 9, nonperson felony.
- 9 (6) At least \$1,000 and is subject to a security interest of at least  
10 \$1,000 and either the value of the property or the security interest is less  
11 than \$2,000 is a severity level 10, nonperson felony.
- 12 (7) At least \$500 and is subject to a security interest of at least \$500  
13 and either the value of the property or the security interest is less than  
14 \$1,000 is a class A nonperson misdemeanor.
- 15 (8) Less than \$500 or the value of \$500 or more but subject to a  
16 security interest of less than \$500 is a class B nonperson misdemeanor.
- 17 ~~Sec. 57.~~ **55.** K.S.A. 21-3761 is hereby amended to read as follows:  
18 21-3761. (a) It shall be unlawful for any person to:
- 19 (1) Without consent of the owner or the owner's agent, enter or re-  
20 main on railroad property, knowing that it is railroad property; or
- 21 (2) maliciously or wantonly cause in any manner the derailment of a  
22 train, railroad car or rail-mounted work equipment.
- 23 Violation of this subsection is a class A nonperson misdemeanor.
- 24 (b) Any person violating subsection (a) which results in a demonstra-  
25 ble monetary loss, damage or destruction of railroad property when such  
26 loss is valued at ~~more than \$1,500 upon conviction shall be guilty of a~~  
27 ~~severity level 8, nonperson felony:~~
- 28 (1) \$100,000 or more is guilty of a severity level 5, nonperson felony.
- 29 (2) At least \$75,000 but less than \$100,000 is guilty of a severity level  
30 6, nonperson felony.
- 31 (3) At least \$50,000 but less than \$75,000 is guilty of a severity level  
32 7, nonperson felony.
- 33 (4) At least \$25,000 but less than \$50,000 is guilty of a severity level  
34 8, nonperson felony.
- 35 (5) At least \$2,000 but less than \$25,000 is guilty of a severity level  
36 9, nonperson felony.
- 37 (6) At least \$1,000 but less than \$2,000 is guilty of a severity level 10,  
38 nonperson felony.
- 39 (7) At least \$500 but less than \$1,000 is guilty of a class A nonperson  
40 misdemeanor.
- 41 (8) Less than \$500 is guilty of a class B nonperson misdemeanor.
- 42 (c) Subsection (a) shall not be construed to interfere with the lawful  
43 use of a public or private crossing.

1 (d) Nothing in this section shall be construed as limiting a represen-  
 2 tative or member of a labor organization which represents or is seeking  
 3 to represent the employees of the railroad, from conducting such business  
 4 as provided under the railway labor act (45 U.S.C. 151, et seq.) and other  
 5 federal labor laws.

6 (e) As used in this section “railroad property” includes, but is not  
 7 limited to, any train, locomotive, railroad car, caboose, rail-mounted work  
 8 equipment, rolling stock, work equipment, safety device, switch, elec-  
 9 tronic signal, microwave communication equipment, connection, railroad  
 10 track, rail, bridge, trestle, right-of-way or other property that is owned,  
 11 leased, operated or possessed by a railroad company.

12 ~~Sec. 58.~~ **56.** K.S.A. 21-3763 is hereby amended to read as follows:  
 13 21-3763. (a) Counterfeiting is intentionally manufacturing, using, display-  
 14 ing, advertising, distributing, offering for sale, selling or possessing with  
 15 intent to sell or distribute any item or services bearing or identified by a  
 16 counterfeit mark.

17 (b) A person having possession, custody or control of more than 25  
 18 items bearing a counterfeit mark shall be presumed to possess such items  
 19 with intent to sell or distribute.

20 (c) Any state or federal certificate of registration of any intellectual  
 21 property shall be prima facie evidence of the facts stated therein.

22 (d) As used in this section:

23 (1) “Counterfeit mark” means:

24 (A) Any unauthorized reproduction or copy of intellectual property;  
 25 or

26 (B) intellectual property affixed to any item knowingly sold, offered  
 27 for sale, manufactured or distributed, or identifying services offered or  
 28 rendered, without the authority of the owner of the intellectual property.

29 (2) “Intellectual property” means any trademark, service mark or  
 30 trade name as such terms are defined in K.S.A. 2007 Supp. 81-202, and  
 31 amendments thereto.

32 (3) “Retail value” means the counterfeiter’s regular selling price for  
 33 the item or service bearing or identified by the counterfeit mark. In the  
 34 case of items bearing a counterfeit mark which are components of a fin-  
 35 ished product, the retail value shall be the counterfeiter’s regular selling  
 36 price of the finished product on or in which the component would be  
 37 utilized.

38 (4) The quantity or retail value of items or services shall include the  
 39 aggregate quantity or retail value of all items bearing, or services identi-  
 40 fied by, every counterfeit mark the defendant manufactures, uses, dis-  
 41 plays, advertises, distributes, offers for sale, sells or possesses.

42 (e) (1) Counterfeiting of the retail value of less than \$1,000 is a class  
 43 ~~A nonperson misdemeanor.~~

- 1 (A) \$100,000 or more is a severity level 5, nonperson felony.  
 2 (B) At least \$75,000 but less than \$100,000 is a severity level 6, non-  
 3 person felony.  
 4 (C) At least \$50,000 but less than \$75,000 is a severity level 7, non-  
 5 person felony.  
 6 (D) At least \$25,000 but less than \$50,000, except as provided further,  
 7 is a severity level 8, nonperson felony.  
 8 (E) At least \$2,000 but less than \$25,000, except as provided further,  
 9 is a severity level 9, nonperson felony.  
 10 (F) At least \$1,000 but less than \$2,000, except as provided further,  
 11 is a severity level 10, nonperson felony.  
 12 (G) At least \$500 but less than \$1,000, except as provided further, is  
 13 a class A nonperson misdemeanor.  
 14 (H) Less than \$500, except as provided further, is a class B nonperson  
 15 misdemeanor.
- 16 (2) Counterfeiting of the retail value of at least \$1,000 but less than  
 17 \$25,000, that involves more than 100 but less than 1,000 items bearing a  
 18 counterfeit mark; or on a second violation of subsection (e)(1)(F),  
 19 (e)(1)(G) or (e)(1)(H) if the offender has a previous conviction of this  
 20 section, is a severity level 9, nonperson felony.
- 21 (3) Counterfeiting of the retail value of \$25,000 or more, that involves  
 22 1,000 or more items bearing a counterfeit mark, or on a third or subse-  
 23 quent violation of subsection (e)(1)(D), (e)(1)(E), (e)(1)(F), (e)(1)(G) or  
 24 (e)(1)(H) if the offender has two previous convictions of any combination  
 25 of subsection (e)(1)(D), (e)(1)(E), (e)(1)(F), (e)(1)(G) or (e)(1)(H), is a  
 26 severity level 7, nonperson felony.
- 27 (f) This section shall be part of and supplemental to the Kansas crim-  
 28 inal code.
- 29 ~~Sec. 59.~~ **57.** K.S.A. 2008 Supp. 21-3811 is hereby amended to read  
 30 as follows: 21-3811. Aiding escape is:
- 31 (a) Assisting another who is in lawful custody on a charge or convic-  
 32 tion of crime, on a charge or adjudication of a misdemeanor or felony or  
 33 on a commitment to the state security hospital as provided in K.S.A. 22-  
 34 3428 and amendments thereto based on a finding that the person com-  
 35 mitted an act constituting any crime to escape from such custody; or  
 36 (b) supplying to another who is in lawful custody on a charge or con-  
 37 viction of crime, on a charge or adjudication of a misdemeanor or felony  
 38 or on a commitment to the state security hospital as provided in K.S.A.  
 39 22-3428 and amendments thereto based on a finding that the person  
 40 committed an act constituting any crime, any object or thing adapted or  
 41 designed for use in making an escape, with intent that it shall be so used;  
 42 or  
 43 (c) introducing into an institution in which a person is confined on a

1 charge or conviction of crime, on a charge or adjudication of a misde-  
2 meanor or felony or into the state security hospital if such person is con-  
3 fined on a commitment to the state security hospital as provided in K.S.A.  
4 22-3428 and amendments thereto based on a finding that the person  
5 committed an act constituting any crime any object or thing adapted or  
6 designed for use in making any escape, with intent that it shall be so used.

7 (d) (1) Except as provided in paragraph (2), aiding escape is a severity  
8 level 8, nonperson felony.

9 (2) Aiding escape by an employee or volunteer of the department of  
10 corrections, or the employee or volunteer of a contractor who is under  
11 contract to provide services to the department of corrections, is a severity  
12 level ~~4~~ 5, nonperson felony.

13 Sec. ~~60~~ **58**. K.S.A. 21-3812 is hereby amended to read as follows:  
14 21-3812. (a) Aiding a felon is knowingly harboring, concealing or aiding  
15 any person who has committed a felony under the laws of this state, other  
16 than a violation of K.S.A. 22-4903, and amendments thereto, or another  
17 state or the United States with intent that such person shall avoid or  
18 escape from arrest, trial, conviction or punishment for such felony.

19 Aiding a felon is a severity level 8, nonperson felony.

20 (b) Aiding a person charged with a felony is knowingly harboring,  
21 concealing or aiding a person who has been charged with a felony under  
22 the laws of this state, other than a violation of K.S.A. 22-4903, and amend-  
23 ments thereto, or another state or the United States with intent that such  
24 person shall avoid or escape from arrest, trial, conviction or punishment  
25 for such felony.

26 Aiding a person charged with a felony is a severity level 8, nonperson  
27 felony.

28 (c) Aiding a person who has been convicted of or who has been  
29 charged with committing a misdemeanor under the laws of Kansas or  
30 another state is knowingly concealing or aiding such person with intent  
31 that such person shall avoid or escape from arrest, trial, conviction or  
32 punishment for such misdemeanor.

33 Aiding a person convicted of or charged with committing a misde-  
34 meanor is a class C misdemeanor.

35 (d) Aiding a person required to register under the Kansas offender  
36 registration act, K.S.A. 22-4901 et seq., and amendments thereto, is  
37 knowingly harboring, concealing or aiding any person who is required to  
38 register under the act and who is not in compliance with the requirements  
39 of the act with intent that such person shall avoid or escape from regis-  
40 tration, arrest, trial, conviction, punishment or any criminal charges aris-  
41 ing from the person's failure to comply with the requirements of the act.

42 Aiding a person required to register under the Kansas offender regis-  
43 tration act is a severity level ~~5~~ 10, person felony.

1     Sec. ~~61~~ **59**. K.S.A. 21-3826 is hereby amended to read as follows:  
2 21-3826. (a) Traffic in contraband in a correctional institution is intro-  
3 ducing or attempting to introduce into or upon the grounds of any cor-  
4 rectional institution or taking, sending, attempting to take or attempting  
5 to send from any correctional institution or any unauthorized possession  
6 while in any correctional institution or distributing within any correctional  
7 institution, any item without the consent of the administrator of the cor-  
8 rectional institution.

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

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

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

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

22     Sec. ~~62~~ **60**. K.S.A. 21-3846 is hereby amended to read as follows:  
23 21-3846. (a) Making a false claim, statement, or representation to the  
24 medicaid program is, knowingly and with intent to defraud, engaging in  
25 a pattern of making, presenting, submitting, offering or causing to be  
26 made, presented, submitted or offered:

27     (1) Any false or fraudulent claim for payment for any goods, service,  
28 item, facility, accommodation for which payment may be made, in whole  
29 or in part, under the medicaid program, whether or not the claim is  
30 allowed or allowable;

31     (2) any false or fraudulent statement or representation for use in de-  
32 termining payments which may be made, in whole or in part, under the  
33 medicaid program, whether or not the claim is allowed or allowable;

34     (3) any false or fraudulent report or filing which is or may be used in  
35 computing or determining a rate of payment for any goods, service, item,  
36 facility or accommodation, for which payment may be made, in whole or  
37 in part, under the medicaid program, whether or not the claim is allowed  
38 or allowable;

39     (4) any false or fraudulent statement or representation made in con-  
40 nection with any report or filing which is or may be used in computing  
41 or determining a rate of payment for any goods, service, item, facility or  
42 accommodation for which payment may be made, in whole or in part,  
43 under the medicaid program, whether or not the claim is allowed or

1 allowable;

2 (5) any statement or representation for use by another in obtaining  
3 any goods, service, item, facility or accommodation for which payment  
4 may be made, in whole or in part, under the medicaid program, knowing  
5 the statement or representation to be false, in whole or in part, by com-  
6 mission or omission, whether or not the claim is allowed or allowable;

7 (6) any claim for payment, for any goods, service, item, facility, or  
8 accommodation, which is not medically necessary in accordance with pro-  
9 fessionally recognized parameters or as otherwise required by law, for  
10 which payment may be made, in whole or in part, under the medicaid  
11 program, whether or not the claim is allowed or allowable; or

12 (7) any wholly or partially false or fraudulent book, record, document,  
13 data or instrument, which is required to be kept or which is kept as  
14 documentation for any goods, service, item, facility or accommodation or  
15 of any cost or expense claimed for reimbursement for any goods, service,  
16 item, facility or accommodation for which payment is, has been, or can  
17 be sought, in whole or in part, under the medicaid program, whether or  
18 not the claim is allowed or allowable.

19 (8) Any wholly or partially false or fraudulent book, record, docu-  
20 ment, data or instrument to any properly identified law enforcement of-  
21 ficer, any properly identified employee or authorized representative of  
22 the attorney general, or to any properly identified employee or agent of  
23 the department of social and rehabilitation services, or its fiscal agent, in  
24 connection with any audit or investigation involving any claim for payment  
25 or rate of payment for any goods, service, item, facility or accommodation  
26 payable, in whole or in part, under the medicaid program.

27 (9) Any false or fraudulent statement or representation made, with  
28 the intent to influence any acts or decision of any official, employee or  
29 agent of a state or federal agency having regulatory or administrative  
30 authority over the Kansas medicaid program.

31 (b) (1) As defined by subsection (a)(1) through (a)(7), making a false  
32 claim, statement or representation to the medicaid program where the  
33 aggregate amount of payments illegally claimed is ~~\$25,000 or more is a~~  
34 ~~severity level 7, nonperson felony.~~

35 ~~—(2) As defined by subsection (a)(1) through (a)(7), making a false~~  
36 ~~claim, statement or representation to the medicaid program where the~~  
37 ~~aggregate amount of payments illegally claimed is at least \$1,000 but less~~  
38 ~~than \$25,000 is a severity level 9, nonperson felony.~~

39 ~~—(3) As defined by subsection (a)(1) through (a)(7), making a false~~  
40 ~~claim, statement or representation to the medicaid program where the~~  
41 ~~aggregate amount of payments illegally claimed is less than \$1,000 is a~~  
42 ~~class A misdemeanor.~~

43 (A) *\$100,000 or more is a severity level 5, nonperson felony.*

- 1 (B) *At least \$75,000 but less than \$100,000 is a severity level 6, non-*  
2 *person felony.*
- 3 (C) *At least \$50,000 but less than \$75,000 is a severity level 7, non-*  
4 *person felony.*
- 5 (D) *At least \$25,000 but less than \$50,000 is a severity level 8, non-*  
6 *person felony.*
- 7 (E) *At least \$2,000 but less than \$25,000 is a severity level 9, non-*  
8 *person felony.*
- 9 (F) *At least \$1,000 but less than \$2,000 is a severity level 10, non-*  
10 *person felony.*
- 11 (G) *At least \$500 but less than \$1,000 is a class A nonperson*  
12 *misdemeanor.*
- 13 (H) *Less than \$500 is a class B nonperson misdemeanor.*
- 14 ~~(4)~~ (2) As defined by subsections (a)(8) and (a)(9), making a false  
15 claim, statement or representation to the medicaid program is a severity  
16 level 9, nonperson felony.
- 17 (c) In determining what is medically necessary pursuant to subsection  
18 (a)(6) of this section the attorney general may contract with or consult  
19 with qualified health care providers and other qualified individuals to  
20 identify professionally recognized parameters for the diagnosis or treat-  
21 ment of the recipient's condition, illness or injury.
- 22 ~~Sec. 62-61.~~ **61.** K.S.A. 21-3902 is hereby amended to read as follows:  
23 21-3902. (a) Official misconduct is any of the following acts committed  
24 by a public officer or employee in the officer or employee's public capacity  
25 or under color of the officer or employee's office or employment:
- 26 (1) Using or authorizing the use of any aircraft, as defined by K.S.A.  
27 3-201, and amendments thereto, vehicle, as defined by K.S.A. 8-1485,  
28 and amendments thereto, or vessel, as defined by K.S.A. 32-1102, and  
29 amendments thereto, under the officer's or employee's control or direc-  
30 tion, or in the officer's or employee's custody, exclusively for the private  
31 benefit or gain of the officer or employee or another.
- 32 (2) Knowingly and willfully failing to serve civil process when re-  
33 quired by law.
- 34 (3) Using confidential information acquired in the course of and re-  
35 lated to the officer's or employee's office or employment for the private  
36 benefit or gain of the officer or employee or another or to maliciously  
37 cause harm to another. As used in this section, "confidential" means any  
38 information that is not subject to mandatory disclosure pursuant to K.S.A.  
39 45-221, and amendments thereto.
- 40 (4) Except as authorized by law, knowingly, willfully and with the  
41 intent to reduce or eliminate competition among bidders or prospective  
42 bidders on any contract or proposed contract: (A) Disclosing confidential  
43 information regarding proposals or communications from bidders or pro-

- 1 spective bidders on any contract or proposed contract; (B) accepting any  
2 bid or proposal on a contract or proposed contract after the deadline for  
3 acceptance of such bid or proposal; or (C) altering any bid or proposal  
4 submitted by a bidder on a contract or proposed contract.
- 5 (5) Except as authorized by law, knowingly destroying, tampering  
6 with or concealing evidence of a crime.
- 7 (6) Knowingly and willfully submitting to a governmental entity a  
8 claim for expenses which is false or duplicates expenses for which a claim  
9 is submitted to such governmental entity, another governmental or private  
10 entity.
- 11 (b) The provisions of subsection (a)(1) shall not apply to any use of  
12 persons or property which:
- 13 (1) At the time of the use, is authorized by law or by formal written  
14 policy of the governmental entity; or
- 15 (2) constitutes misuse of public funds, as defined in K.S.A. 21-3910  
16 and amendments thereto.
- 17 (c) (1) Official misconduct as defined in subsections (a)(1) through  
18 (a)(4) is a class A nonperson misdemeanor.
- 19 (2) Official misconduct as defined in subsection (a)(5) is: (A) A severity  
20 level 8, nonperson felony if the evidence is evidence of a crime  
21 which is a felony; and (B) a class A nonperson misdemeanor if the evidence  
22 is evidence of a crime which is a misdemeanor.
- 23 (3) Official misconduct as defined in subsection (a)(6) ~~is if the claim~~  
24 ~~is for: (A) A severity level 7, nonperson felony if the claim is for \$25,000~~  
25 ~~or more; (B) a severity level 9, nonperson felony if the claim is for at least~~  
26 ~~\$1,000 but less than \$25,000, and (C) a class A nonperson misdemeanor~~  
27 ~~for a claim of less than \$1,000.~~
- 28 (A) *\$100,000 or more is a severity level 5, nonperson felony.*
- 29 (B) *At least \$75,000 but less than \$100,000 is a severity level 6, non-*  
30 *person felony.*
- 31 (C) *At least \$50,000 but less than \$75,000 is a severity level 7, non-*  
32 *person felony.*
- 33 (D) *At least \$25,000 but less than \$50,000 is a severity level 8, non-*  
34 *person felony.*
- 35 (E) *At least \$2,000 but less than \$25,000 is a severity level 9, non-*  
36 *person felony.*
- 37 (F) *At least \$1,000 but less than \$2,000 is a severity level 10, non-*  
38 *person felony.*
- 39 (G) *At least \$500 but less than \$1,000 is a class A nonperson*  
40 *misdemeanor.*
- 41 (H) *Less than \$500 is a class B nonperson misdemeanor.*
- 42 (4) Upon conviction of official misconduct a public officer or employee  
43 shall forfeit such officer or employee's office or employment.

1     Sec. ~~64~~ **62**. K.S.A. 21-3904 is hereby amended to read as follows:  
 2 21-3904. (a) Presenting a false claim is knowingly and with intent to de-  
 3 fraud presenting a claim or demand which is false in whole or in part, to  
 4 a public officer or body authorized to audit, allow or pay such claim.

5     (b) ~~(1)~~ Presenting a false claim for ~~\$25,000 or more is a severity level~~  
 6 ~~7, nonperson felony.~~

7 ~~—(2) Presenting a false claim for at least \$1,000 but less than \$25,000~~  
 8 ~~is a severity level 9, nonperson felony.~~

9 ~~—(3) Presenting a false claim for less than \$1,000 is a class A nonperson~~  
 10 ~~misdemeanor.:~~

11     (1) *\$100,000 or more is a severity level 5, nonperson felony.*

12     (2) *At least \$75,000 but less than \$100,000 is a severity level 6, non-*  
 13 *person felony.*

14     (3) *At least \$50,000 but less than \$75,000 is a severity level 7, non-*  
 15 *person felony.*

16     (4) *At least \$25,000 but less than \$50,000 is a severity level 8, non-*  
 17 *person felony.*

18     (5) *At least \$2,000 but less than \$25,000 is a severity level 9, nonper-*  
 19 *son felony.*

20     (6) *At least \$1,000 but less than \$2,000 is a severity level 10, nonper-*  
 21 *son felony.*

22     (7) *At least \$500 but less than \$1,000 is a class A nonperson*  
 23 *misdemeanor.*

24     (8) *Less than \$500 is a class B nonperson misdemeanor.*

25     Sec. ~~65~~ **63**. K.S.A. 21-3905 is hereby amended to read as follows:  
 26 21-3905. (a) Permitting a false claim is the auditing, allowing, or paying  
 27 of any claim or demand made upon the state or any subdivision thereof  
 28 or other governmental instrumentality within the state by a public officer  
 29 or public employee who knows such claim or demand is false or fraud-  
 30 ulent in whole or in part.

31     (b) ~~(1)~~ Permitting a false claim for ~~\$25,000 or more is a severity level~~  
 32 ~~7, nonperson felony.~~

33 ~~—(2) Permitting a false claim for at least \$1,000 but less than \$25,000~~  
 34 ~~is a severity level 9, nonperson felony.~~

35 ~~—(3) Permitting a false claim for less than \$1,000 is a class A nonperson~~  
 36 ~~misdemeanor.:~~

37     (1) *\$100,000 or more is a severity level 5, nonperson felony.*

38     (2) *At least \$75,000 but less than \$100,000 is a severity level 6, non-*  
 39 *person felony.*

40     (3) *At least \$50,000 but less than \$75,000 is a severity level 7, non-*  
 41 *person felony.*

42     (4) *At least \$25,000 but less than \$50,000 is a severity level 8, non-*  
 43 *person felony.*

- 1     (5) *At least \$2,000 but less than \$25,000 is a severity level 9, nonper-*  
 2 *son felony.*
- 3     (6) *At least \$1,000 but less than \$2,000 is a severity level 10, nonper-*  
 4 *son felony.*
- 5     (7) *At least \$500 but less than \$1,000 is a class A nonperson*  
 6 *misdemeanor.*
- 7     (8) *Less than \$500 is a class B nonperson misdemeanor.*
- 8     ~~(4)~~ (c) Upon conviction of permitting a false claim, a public officer  
 9 or public employee shall forfeit the officer or employee's office or  
 10 employment.
- 11     Sec. ~~66.~~ **64.** K.S.A. 21-3910 is hereby amended to read as follows:  
 12 21-3910. (a) Misuse of public funds is knowingly using, lending or per-  
 13 mitting another to use public money in a manner not authorized by law,  
 14 by a custodian or other person having control of public money by virtue  
 15 of such person's official position.
- 16     (b) As used in this section, "public money" means any money or ne-  
 17 gotiable instrument which belongs to the state of Kansas or any political  
 18 subdivision thereof.
- 19     (c) ~~(1)~~ Misuse of public funds where the aggregate amount of money  
 20 paid or claimed in violation of this section is ~~\$100,000 or more is a severity~~  
 21 ~~level 5, nonperson felony.~~
- 22     ~~(2) Misuse of public funds where the aggregate amount of money~~  
 23 ~~paid or claimed in violation of this section is at least \$25,000 but less than~~  
 24 ~~\$100,000 is a severity level 7, nonperson felony.~~
- 25     ~~(3) Misuse of public funds where the aggregate amount of money~~  
 26 ~~paid or claimed in violation of this section is at least \$1,000 but less than~~  
 27 ~~\$25,000 is a severity level 9, nonperson felony.~~
- 28     ~~(4) Misuse of public funds where the aggregate amount of money~~  
 29 ~~paid or claimed in violation of this section is less than \$1,000 is a class A~~  
 30 ~~nonperson misdemeanor.~~
- 31     (1) *\$100,000 or more is a severity level 5, nonperson felony.*
- 32     (2) *At least \$75,000 but less than \$100,000 is a severity level 6, non-*  
 33 *person felony.*
- 34     (3) *At least \$50,000 but less than \$75,000 is a severity level 7, non-*  
 35 *person felony.*
- 36     (4) *At least \$25,000 but less than \$50,000 is a severity level 8, non-*  
 37 *person felony.*
- 38     (5) *At least \$2,000 but less than \$25,000 is a severity level 9, nonper-*  
 39 *son felony.*
- 40     (6) *At least \$1,000 but less than \$2,000 is a severity level 10, nonper-*  
 41 *son felony.*
- 42     (7) *At least \$500 but less than \$1,000 is a class A nonperson*  
 43 *misdemeanor.*

- 1       (8) *Less than \$500 is a class B nonperson misdemeanor.*
- 2       (d) Upon conviction of misuse of public funds, the convicted person
- 3 shall forfeit the person's official position.
- 4       Sec. ~~67~~ **65**. K.S.A. 21-4018 is hereby amended to read as follows:
- 5 21-4018. (a) Identity theft is knowingly and with intent to defraud for any
- 6 benefit, obtaining, possessing, transferring, using or attempting to obtain,
- 7 possess, transfer or use, one or more identification documents or personal
- 8 identification number of another person other than that issued lawfully
- 9 for the use of the possessor.
- 10       (b) "Identification documents" has the meaning provided in K.S.A.
- 11 21-3830, and amendments thereto.
- 12       (c) (1) Except as provided further, identity theft is a severity level 8,
- 13 nonperson felony. ~~If the monetary loss to the victim or victims is more~~
- 14 ~~than \$100,000, identity theft is a severity level 5, nonperson felony.~~
- 15       (2) *Identity theft, if the monetary loss to the victim or victims is:*
- 16       (A) *\$100,000 or more is a severity level 5, nonperson felony.*
- 17       (B) *At least \$75,000 but less than \$100,000 is a severity level 6, non-*
- 18 *person felony.*
- 19       (C) *At least \$50,000 but less than \$75,000 is a severity level 7, non-*
- 20 *person felony.*
- 21       (D) *At least \$25,000 but less than \$50,000 is a severity level 8, non-*
- 22 *person felony.*
- 23       (E) *At least \$2,000 but less than \$25,000 is a severity level 9, non-*
- 24 *person felony.*
- 25       (F) *At least \$1,000 but less than \$2,000 is a severity level 10, non-*
- 26 *person felony.*
- 27       (G) *At least \$500 but less than \$1,000 is a class A nonperson*
- 28 *misdemeanor.*
- 29       (H) *Less than \$500 is a class B nonperson misdemeanor.*
- 30       (d) Identity fraud is:
- 31       (1) Willfully and knowingly supplying false information intending that
- 32 the information be used to obtain an identification document;
- 33       (2) making, counterfeiting, altering, amending or mutilating any iden-
- 34 tification document:
- 35       (A) Without lawful authority; and
- 36       (B) with the intent to deceive; or
- 37       (3) willfully and knowingly obtaining, possessing, using, selling or fur-
- 38 nishing or attempting to obtain, possess or furnish to another for any
- 39 purpose of deception an identification document.
- 40       (e) Identity fraud is a severity level 8, nonperson felony.
- 41       (f) This section shall be part of and supplemental to the Kansas crim-
- 42 inal code.
- 43       Sec. ~~68~~ **66**. K.S.A. 21-4105 is hereby amended to read as follows:

- 1 21-4105. (a) Incitement to riot is by words or conduct urging others to  
2 engage in riot as defined by K.S.A. 21-4104, and amendments thereto,  
3 under circumstances which produce a clear and present danger of injury  
4 to persons or property or a breach of the public peace.
- 5 (b) Incitement to riot is a severity level 6, person felony.
- 6 ~~Sec. 60-67.~~ K.S.A. 21-4111 is hereby amended to read as follows:  
7 21-4111. (a) Criminal desecration is:
- 8 (1) Obtaining or attempting to obtain unauthorized control of a dead  
9 body or remains of any human being or the coffin, urn or other article  
10 containing a dead body or remains of any human being;
- 11 (2) by means other than by fire or explosive:
- 12 (A) Damaging, defacing or destroying the flag, ensign or other symbol  
13 of the United States or this state in which another has a property interest  
14 without the consent of such other person;
- 15 (B) damaging, defacing or destroying any public monument or  
16 structure;
- 17 (C) damaging, defacing or destroying any tomb, monument, memo-  
18 rial, marker, grave, vault, crypt gate, tree, shrub, plant or any other prop-  
19 erty in a cemetery; or
- 20 (D) damaging, defacing or destroying any place of worship.
- 21 (b) (1) Criminal desecration as described in subsections (a)(2)(B),  
22 (a)(2)(C) and (a)(2)(D) ~~is, if the property is damaged to the extent of:~~
- 23 ~~(A) A severity level 7, nonperson felony if the property is damaged~~  
24 ~~to the extent of \$25,000 or more;~~
- 25 ~~(B) a severity level 9, nonperson felony if the property is damaged to~~  
26 ~~the extent of at least \$1,000 but less than \$25,000, and~~
- 27 ~~(C) a class A nonperson misdemeanor if the property is damaged to~~  
28 ~~the extent of less than \$1,000.~~
- 29 (A) *\$100,000 or more is a severity level 5, nonperson felony.*
- 30 (B) *At least \$75,000 but less than \$100,000 is a severity level 6, non-*  
31 *person felony.*
- 32 (C) *At least \$50,000 but less than \$75,000 is a severity level 7, non-*  
33 *person felony.*
- 34 (D) *At least \$25,000 but less than \$50,000 is a severity level 8, non-*  
35 *person felony.*
- 36 (E) *At least \$2,000 but less than \$25,000 is a severity level 9, non-*  
37 *person felony.*
- 38 (F) *At least \$1,000 but less than \$2,000 is a severity level 10, non-*  
39 *person felony.*
- 40 (G) *At least \$500 but less than \$1,000 is a class A nonperson*  
41 *misdemeanor.*
- 42 (H) *Less than \$500 is a class B nonperson misdemeanor.*
- 43 (2) Criminal desecration as described in subsections (a)(1) and

1 (a)(2)(A) is a class A nonperson misdemeanor.

2 Sec. ~~70~~ **68**. K.S.A. 21-4203 is hereby amended to read as follows:  
3 21-4203. (a) Criminal disposal of firearms is knowingly:

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

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

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

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

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

24 (6) selling, giving or otherwise transferring any firearm to any person  
25 who is or has been a mentally ill person subject to involuntary commit-  
26 ment for care and treatment, as defined in K.S.A. 59-2946, and amend-  
27 ments thereto, or a person with an alcohol or substance abuse problem  
28 subject to involuntary commitment for care and treatment as defined in  
29 K.S.A. 59-29b46, and amendments thereto, and such person has not re-  
30 ceived a certificate of restoration pursuant to K.S.A. 2008 Supp. 75-7c26,  
31 and amendments thereto.

32 (b) Subsection (a)(4) shall apply to a felony under K.S.A. 21-3401,  
33 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-  
34 3419, 21-3420, 21-3421, 21-3427, 21-3442, 21-3502, 21-3506, 21-3518,  
35 21-3716, ~~65-4127a or 65-4127b, or 65-4160 through 65-4164, section 5~~  
36 *or 6*, and amendments thereto, or a crime under a law of another juris-  
37 diction which is substantially the same as such felony.

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

39 Sec. ~~71~~ **69**. K.S.A. 21-4204 is hereby amended to read as follows:  
40 21-4204. (a) Criminal possession of a firearm is:

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

43 (2) possession of any firearm by a person who has been convicted of

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

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

19 (4) possession of any firearm by a person who, within the preceding  
20 10 years, has been convicted of: (A) A felony under K.S.A. 21-3401, 21-  
21 3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419,  
22 21-3420, 21-3421, 21-3427, 21-3442, 21-3502, 21-3506, 21-3518, 21-  
23 3716, ~~65-4127a or 65-4127b, or 65-4160 through 65-4164~~ sections 5 or 6,  
24 and amendments thereto, or K.S.A. 65-4127a, 65-4127b, 65-4160, 65-  
25 4161, 65-4162, 65-4163 or 65-4164, prior to such section's repeal, or a  
26 crime under a law of another jurisdiction which is substantially the same  
27 as such felony, has been released from imprisonment for such felony, or  
28 was adjudicated as a juvenile offender because of the commission of an  
29 act which if done by an adult would constitute the commission of such  
30 felony, was found not to have been in possession of a firearm at the time  
31 of the commission of the offense, and has not had the conviction of such  
32 crime expunged or been pardoned for such crime; or (B) a nonperson  
33 felony under the laws of Kansas or a crime under the laws of another  
34 jurisdiction which is substantially the same as such nonperson felony, has  
35 been released from imprisonment for such nonperson felony or was ad-  
36 judicated as a juvenile offender because of the commission of an act which  
37 if done by an adult would constitute the commission of a nonperson fel-  
38 ony, and was found to have been in possession of a firearm at the time  
39 of the commission of the offense;

40 (5) possession of any firearm by any person, other than a law enforce-  
41 ment officer, in or on any school property or grounds upon which is  
42 located a building or structure used by a unified school district or an  
43 accredited nonpublic school for student instruction or attendance or ex-

- 1 traccurricular activities of pupils enrolled in kindergarten or any of the  
 2 grades 1 through 12 or at any regularly scheduled school sponsored ac-  
 3 tivity or event;
- 4 (6) refusal to surrender or immediately remove from school property  
 5 or grounds or at any regularly scheduled school sponsored activity or  
 6 event any firearm in the possession of any person, other than a law en-  
 7 forcement officer, when so requested or directed by any duly authorized  
 8 school employee or any law enforcement officer; or
- 9 (7) possession of any firearm by a person who is or has been a men-  
 10 tally ill person subject to involuntary commitment for care and treatment,  
 11 as defined in K.S.A. 59-2946, and amendments thereto, or persons with  
 12 an alcohol or substance abuse problem subject to involuntary commit-  
 13 ment for care and treatment as defined in K.S.A. 59-29b46, and amend-  
 14 ments thereto.
- 15 (b) Subsection (a)(5) shall not apply to:
- 16 (1) Possession of any firearm in connection with a firearms safety  
 17 course of instruction or firearms education course approved and author-  
 18 ized by the school;
- 19 (2) any possession of any firearm specifically authorized in writing by  
 20 the superintendent of any unified school district or the chief administrator  
 21 of any accredited nonpublic school;
- 22 (3) possession of a firearm secured in a motor vehicle by a parent,  
 23 guardian, custodian or someone authorized to act in such person's behalf  
 24 who is delivering or collecting a student; or
- 25 (4) possession of a firearm secured in a motor vehicle by a registered  
 26 voter who is on the school grounds, which contain a polling place for the  
 27 purpose of voting during polling hours on an election day.
- 28 (c) Subsection (a)(7) shall not apply to a person who has received a  
 29 certificate of restoration pursuant to K.S.A. 2008 Supp. 75-7c26, and  
 30 amendments thereto.
- 31 (d) (1) Violation of subsection (a)(1) or (a)(5) is a class B nonperson  
 32 select misdemeanor;
- 33 (2) Violation of subsection (a)(2), (a)(3); *or* (a)(4) ~~or (a)(7)~~ is a severity  
 34 level 8, nonperson felony;
- 35 (3) *Violation of subsection (a)(7) is a severity level 9, nonperson*  
 36 *felony.*
- 37 (4) Violation of subsection (a)(6) is a class A nonperson misdemeanor.
- 38 ~~Sec. 72.~~ **70.** K.S.A. 21-4226 is hereby amended to read as follows:  
 39 21-4226. As used in K.S.A. 21-4225 through 21-4229, and amendments  
 40 thereto:
- 41 (a) "Criminal street gang" means any organization, association or  
 42 group, whether formal or informal:
- 43 (1) Consisting of three or more persons;

- 1 (2) having as one of its primary activities the commission of one or  
2 more person felonies, person misdemeanors, felony violations of ~~the uni-~~  
3 ~~form controlled substances act, K.S.A. 65-4101 et seq. sections 1 through~~  
4 17, and amendments thereto, or the comparable juvenile offenses, which  
5 if committed by an adult would constitute the commission of such felonies  
6 or misdemeanors;
- 7 (3) which has a common name or common identifying sign or symbol;  
8 and
- 9 (4) whose members, individually or collectively, engage in or have  
10 engaged in the commission, attempted commission, conspiracy to commit  
11 or solicitation of two or more person felonies, person misdemeanors, fel-  
12 ony violations of ~~the uniform controlled substances act, K.S.A. 65-4101~~  
13 ~~et seq. sections 1 through 17~~, and amendments thereto, the comparable  
14 juvenile offenses, which if committed by an adult would constitute the  
15 commission of such felonies or misdemeanors or any substantially similar  
16 offense from another jurisdiction.
- 17 (b) “Criminal street gang member” is a person who:
- 18 (1) Admits to criminal street gang membership; or
- 19 (2) meets three or more of the following criteria:
- 20 (A) Is identified as a criminal street gang member by a parent or  
21 guardian.
- 22 (B) Is identified as a criminal street gang member by a state, county  
23 or city law enforcement officer or correctional officer or documented  
24 reliable informant.
- 25 (C) Is identified as a criminal street gang member by an informant  
26 of previously untested reliability and such identification is corroborated  
27 by independent information.
- 28 (D) Resides in or frequents a particular criminal street gang’s area  
29 and adopts such gang’s style of dress, color, use of hand signs or tattoos,  
30 and associates with known criminal street gang members.
- 31 (E) Has been arrested more than once in the company of identified  
32 criminal street gang members for offenses which are consistent with usual  
33 criminal street gang activity.
- 34 (F) Is identified as a criminal street gang member by physical evi-  
35 dence including, but not limited to, photographs or other documentation.
- 36 (G) Has been stopped in the company of known criminal street gang  
37 members two or more times.
- 38 (H) Has participated in or undergone activities self-identified or  
39 identified by a reliable informant as a criminal street gang initiation ritual.
- 40 (c) “Criminal street gang activity” means the commission or at-  
41 tempted commission of, or solicitation or conspiracy to commit, one or  
42 more person felonies, person misdemeanors, felony violations of ~~the uni-~~  
43 ~~form controlled substances act, K.S.A. 65-4101, et seq. sections 1 through~~

1 17, and amendments thereto, or the comparable juvenile offenses, which  
2 if committed by an adult would constitute the commission of such felonies  
3 or misdemeanors on separate occasions.

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

5 (1) Admits to criminal street gang association; or

6 (2) meets two or more defining criteria for criminal street gang mem-  
7 bership described in subsection (b)(2).

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

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

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

17 (3) an informant of previously untested reliability identifies an inci-  
18 dent as criminal street gang activity and it is corroborated by independent  
19 information.

20 Sec. ~~73~~ **71**. K.S.A. 21-4232 is hereby amended to read as follows:  
21 21-4232. (a) Unlawfully tampering with electronic monitoring equipment  
22 is intentionally removing, disabling, altering, tampering with, damaging  
23 or destroying any electronic monitoring equipment used pursuant to  
24 court order or as a condition of parole.

25 (b) The provisions of this section shall not apply to:

26 (1) The owner of the equipment, or an agent of the owner, perform-  
27 ing ordinary maintenance and repairs upon such equipment; or

28 (2) an employee of the department of corrections acting within such  
29 employee’s scope of employment.

30 (c) Unlawfully tampering with electronic monitoring equipment is a  
31 severity level ~~6~~ 8, nonperson felony.

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

34 Sec. ~~74~~ **72**. K.S.A. 2008 Supp. 21-4310 is hereby amended to read  
35 as follows: 21-4310. (a) Cruelty to animals is:

36 (1) Intentionally and maliciously killing, injuring, maiming, torturing,  
37 burning or mutilating any animal;

38 (2) intentionally abandoning or leaving any animal in any place with-  
39 out making provisions for its proper care;

40 (3) having physical custody of any animal and intentionally failing to  
41 provide such food, potable water, protection from the elements, oppor-  
42 tunity for exercise and other care as is needed for the health or well-being  
43 of such kind of animal;

- 1 (4) intentionally using a wire, pole, stick, rope or any other object to
- 2 cause an equine to lose its balance or fall, for the purpose of sport or
- 3 entertainment; or
- 4 (5) intentionally causing any physical injury other than the acts de-
- 5 scribed in subsection (a)(1).
- 6 (b) The provisions of this section shall not apply to:
- 7 (1) Normal or accepted veterinary practices;
- 8 (2) bona fide experiments carried on by commonly recognized re-
- 9 search facilities;
- 10 (3) killing, attempting to kill, trapping, catching or taking of any an-
- 11 imal in accordance with the provisions of chapter 32 or chapter 47 of the
- 12 Kansas Statutes Annotated;
- 13 (4) rodeo practices accepted by the rodeo cowboys' association;
- 14 (5) the humane killing of an animal which is diseased or disabled
- 15 beyond recovery for any useful purpose, or the humane killing of animals
- 16 for population control, by the owner thereof or the agent of such owner
- 17 residing outside of a city or the owner thereof within a city if no animal
- 18 shelter, pound or licensed veterinarian is within the city, or by a licensed
- 19 veterinarian at the request of the owner thereof, or by any officer or agent
- 20 of an incorporated humane society, the operator of an animal shelter or
- 21 pound, a local or state health officer or a licensed veterinarian three busi-
- 22 ness days following the receipt of any such animal at such society, shelter
- 23 or pound;
- 24 (6) with respect to farm animals, normal or accepted practices of
- 25 animal husbandry, including the normal and accepted practices for the
- 26 slaughter of such animals for food or by-products and the careful or thrifty
- 27 management of one's herd or animals, including animal care practices
- 28 common in the industry or region;
- 29 (7) the killing of any animal by any person at any time which may be
- 30 found outside of the owned or rented property of the owner or custodian
- 31 of such animal and which is found injuring or posing a threat to any
- 32 person, farm animal or property;
- 33 (8) an animal control officer trained by a licensed veterinarian in the
- 34 use of a tranquilizer gun, using such gun with the appropriate dosage for
- 35 the size of the animal, when such animal is vicious or could not be cap-
- 36 tured after reasonable attempts using other methods;
- 37 (9) laying an equine down for medical or identification purposes;
- 38 (10) normal or accepted practices of pest control, as defined in sub-
- 39 section (x) of K.S.A. 2-2438a, and amendments thereto; or
- 40 (11) accepted practices of animal husbandry pursuant to regulations
- 41 promulgated by the United States department of agriculture for domestic
- 42 pet animals under the animal welfare act, public law 89-544, as amended
- 43 and in effect on July 1, 2006.

1 (c) As used in this section:

2 (1) “Equine” means a horse, pony, mule, jenny, donkey or hinny.

3 (2) “Maliciously” means a state of mind characterized by actual evil-  
4 mindedness or specific intent to do a harmful act without a reasonable  
5 justification or excuse.

6 (d) (1) Cruelty to animals as described in subsection (a)(1) is a *se-*  
7 *verity level 10*, nonperson felony. Upon conviction of this subsection, a  
8 person shall be ~~sentenced to not less than 30 days or more than one year’s~~  
9 ~~imprisonment required to serve 30 days’ imprisonment as a condition of~~  
10 *probation* and be fined not less than \$500 nor more than \$5,000. During  
11 the mandatory 30 days imprisonment, such offender shall have a psycho-  
12 logical evaluation prepared for the court to assist the court in determining  
13 conditions of probation. Such conditions shall include, but not be limited  
14 to, the completion of an anger management program.

15 (2) The first conviction of cruelty to animals as described in subsection  
16 (a)(2), (a)(3), (a)(4) and (a)(5) is a class A nonperson misdemeanor. The  
17 second or subsequent conviction of cruelty to animals as described in  
18 subsection (a)(2), (a)(3), (a)(4) and (a)(5) is a *severity level 10*, non-  
19 person felony. Upon such conviction, a person shall be ~~sentenced to not less than~~  
20 ~~five days or more than one year’s imprisonment required to serve 5 days’~~  
21 *imprisonment as a condition of probation* and be fined not less than \$500  
22 nor more than \$2,500.

23 (3) *The person convicted shall not be eligible for release on probation,*  
24 *suspension or reduction of sentence or parole until the person has served*  
25 *the mandatory sentence as provided herein.*

26 (e) *Persons serving the mandatory sentence shall be supervised by*  
27 *community correctional services upon release.*

28 ~~(f)~~ (f) For purposes of this section, “animal” shall have the meaning  
29 ascribed to it in K.S.A. 21-4313, and amendments thereto.

30 ~~Sec. 75-~~ **73.** K.S.A. 21-4318 is hereby amended to read as follows:  
31 21-4318. (a) Inflicting harm, disability or death to a police dog, arson dog,  
32 assistance dog, game warden dog or search and rescue dog is knowingly  
33 and intentionally, and without lawful cause or justification poisoning, in-  
34 flicting great bodily harm, permanent disability or death, upon a police  
35 dog, arson dog, assistance dog, game warden dog or search and rescue  
36 dog.

37 (b) As used in this section:

38 (1) “Arson dog” means any dog which is owned, or the service of  
39 which is employed, by the state fire marshal or a fire department for the  
40 principal purpose of aiding in the detection of liquid accelerants in the  
41 investigation of fires.

42 (2) “Assistance dog” has the meaning provided by K.S.A. 2008 Supp.  
43 39-1113, and amendments thereto.

1 (3) “Fire department” means a public fire department under the con-  
2 trol of the governing body of a city, township, county, fire district or  
3 benefit district or a private fire department operated by a nonprofit cor-  
4 poration providing fire protection services for a city, township, county,  
5 fire district or benefit district under contract with the governing body of  
6 the city, township, county or district.

7 (4) “Game warden dog” means any dog which is owned, or the service  
8 of which is employed, by the department of wildlife and parks for the  
9 purpose of aiding in detection of criminal activity, enforcement of laws,  
10 apprehension of offenders or location of persons or wildlife.

11 (5) “Police dog” means any dog which is owned, or the service of  
12 which is employed, by a law enforcement agency for the principal purpose  
13 of aiding in the detection of criminal activity, enforcement of laws or  
14 apprehension of offenders.

15 (6) “Search and rescue dog” means any dog which is owned or the  
16 service of which is employed, by a law enforcement or emergency re-  
17 sponse agency for the purpose of aiding in the location of persons missing  
18 in disasters or other times of need.

19 (c) Inflicting harm, disability or death to a police dog, arson dog,  
20 assistance dog, game warden dog or search and rescue dog is a *severity*  
21 *level 9*, nonperson felony. Upon conviction of this subsection, a person  
22 shall be ~~sentenced to not less than 30 days or more than one year’s im-~~  
23 ~~prisonment~~ *required to serve 30 days’ imprisonment as a condition of*  
24 *probation* and be fined not less than \$500 nor more than \$5,000. During  
25 the mandatory 30 days imprisonment, such offender shall have a psycho-  
26 logical evaluation prepared for the court to assist the court in determining  
27 conditions of probation. Such conditions shall include, but not be limited  
28 to, the completion of an anger management program.

29 (d) *The person convicted shall not be eligible for release on probation,*  
30 *suspension or reduction of sentence or parole until the person has served*  
31 *the mandatory sentence as provided herein.*

32 (e) *Persons serving the mandatory sentence shall be supervised by*  
33 *community correctional services upon release.*

34 ~~(f)~~ (f) This section shall be part of and supplemental to the Kansas  
35 criminal code.

36 Sec. ~~76.~~ **74.** K.S.A. 21-4502 is hereby amended to read as follows:  
37 21-4502. (1) For the purpose of sentencing, the following classes of mis-  
38 demeanors and the punishment and the terms of confinement authorized  
39 for each class are established:

40 (a) Class A, the sentence for which shall be a definite term of con-  
41 finement in the county jail which shall be fixed by the court and shall not  
42 exceed one year.

43 (b) Class B, the sentence for which shall be a definite term of con-

1 finement in the county jail which shall be fixed by the court and shall not  
2 exceed six months.

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

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

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

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

21 (4) Except as provided in subsection (5), in addition to or in lieu of  
22 any other sentence authorized by law, whenever a person is convicted of  
23 having committed, while under 21 years of age, a misdemeanor under  
24 ~~the uniform controlled substances act (K.S.A. 65-4101 et seq. and amend-~~  
25 ~~ments thereto), K.S.A. 41-719, 41-727, 65-4152, 65-4153, 65-4154 or 65-~~  
26 ~~4155 sections 1 through 17 or 8-1599, and amendments thereto, the court~~  
27 shall order such person to submit to and complete an alcohol and drug  
28 evaluation by a community-based alcohol and drug safety action program  
29 certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay  
30 a fee not to exceed the fee established by that statute for such evaluation.  
31 If the court finds that the person is indigent, the fee may be waived.

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

36 ~~Sec. 77.~~ **75.** K.S.A. 21-4503a is hereby amended to read as follows:  
37 21-4503a. (a) A person who has been convicted of a felony may, in ad-  
38 dition to the sentence authorized by law, be ordered to pay a fine which  
39 shall be fixed by the court as follows:

40 (1) For any off-grid felony crime ~~or any felony ranked in severity level~~  
41 ~~1 of the drug grid as provided in K.S.A. 21-4705 and amendments thereto,~~  
42 a sum not exceeding \$500,000.

43 (2) For any felony ranked in severity levels 1 through 5 ~~of the non-drug~~

1 ~~grid as provided in K.S.A. 21-4704 and amendments thereto or in severity~~  
2 ~~levels 2 or 3 of the drug grid as provided in K.S.A. 21-4705 and amend-~~  
3 ~~ments thereto, a sum not exceeding \$300,000.~~

4 (3) For any felony ranked in severity levels 6 through 10 ~~of the non-~~  
5 ~~drug grid as provided in K.S.A. 21-4704 and amendments thereto or in~~  
6 ~~severity level 4 of the drug grid as provided in K.S.A. 21-4705 and amend-~~  
7 ~~ments thereto, a sum not exceeding \$100,000.~~

8 (b) A person who has been convicted of a misdemeanor, in addition  
9 to or instead of the imprisonment authorized by law, may be sentenced  
10 to pay a fine which shall be fixed by the court as follows:

11 (1) For a class A misdemeanor, a sum not exceeding \$2,500.

12 (2) For a class B misdemeanor, a sum not exceeding \$1,000.

13 (3) For a class C misdemeanor, a sum not exceeding \$500.

14 (4) For an unclassified misdemeanor, any sum authorized by the stat-  
15 ute that defines the crime. If no penalty is provided in such law, the fine  
16 shall not exceed the fine provided herein for a class C misdemeanor.

17 (c) As an alternative to any of the above fines, the fine imposed may  
18 be fixed at any greater sum not exceeding double the pecuniary gain  
19 derived from the crime by the offender.

20 (d) A person who has been convicted of a traffic infraction may be  
21 sentenced to pay a fine which shall be fixed by the court, not exceeding  
22 \$500.

23 (e) A person who has been convicted of a cigarette or tobacco in-  
24 fraction shall be sentenced to pay a fine of \$25.

25 (f) The provisions of this section shall apply to crimes committed on  
26 or after July 1, 1993.

27 ~~Sec. 78.~~ **76.** K.S.A. 21-4603d is hereby amended to read as follows:  
28 21-4603d. (a) Whenever any person has been found guilty of a crime, the  
29 court may adjudge any of the following:

30 (1) Commit the defendant to the custody of the secretary of correc-  
31 tions if the current crime of conviction is a felony and the sentence pre-  
32 sumes imprisonment, or the sentence imposed is a dispositional departure  
33 to imprisonment; or, if confinement is for a misdemeanor, to jail for the  
34 term provided by law;

35 (2) impose the fine applicable to the offense;

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

- 1 probation sentence, or community corrections placement;
- 2 (4) assign the defendant to a community correctional services pro-  
3 gram as provided in K.S.A. 75-5291, and amendments thereto, or through  
4 a departure for substantial and compelling reasons subject to such con-  
5 ditions as the court may deem appropriate, including orders requiring full  
6 or partial restitution;
- 7 (5) assign the defendant to a conservation camp for a period not to  
8 exceed six months as a condition of probation followed by a six-month  
9 period of follow-up through adult intensive supervision by a community  
10 correctional services program, if the offender successfully completes the  
11 conservation camp program;
- 12 (6) assign the defendant to a house arrest program pursuant to K.S.A.  
13 21-4603b, and amendments thereto;
- 14 (7) order the defendant to attend and satisfactorily complete an al-  
15 cohol or drug education or training program as provided by subsection  
16 (3) of K.S.A. 21-4502, and amendments thereto;
- 17 (8) order the defendant to repay the amount of any reward paid by  
18 any crime stoppers chapter, individual, corporation or public entity which  
19 materially aided in the apprehension or conviction of the defendant; repay  
20 the amount of any costs and expenses incurred by any law enforcement  
21 agency in the apprehension of the defendant, if one of the current crimes  
22 of conviction of the defendant includes escape, as defined in K.S.A. 21-  
23 3809, and amendments thereto, or aggravated escape, as defined in K.S.A.  
24 21-3810, and amendments thereto; repay expenses incurred by a fire dis-  
25 trict, fire department or fire company responding to a fire which has been  
26 determined to be arson under K.S.A. 21-3718 or 21-3719, and amend-  
27 ments thereto, if the defendant is convicted of such crime; repay the  
28 amount of any public funds utilized by a law enforcement agency to pur-  
29 chase controlled substances from the defendant during the investigation  
30 which leads to the defendant's conviction; or repay the amount of any  
31 medical costs and expenses incurred by any law enforcement agency or  
32 county. Such repayment of the amount of any such costs and expenses  
33 incurred by a county, law enforcement agency, fire district, fire depart-  
34 ment or fire company or any public funds utilized by a law enforcement  
35 agency shall be deposited and credited to the same fund from which the  
36 public funds were credited to prior to use by the county, law enforcement  
37 agency, fire district, fire department or fire company;
- 38 (9) order the defendant to pay the administrative fee authorized by  
39 K.S.A. 22-4529, and amendments thereto, unless waived by the court;
- 40 (10) order the defendant to pay a domestic violence special program  
41 fee authorized by K.S.A. 20-369, and amendments thereto;
- 42 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6),  
43 (7), (8), (9) and (10); or

- 1 (12) suspend imposition of sentence in misdemeanor cases.
- 2 (b) (1) In addition to or in lieu of any of the above, the court shall  
3 order the defendant to pay restitution, which shall include, but not be  
4 limited to, damage or loss caused by the defendant's crime, unless the  
5 court finds compelling circumstances which would render a plan of res-  
6 titution unworkable. In regard to a violation of K.S.A. 21-4018, and  
7 amendments thereto, such damage or loss shall include, but not be limited  
8 to, attorney fees and costs incurred to repair the credit history or rating  
9 of the person whose personal identification documents were obtained and  
10 used in violation of such section, and to satisfy a debt, lien or other ob-  
11 ligation incurred by the person whose personal identification documents  
12 were obtained and used in violation of such section. If the court finds a  
13 plan of restitution unworkable, the court shall state on the record in detail  
14 the reasons therefor.
- 15 (2) If the court orders restitution, the restitution shall be a judgment  
16 against the defendant which may be collected by the court by garnishment  
17 or other execution as on judgments in civil cases. If, after 60 days from  
18 the date restitution is ordered by the court, a defendant is found to be in  
19 noncompliance with the plan established by the court for payment of  
20 restitution, and the victim to whom restitution is ordered paid has not  
21 initiated proceedings in accordance with K.S.A. 60-4301 et seq., and  
22 amendments thereto, the court shall assign an agent procured by the  
23 attorney general pursuant to K.S.A. 75-719, and amendments thereto, to  
24 collect the restitution on behalf of the victim. The administrative judge  
25 of each judicial district may assign such cases to an appropriate division  
26 of the court for the conduct of civil collection proceedings.
- 27 (c) In addition to or in lieu of any of the above, the court shall order  
28 the defendant to submit to and complete an alcohol and drug evaluation,  
29 and pay a fee therefor, when required by subsection (4) of K.S.A. 21-  
30 4502, and amendments thereto.
- 31 (d) In addition to any of the above, the court shall order the defend-  
32 ant to reimburse the county general fund for all or a part of the expend-  
33 itures by the county to provide counsel and other defense services to the  
34 defendant. Any such reimbursement to the county shall be paid only after  
35 any order for restitution has been paid in full. In determining the amount  
36 and method of payment of such sum, the court shall take account of the  
37 financial resources of the defendant and the nature of the burden that  
38 payment of such sum will impose. A defendant who has been required  
39 to pay such sum and who is not willfully in default in the payment thereof  
40 may at any time petition the court which sentenced the defendant to  
41 waive payment of such sum or any unpaid portion thereof. If it appears  
42 to the satisfaction of the court that payment of the amount due will im-  
43 pose manifest hardship on the defendant or the defendant's immediate

1 family, the court may waive payment of all or part of the amount due or  
2 modify the method of payment.

3 (e) In imposing a fine the court may authorize the payment thereof  
4 in installments. ~~In releasing a defendant on probation, the court shall~~  
5 ~~direct that the defendant be under the supervision of a court services~~  
6 ~~officer.~~ If the court commits the defendant to the custody of the secretary  
7 of corrections or to jail, the court may specify in its order the amount of  
8 restitution to be paid and the person to whom it shall be paid if restitution  
9 is later ordered as a condition of parole, conditional release or postrelease  
10 supervision.

11 (f) (1) When a new felony is committed while the offender is incar-  
12 cerated and serving a sentence for a felony, or while the offender is on  
13 probation, assignment to a community correctional services program, pa-  
14 role, conditional release, or postrelease supervision for a felony, a new  
15 sentence shall be imposed pursuant to the consecutive sentencing  
16 requirements of K.S.A. 21-4608, and amendments thereto, and the court  
17 may sentence the offender to imprisonment for the new conviction, even  
18 when the new crime of conviction otherwise presumes a nonprison sen-  
19 tence. In this event, imposition of a prison sentence for the new crime  
20 does not constitute a departure.

21 (2) When a new felony is committed while the offender is incarcer-  
22 ated in a juvenile correctional facility pursuant to K.S.A. 38-1671 prior to  
23 its repeal or K.S.A. 2008 Supp. 38-2373, and amendments thereto, for an  
24 offense, which if committed by an adult would constitute the commission  
25 of a felony, upon conviction, the court shall sentence the offender to  
26 imprisonment for the new conviction, even when the new crime of con-  
27 viction otherwise presumes a nonprison sentence. In this event, imposi-  
28 tion of a prison sentence for the new crime does not constitute a depart-  
29 ure. The conviction shall operate as a full and complete discharge from  
30 any obligations, except for an order of restitution, imposed on the of-  
31 fender arising from the offense for which the offender was committed to  
32 a juvenile correctional facility.

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

42 (g) Prior to imposing a dispositional departure for a defendant whose  
43 offense is classified in the presumptive nonprison grid block of ~~either the~~

1 sentencing ~~guideline~~ *guidelines* grid, prior to sentencing a defendant to  
 2 incarceration whose offense is classified in grid blocks ~~5-H, 5-I or 6-G~~ 6-  
 3 *E, 6-F, 6-G, 6-H, 6-I, 7-C, 7-D, 7-E, 7-F, 8-C, 8-D, 8-E, 8-F, 9-C, 9-D or*  
 4 *9-E* of the sentencing guidelines grid ~~for nondrug crimes or in grid blocks~~  
 5 ~~3-E, 3-F, 3-G, 3-H or 3-I~~ of the sentencing guidelines grid ~~for drug~~  
 6 ~~crimes~~, prior to sentencing a defendant to incarceration whose offense is  
 7 classified in grid blocks ~~4-E or 4-F~~ *10-E or 10-F* of the sentencing ~~guide-~~  
 8 ~~line~~ *guidelines* grid ~~for drug crimes~~ and whose offense does not meet the  
 9 requirements of K.S.A. 21-4729, and amendments thereto, prior to rev-  
 10 ocation of a nonprison sanction of a defendant whose offense is classified  
 11 in grid blocks 4-E or 4-F of the sentencing ~~guideline~~ *guidelines* grid for  
 12 drug crimes *prior to such grid's repeal or classified in grid blocks 10-E*  
 13 *or 10-F of the sentencing guidelines grid* and whose offense does not meet  
 14 the requirements of K.S.A. 21-4729, and amendments thereto, or prior  
 15 to revocation of a nonprison sanction of a defendant whose offense is  
 16 classified in the presumptive nonprison grid block of ~~either the~~ sentencing  
 17 ~~guideline~~ *guidelines* grid or grid blocks ~~5-H, 5-I or 6-G~~ 6-E, 6-F, 6-G, 6-  
 18 *H, 6-I, 7-C, 7-D, 7-E, 7-F, 8-C, 8-D, 8-E, 8-F, 9-C, 9-D or 9-E* of the  
 19 sentencing guidelines grid ~~for nondrug crimes or in grid blocks 3-E, 3-F,~~  
 20 ~~3-G, 3-H or 3-I~~ of the sentencing guidelines grid ~~for drug crimes~~, the  
 21 court shall consider placement of the defendant in the Labette correc-  
 22 tional conservation camp, conservation camps established by the secretary  
 23 of corrections pursuant to K.S.A. 75-52,127, and ~~amendment~~ *amend-*  
 24 *ments* thereto, or a community intermediate sanction center. Pursuant to  
 25 this paragraph the defendant shall not be sentenced to imprisonment if  
 26 space is available in a conservation camp or a community intermediate  
 27 sanction center and the defendant meets all of the conservation camp's  
 28 or a community intermediate sanction center's placement criteria unless  
 29 the court states on the record the reasons for not placing the defendant  
 30 in a conservation camp or a community intermediate sanction center.

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

36 (i) In addition to any of the above, the court shall order the defendant  
 37 to reimburse the state general fund for all or a part of the expenditures  
 38 by the state board of indigents' defense services to provide counsel and  
 39 other defense services to the defendant. In determining the amount and  
 40 method of payment of such sum, the court shall take account of the  
 41 financial resources of the defendant and the nature of the burden that  
 42 payment of such sum will impose. A defendant who has been required  
 43 to pay such sum and who is not willfully in default in the payment thereof

1 may at any time petition the court which sentenced the defendant to  
2 waive payment of such sum or any unpaid portion thereof. If it appears  
3 to the satisfaction of the court that payment of the amount due will im-  
4 pose manifest hardship on the defendant or the defendant's immediate  
5 family, the court may waive payment of all or part of the amount due or  
6 modify the method of payment. The amount of attorney fees to be in-  
7 cluded in the court order for reimbursement shall be the amount claimed  
8 by appointed counsel on the payment voucher for indigents' defense serv-  
9 ices or the amount prescribed by the board of indigents' defense services  
10 reimbursement tables as provided in K.S.A. 22-4522, and amendments  
11 thereto, whichever is less.

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

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

22 (l) The secretary of corrections is authorized to make direct place-  
23 ment to the Labette correctional conservation camp or a conservation  
24 camp established by the secretary pursuant to K.S.A. 75-52,127, and  
25 amendments thereto, of an inmate sentenced to the secretary's custody  
26 if the inmate: (1) Has been sentenced to the secretary for a probation  
27 revocation, as a departure from the presumptive nonimprisonment grid  
28 block of ~~either the~~ sentencing grid, for an offense which is classified in  
29 grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid ~~for nondrug~~  
30 ~~crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing~~  
31 ~~guidelines grid for drug crimes~~, or for an offense which is classified in  
32 gridblocks ~~4-E or 4-F~~ *10-E or 10-F* of the sentencing guidelines grid ~~for~~  
33 ~~drug crimes~~ and such offense does not meet the requirements of K.S.A.  
34 21-4729, and amendments thereto, and (2) otherwise meets admission  
35 criteria of the camp. If the inmate successfully completes a conservation  
36 camp program, the secretary of corrections shall report such completion  
37 to the sentencing court and the county or district attorney. The inmate  
38 shall then be assigned by the court to six months of follow-up supervision  
39 conducted by the appropriate community corrections services program.  
40 The court may also order that supervision continue thereafter for the  
41 length of time authorized by K.S.A. 21-4611, and amendments thereto.

42 (m) When it is provided by law that a person shall be sentenced pur-  
43 suant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of

1 this section shall not apply.

2 (n) Except as provided by subsection (f) of K.S.A. 21-4705, and  
3 amendments thereto, in addition to any of the above, for felony violations  
4 of ~~K.S.A. 65-4160 or 65-4162~~ *section 6*, and amendments thereto, the  
5 court shall require the defendant who meets the requirements established  
6 in K.S.A. 21-4729, and amendments thereto, to participate in a certified  
7 drug abuse treatment program, as provided in K.S.A. 2008 Supp. 75-  
8 52,144, and amendments thereto, including, but not limited to, an ap-  
9 proved after-care plan. If the defendant fails to participate in or has a  
10 pattern of intentional conduct that demonstrates the offender's refusal to  
11 comply with or participate in the treatment program, as established by  
12 judicial finding, the defendant shall be subject to revocation of probation  
13 and the defendant shall serve the underlying prison sentence as estab-  
14 lished in K.S.A. ~~21-4705~~ **21-4704**, and amendments thereto. For those  
15 offenders who are convicted on or after the effective date of this act, upon  
16 completion of the underlying prison sentence, the defendant shall not be  
17 subject to a period of postrelease supervision. The amount of time spent  
18 participating in such program shall not be credited as service on the un-  
19 derlying prison sentence.

20 ~~(o) All offenders who are convicted of a class A misdemeanor shall be~~  
21 ~~under the supervision of a court services officer. In releasing a defendant~~  
22 **If an offender, who is convicted of a class A misdemeanor, is placed**  
23 *on probation, the court shall direct that the defendant be under the su-*  
24 *per vision of a court services officer.*

25 Sec. ~~79~~ **77.** K.S.A. 21-4611 is hereby amended to read as follows:  
26 21-4611. (a) The period of suspension of sentence, probation or assign-  
27 ment to community corrections fixed by the court shall not exceed five  
28 years in felony cases involving crimes committed prior to July 1, 1993, or  
29 two years in misdemeanor cases, subject to renewal and extension for  
30 additional fixed periods not exceeding five years in such felony cases, nor  
31 two years in misdemeanor cases. In no event shall the total period of  
32 probation, suspension of sentence or assignment to community correc-  
33 tions for a felony committed prior to July 1, 1993, exceed the greatest  
34 maximum term provided by law for the crime, except that where the  
35 defendant is convicted of nonsupport of a child, the period may be con-  
36 tinued as long as the responsibility for support continues. Probation, sus-  
37 pension of sentence or assignment to community corrections may be ter-  
38 minated by the court at any time and upon such termination or upon  
39 termination by expiration of the term of probation, suspension of sentence  
40 or assignment to community corrections, an order to this effect shall be  
41 entered by the court. The provisions of K.S.A. 75-5291, and amendments  
42 thereto, shall be applicable to any assignment to a community correctional  
43 services program pursuant to this section.

- 1 (b) The district court having jurisdiction of the offender may parole  
2 any misdemeanor sentenced to confinement in the county jail. The pe-  
3 riod of such parole shall be fixed by the court and shall not exceed two  
4 years and shall be terminated in the manner provided for termination of  
5 suspended sentence and probation.
- 6 (c) For all crimes committed on or after July 1, 1993, the duration of  
7 probation in felony cases sentenced for the following severity levels on  
8 the sentencing guidelines grid ~~for nondrug crimes and the sentencing~~  
9 ~~guidelines grid for drug crimes~~ is as follows:
- 10 (1) ~~For nondrug crimes the recommended duration of probation is:~~  
11 ~~(A)~~ Thirty-six months for crimes in crime severity levels 1 through 5;  
12 ~~and~~
- 13 ~~(B)~~ (2) 24 months for crimes in crime severity levels 6 and 7.
- 14 ~~(2)~~ (3) For drug crimes the recommended duration of probation is  
15 36 months for crimes in crime severity levels 1 and 2 *prior to such level's*  
16 *repeal*.
- 17 ~~(3)~~ (4) In felony cases sentenced at severity levels 9 and 10 on the  
18 sentencing guidelines grid ~~for nondrug crimes~~ and severity level 4 on the  
19 sentencing guidelines grid for drug crimes *prior to such level's repeal*, if  
20 a nonprison sanction is imposed, the court shall order the defendant to  
21 serve a period of probation, or assignment to a community correctional  
22 services program as provided under K.S.A. 75-5291 et seq., and amend-  
23 ments thereto, of up to 12 months in length.
- 24 ~~(4)~~ (5) In felony cases sentenced at severity level 8 on the sentencing  
25 guidelines grid ~~for nondrug crimes~~ and severity level 3 on the sentencing  
26 guidelines grid for drug crimes *prior to such level's repeal*, if a nonprison  
27 sanction is imposed, the court shall order the defendant to serve a period  
28 of probation, or assignment to a community correctional services pro-  
29 gram, as provided under K.S.A. 75-5291 et seq., and amendments thereto,  
30 of up to 18 months in length.
- 31 ~~(5)~~ (6) If the court finds and sets forth with particularity the reasons  
32 for finding that the safety of the members of the public will be jeopardized  
33 or that the welfare of the inmate will not be served by the length of the  
34 probation terms provided in subsections (c)(3) and (c)(4), the court may  
35 impose a longer period of probation. Such an increase shall not be con-  
36 sidered a departure and shall not be subject to appeal.
- 37 ~~(6)~~ (7) Except as provided in subsections (c)(7) and (c)(8), the total  
38 period in all cases shall not exceed 60 months, or the maximum period  
39 of the prison sentence that could be imposed whichever is longer. Non-  
40 prison sentences may be terminated by the court at any time.
- 41 ~~(7)~~ (8) If the defendant is convicted of nonsupport of a child, the  
42 period may be continued as long as the responsibility for support contin-  
43 ues. If the defendant is ordered to pay full or partial restitution, the period

1 may be continued as long as the amount of restitution ordered has not  
2 been paid.

3 ~~(8)~~ (9) The court may modify or extend the offender's period of su-  
4 pervision, pursuant to a modification hearing and a judicial finding of  
5 necessity. Such extensions may be made for a maximum period of five  
6 years or the maximum period of the prison sentence that could be im-  
7 posed, whichever is longer, inclusive of the original supervision term.

8 ~~(d) The provisions of subsection (c), as amended by this act, shall be~~  
9 ~~applied retroactively. The sentencing court shall direct that a review of~~  
10 ~~all persons serving a nonprison sanction for a crime in severity levels 8,~~  
11 ~~9 or 10 of the sentencing guidelines grid for nondrug crimes or a crime~~  
12 ~~in severity levels 3 or 4 of the sentencing guidelines grid for drug crimes~~  
13 ~~be conducted. On or before September 1, 2000, the duration of such~~  
14 ~~person's probation shall be modified in conformity with the provisions of~~  
15 ~~subsection (c).~~

16 ~~Sec. 80-78.~~ K.S.A. 2008 Supp. 21-4619 is hereby amended to read  
17 as follows: 21-4619. (a) (1) Except as provided in subsections (b) and (c),  
18 any person convicted in this state of a traffic infraction, cigarette or to-  
19 bacco infraction, misdemeanor or a class D or E felony, or for crimes  
20 committed on or after July 1, 1993, ~~nondrug~~ crimes ranked in severity  
21 levels 6 through 10 or any felony ranked in severity level 4 of the drug  
22 grid *prior to such grid's repeal*, may petition the convicting court for the  
23 expungement of such conviction or related arrest records if three or more  
24 years have elapsed since the person: (A) Satisfied the sentence imposed;  
25 or (B) was discharged from probation, a community correctional services  
26 program, parole, postrelease supervision, conditional release or a sus-  
27 pended sentence.

28 (2) Except as provided in subsections (b) and (c), any person who has  
29 fulfilled the terms of a diversion agreement may petition the district court  
30 for the expungement of such diversion agreement and related arrest re-  
31 cords if three or more years have elapsed since the terms of the diversion  
32 agreement were fulfilled.

33 (b) Except as provided in subsection (c), no person may petition for  
34 expungement until five or more years have elapsed since the person sat-  
35 isfied the sentence imposed, the terms of a diversion agreement or was  
36 discharged from probation, a community correctional services program,  
37 parole, postrelease supervision, conditional release or a suspended sen-  
38 tence, if such person was convicted of a class A, B or C felony, or for  
39 crimes committed on or after July 1, 1993, if convicted of an off-grid  
40 felony or any ~~nondrug~~ crime ranked in severity levels 1 through 5 or any  
41 felony ranked in severity levels 1 through 3 of the drug grid *prior to such*  
42 *grid's repeal*, or:

43 (1) Vehicular homicide, as defined by K.S.A. 21-3405, and amend-

1 ments thereto, or as prohibited by any law of another state which is in  
2 substantial conformity with that statute;

3 (2) driving while the privilege to operate a motor vehicle on the public  
4 highways of this state has been canceled, suspended or revoked, as pro-  
5 hibited by K.S.A. 8-262, and amendments thereto, or as prohibited by  
6 any law of another state which is in substantial conformity with that  
7 statute;

8 (3) perjury resulting from a violation of K.S.A. 8-261a, and amend-  
9 ments thereto, or resulting from the violation of a law of another state  
10 which is in substantial conformity with that statute;

11 (4) violating the provisions of the fifth clause of K.S.A. 8-142, and  
12 amendments thereto, relating to fraudulent applications or violating the  
13 provisions of a law of another state which is in substantial conformity with  
14 that statute;

15 (5) any crime punishable as a felony wherein a motor vehicle was  
16 used in the perpetration of such crime;

17 (6) failing to stop at the scene of an accident and perform the duties  
18 required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto,  
19 or required by a law of another state which is in substantial conformity  
20 with those statutes;

21 (7) violating the provisions of K.S.A. 40-3104, and amendments  
22 thereto, relating to motor vehicle liability insurance coverage; or

23 (8) a violation of K.S.A. 21-3405b, prior to its repeal.

24 (c) There shall be no expungement of convictions for the following  
25 offenses or of convictions for an attempt to commit any of the following  
26 offenses: (1) Rape as defined in K.S.A. 21-3502, and amendments thereto;  
27 (2) indecent liberties with a child as defined in K.S.A. 21-3503, and  
28 amendments thereto; (3) aggravated indecent liberties with a child as  
29 defined in K.S.A. 21-3504, and amendments thereto; (4) criminal sodomy  
30 as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, and amend-  
31 ments thereto; (5) aggravated criminal sodomy as defined in K.S.A. 21-  
32 3506, and amendments thereto; (6) indecent solicitation of a child as  
33 defined in K.S.A. 21-3510, and amendments thereto; (7) aggravated in-  
34 decent solicitation of a child as defined in K.S.A. 21-3511, and amend-  
35 ments thereto; (8) sexual exploitation of a child as defined in K.S.A. 21-  
36 3516, and amendments thereto; (9) aggravated incest as defined in K.S.A.  
37 21-3603, and amendments thereto; (10) endangering a child as defined  
38 in K.S.A. 21-3608, and amendments thereto; (11) *aggravated endanger-*  
39 *ing a child, as defined in K.S.A. 21-3608a, and amendments thereto;* (12)  
40 abuse of a child as defined in K.S.A. 21-3609, and amendments thereto;  
41 ~~(12)~~ (13) capital murder as defined in K.S.A. 21-3439, and amendments  
42 thereto; ~~(13)~~ (14) murder in the first degree as defined in K.S.A. 21-3401,  
43 and amendments thereto; ~~(14)~~ (15) murder in the second degree as de-

1 fined in K.S.A. 21-3402, and amendments thereto; ~~(15)~~ (16) voluntary  
2 manslaughter as defined in K.S.A. 21-3403, and amendments thereto;  
3 ~~(16)~~ (17) involuntary manslaughter as defined in K.S.A. 21-3404, and  
4 amendments thereto; ~~(17)~~ (18) involuntary manslaughter while driving  
5 under the influence of alcohol or drugs as defined in K.S.A. 21-3442, and  
6 amendments thereto; ~~(18)~~ (19) sexual battery as defined in K.S.A. 21-  
7 3517, and amendments thereto, when the victim was less than 18 years  
8 of age at the time the crime was committed; ~~(19)~~ (20) aggravated sexual  
9 battery as defined in K.S.A. 21-3518, and amendments thereto; ~~(20)~~ (21)  
10 a violation of K.S.A. 8-1567, and amendments thereto, including any di-  
11 version for such violation; ~~(21)~~ (22) a violation of K.S.A. 8-2,144, and  
12 amendments thereto, including any diversion for such violation; or ~~(22)~~  
13 (23) any conviction for any offense in effect at any time prior to the  
14 effective date of this act, that is comparable to any offense as provided in  
15 this subsection.

16 (d) When a petition for expungement is filed, the court shall set a  
17 date for a hearing of such petition and shall cause notice of such hearing  
18 to be given to the prosecuting attorney and the arresting law enforcement  
19 agency. The petition shall state: (1) The defendant's full name;

20 (2) the full name of the defendant at the time of arrest, conviction or  
21 diversion, if different than the defendant's current name;

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

23 (4) the crime for which the defendant was arrested, convicted or  
24 diverted;

25 (5) the date of the defendant's arrest, conviction or diversion; and

26 (6) the identity of the convicting court, arresting law enforcement  
27 authority or diverting authority. There shall be no docket fee for filing a  
28 petition pursuant to this section. All petitions for expungement shall be  
29 docketed in the original criminal action. Any person who may have rel-  
30 evant information about the petitioner may testify at the hearing. The  
31 court may inquire into the background of the petitioner and shall have  
32 access to any reports or records relating to the petitioner that are on file  
33 with the secretary of corrections or the Kansas parole board.

34 (e) At the hearing on the petition, the court shall order the peti-  
35 tioner's arrest record, conviction or diversion expunged if the court finds  
36 that:

37 (1) The petitioner has not been convicted of a felony in the past two  
38 years and no proceeding involving any such crime is presently pending  
39 or being instituted against the petitioner;

40 (2) the circumstances and behavior of the petitioner warrant the  
41 expungement; and

42 (3) the expungement is consistent with the public welfare.

43 (f) When the court has ordered an arrest record, conviction or diver-

1 sion expunged, the order of expungement shall state the information re-  
2 quired to be contained in the petition. The clerk of the court shall send  
3 a certified copy of the order of expungement to the Kansas bureau of  
4 investigation which shall notify the federal bureau of investigation, the  
5 secretary of corrections and any other criminal justice agency which may  
6 have a record of the arrest, conviction or diversion. After the order of  
7 expungement is entered, the petitioner shall be treated as not having been  
8 arrested, convicted or diverted of the crime, except that:

9 (1) Upon conviction for any subsequent crime, the conviction that  
10 was expunged may be considered as a prior conviction in determining the  
11 sentence to be imposed;

12 (2) the petitioner shall disclose that the arrest, conviction or diversion  
13 occurred if asked about previous arrests, convictions or diversions:

14 (A) In any application for licensure as a private detective, private  
15 detective agency, certification as a firearms trainer pursuant to K.S.A.  
16 2008 Supp. 75-7b21, and amendments thereto, or employment as a de-  
17 tective with a private detective agency, as defined by K.S.A. 75-7b01, and  
18 amendments thereto; as security personnel with a private patrol operator,  
19 as defined by K.S.A. 75-7b01, and amendments thereto; or with an insti-  
20 tution, as defined in K.S.A. 76-12a01, and amendments thereto, of the  
21 department of social and rehabilitation services;

22 (B) in any application for admission, or for an order of reinstatement,  
23 to the practice of law in this state;

24 (C) to aid in determining the petitioner's qualifications for employ-  
25 ment with the Kansas lottery or for work in sensitive areas within the  
26 Kansas lottery as deemed appropriate by the executive director of the  
27 Kansas lottery;

28 (D) to aid in determining the petitioner's qualifications for executive  
29 director of the Kansas racing and gaming commission, for employment  
30 with the commission or for work in sensitive areas in parimutuel racing  
31 as deemed appropriate by the executive director of the commission, or  
32 to aid in determining qualifications for licensure or renewal of licensure  
33 by the commission;

34 (E) to aid in determining the petitioner's qualifications for the fol-  
35 lowing under the Kansas expanded lottery act: (i) Lottery gaming facility  
36 manager or prospective manager, racetrack gaming facility manager or  
37 prospective manager, licensee or certificate holder; or (ii) an officer, di-  
38 rector, employee, owner, agent or contractor thereof;

39 (F) upon application for a commercial driver's license under K.S.A.  
40 8-2,125 through 8-2,142, and amendments thereto;

41 (G) to aid in determining the petitioner's qualifications to be an em-  
42 ployee of the state gaming agency;

43 (H) to aid in determining the petitioner's qualifications to be an em-

1 ployee of a tribal gaming commission or to hold a license issued pursuant  
2 to a tribal-state gaming compact;

3 (I) in any application for registration as a broker-dealer, agent, in-  
4 vestment adviser or investment adviser representative all as defined in  
5 K.S.A. 17-12a102, and amendments thereto;

6 (J) in any application for employment as a law enforcement officer as  
7 defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; or

8 (K) for applications received on and after July 1, 2006, to aid in de-  
9 termining the petitioner's qualifications for a license to carry a concealed  
10 weapon pursuant to the personal and family protection act, K.S.A. 2008  
11 Supp. 75-7c01 et seq., and amendments thereto;

12 (3) the court, in the order of expungement, may specify other cir-  
13 cumstances under which the conviction is to be disclosed;

14 (4) the conviction may be disclosed in a subsequent prosecution for  
15 an offense which requires as an element of such offense a prior conviction  
16 of the type expunged; and

17 (5) upon commitment to the custody of the secretary of corrections,  
18 any previously expunged record in the possession of the secretary of cor-  
19 rections may be reinstated and the expungement disregarded, and the  
20 record continued for the purpose of the new commitment.

21 (g) Whenever a person is convicted of a crime, pleads guilty and pays  
22 a fine for a crime, is placed on parole, postrelease supervision or proba-  
23 tion, is assigned to a community correctional services program, is granted  
24 a suspended sentence or is released on conditional release, the person  
25 shall be informed of the ability to expunge the arrest records or convic-  
26 tion. Whenever a person enters into a diversion agreement, the person  
27 shall be informed of the ability to expunge the diversion.

28 (h) Subject to the disclosures required pursuant to subsection (f), in  
29 any application for employment, license or other civil right or privilege,  
30 or any appearance as a witness, a person whose arrest records, conviction  
31 or diversion of a crime has been expunged under this statute may state  
32 that such person has never been arrested, convicted or diverted of such  
33 crime, but the expungement of a felony conviction does not relieve an  
34 individual of complying with any state or federal law relating to the use  
35 or possession of firearms by persons convicted of a felony.

36 (i) Whenever the record of any arrest, conviction or diversion has  
37 been expunged under the provisions of this section or under the provi-  
38 sions of any other existing or former statute, the custodian of the records  
39 of arrest, conviction, diversion and incarceration relating to that crime  
40 shall not disclose the existence of such records, except when requested  
41 by:

42 (1) The person whose record was expunged;

43 (2) a private detective agency or a private patrol operator, and the

- 1 request is accompanied by a statement that the request is being made in  
2 conjunction with an application for employment with such agency or op-  
3 erator by the person whose record has been expunged;
- 4 (3) a court, upon a showing of a subsequent conviction of the person  
5 whose record has been expunged;
- 6 (4) the secretary of social and rehabilitation services, or a designee of  
7 the secretary, for the purpose of obtaining information relating to em-  
8 ployment in an institution, as defined in K.S.A. 76-12a01, and amend-  
9 ments thereto, of the department of social and rehabilitation services of  
10 any person whose record has been expunged;
- 11 (5) a person entitled to such information pursuant to the terms of the  
12 expungement order;
- 13 (6) a prosecuting attorney, and such request is accompanied by a  
14 statement that the request is being made in conjunction with a prosecu-  
15 tion of an offense that requires a prior conviction as one of the elements  
16 of such offense;
- 17 (7) the supreme court, the clerk or disciplinary administrator thereof,  
18 the state board for admission of attorneys or the state board for discipline  
19 of attorneys, and the request is accompanied by a statement that the  
20 request is being made in conjunction with an application for admission,  
21 or for an order of reinstatement, to the practice of law in this state by the  
22 person whose record has been expunged;
- 23 (8) the Kansas lottery, and the request is accompanied by a statement  
24 that the request is being made to aid in determining qualifications for  
25 employment with the Kansas lottery or for work in sensitive areas within  
26 the Kansas lottery as deemed appropriate by the executive director of the  
27 Kansas lottery;
- 28 (9) the governor or the Kansas racing and gaming commission, or a  
29 designee of the commission, and the request is accompanied by a state-  
30 ment that the request is being made to aid in determining qualifications  
31 for executive director of the commission, for employment with the com-  
32 mission, for work in sensitive areas in parimutuel racing as deemed ap-  
33 propriate by the executive director of the commission or for licensure,  
34 renewal of licensure or continued licensure by the commission;
- 35 (10) the Kansas racing and gaming commission, or a designee of the  
36 commission, and the request is accompanied by a statement that the re-  
37 quest is being made to aid in determining qualifications of the following  
38 under the Kansas expanded lottery act: (A) Lottery gaming facility man-  
39 agers and prospective managers, racetrack gaming facility managers and  
40 prospective managers, licensees and certificate holders; and (B) their of-  
41 ficers, directors, employees, owners, agents and contractors;
- 42 (11) the Kansas sentencing commission;
- 43 (12) the state gaming agency, and the request is accompanied by a

1 statement that the request is being made to aid in determining qualifi-  
2 cations: (A) To be an employee of the state gaming agency; or (B) to be  
3 an employee of a tribal gaming commission or to hold a license issued  
4 pursuant to a tribal-gaming compact;

5 (13) the Kansas securities commissioner or a designee of the com-  
6 missioner, and the request is accompanied by a statement that the request  
7 is being made in conjunction with an application for registration as a  
8 broker-dealer, agent, investment adviser or investment adviser represen-  
9 tative by such agency and the application was submitted by the person  
10 whose record has been expunged;

11 (14) the Kansas commission on peace officers' standards and training  
12 and the request is accompanied by a statement that the request is being  
13 made to aid in determining certification eligibility as a law enforcement  
14 officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;

15 (15) a law enforcement agency and the request is accompanied by a  
16 statement that the request is being made to aid in determining eligibility  
17 for employment as a law enforcement officer as defined by K.S.A. 22-  
18 2202, and amendments thereto; or

19 (16) the attorney general and the request is accompanied by a state-  
20 ment that the request is being made to aid in determining qualifications  
21 for a license to carry a concealed weapon pursuant to the personal and  
22 family protection act.

23 ~~Sec. 81.~~ **79.** K.S.A. 21-4638 is hereby amended to read as follows:  
24 21-4638. When it is provided by law that a person shall be sentenced  
25 pursuant to this section, such person shall be sentenced to imprisonment  
26 for life and shall not be eligible for probation or suspension, modification  
27 or reduction of sentence. Except as otherwise provided, in addition, a  
28 person sentenced pursuant to this section shall not be eligible for parole  
29 prior to serving 40 years' imprisonment, and such 40 years' imprisonment  
30 shall not be reduced by the application of good time credits. For crimes  
31 committed on and after July 1, 1999, a person sentenced pursuant to this  
32 section shall not be eligible for parole prior to serving 50 years' impris-  
33 onment, and such 50 years' imprisonment shall not be reduced by the  
34 application of good time credits. For crimes committed on or after July  
35 1, 2006, a mandatory minimum term of imprisonment of 50 years shall  
36 not apply if the court finds that the defendant, because of the defendant's  
37 criminal history classification, is subject to presumptive imprisonment  
38 pursuant to the sentencing guidelines grid ~~for nondrug crimes~~ and the  
39 sentencing range exceeds 600 months. In such case, the defendant is  
40 required to serve a mandatory minimum term equal to the sentence es-  
41 tablished pursuant to the sentencing range. Upon sentencing a defendant  
42 pursuant to this section, the court shall commit the defendant to the  
43 custody of the secretary of corrections and the court shall state in the

1 sentencing order of the judgment form or journal entry, whichever is  
2 delivered with the defendant to the correctional institution, that the de-  
3 fendant has been sentenced pursuant to K.S.A. 21-4638 and amendments  
4 thereto.

5 ~~Sec. 82.~~ **80.** K.S.A. 21-4643 is hereby amended to read as follows:  
6 21-4643. (a) (1) Except as provided in subsection (b) or (d), a defendant  
7 who is 18 years of age or older and is convicted of the following crimes  
8 committed on or after July 1, 2006, shall be sentenced to a term of im-  
9 prisonment for life with a mandatory minimum term of imprisonment of  
10 not less than 25 years unless the court determines that the defendant  
11 should be sentenced as determined in paragraph (2):

12 (A) Aggravated trafficking, as defined in K.S.A. 21-3447, and amend-  
13 ments thereto, if the victim is less than 14 years of age;

14 (B) rape, as defined in subsection (a)(2) of K.S.A. 21-3502, and  
15 amendments thereto;

16 (C) aggravated indecent liberties with a child, as defined in subsec-  
17 tion (a)(3) of K.S.A. 21-3504, and amendments thereto;

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

20 (E) promoting prostitution, as defined in K.S.A. 21-3513, and amend-  
21 ments thereto, if the prostitute is less than 14 years of age;

22 (F) sexual exploitation of a child, as defined in subsection (a)(5) or  
23 (a)(6) of K.S.A. 21-3516, and amendments thereto; and

24 (G) an attempt, conspiracy or criminal solicitation, as defined in  
25 K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of an of-  
26 fense defined in paragraphs (A) through (F).

27 (2) The provision of paragraph (1) requiring a mandatory minimum  
28 term of imprisonment of not less than 25 years shall not apply if the court  
29 finds:

30 (A) The defendant is an aggravated habitual sex offender and sen-  
31 tenced pursuant to K.S.A. 21-4642, and amendments thereto; or

32 (B) the defendant, because of the defendant's criminal history clas-  
33 sification, is subject to presumptive imprisonment pursuant to the sen-  
34 tencing guidelines grid ~~for non-drug crimes~~ and the sentencing range ex-  
35 ceeds 300 months. In such case, the defendant is required to serve a  
36 mandatory minimum term equal to the sentence established pursuant to  
37 the sentencing range.

38 (b) (1) On and after July 1, 2006, if a defendant who is 18 years of  
39 age or older is convicted of a crime listed in subsection (a)(1) and such  
40 defendant has previously been convicted of a crime listed in subsection  
41 (a)(1), a crime in effect at any time prior to the effective date of this act  
42 which is substantially the same as a crime listed in subsection (a)(1) or a  
43 crime under a law of another jurisdiction which is substantially the same

1 as a crime listed in subsection (a)(1), the court shall sentence the de-  
2 fendant to a term of imprisonment for life with a mandatory minimum  
3 term of imprisonment of not less than 40 years. The provisions of this  
4 paragraph shall not apply to a crime committed under K.S.A. 21-3522,  
5 and amendments thereto, or a crime under a law of another jurisdiction  
6 which is substantially the same as K.S.A. 21-3522, and amendments  
7 thereto.

8 (2) The provision of paragraph (1) requiring a mandatory minimum  
9 term of imprisonment of not less than 40 years shall not apply if the court  
10 finds:

11 (A) The defendant is an aggravated habitual sex offender and sen-  
12 tenced pursuant to K.S.A. 21-4642, and amendments thereto; or

13 (B) the defendant, because of the defendant's criminal history clas-  
14 sification, is subject to presumptive imprisonment pursuant to the sen-  
15 tencing guidelines grid ~~for non-drug crimes~~ and the sentencing range ex-  
16 ceeds 480 months. In such case, the defendant is required to serve a  
17 mandatory minimum term equal to the sentence established pursuant to  
18 the sentencing range.

19 (c) When a person is sentenced pursuant to subsection (a) or (b),  
20 such person shall be sentenced to a mandatory minimum term of im-  
21 prisonment of not less than 25 years, 40 years or be sentenced as deter-  
22 mined in subsection (a)(2) or subsection (b)(2), whichever is applicable,  
23 and shall not be eligible for probation or suspension, modification or  
24 reduction of sentence. In addition, a person sentenced pursuant to this  
25 section shall not be eligible for parole prior to serving such mandatory  
26 term of imprisonment, and such imprisonment shall not be reduced by  
27 the application of good time credits.

28 (d) On or after July 1, 2006, for a first time conviction of an offense  
29 listed in paragraph (a)(1), the sentencing judge shall impose the manda-  
30 tory minimum term of imprisonment provided by subsection (a), unless  
31 the judge finds substantial and compelling reasons, following a review of  
32 mitigating circumstances, to impose a departure. If the sentencing judge  
33 departs from such mandatory minimum term of imprisonment, the judge  
34 shall state on the record at the time of sentencing the substantial and  
35 compelling reasons for the departure. The departure sentence shall be  
36 the sentence pursuant to the sentencing guidelines act, K. S. A. 21-4701  
37 et seq., and amendments thereto, and no sentence of a mandatory min-  
38 imum term of imprisonment shall be imposed hereunder. as used in this  
39 subsection, mitigating circumstances shall include, but are not limited to,  
40 the following:

41 (1) The defendant has no significant history of prior criminal activity.

42 (2) The crime was committed while the defendant was under the  
43 influence of extreme mental or emotional disturbances.

- 1 (3) The victim was an accomplice in the crime committed by another  
2 person, and the defendant's participation was relatively minor.
- 3 (4) The defendant acted under extreme distress or under the sub-  
4 substantial domination of another person.
- 5 (5) The capacity of the defendant to appreciate the criminality of the  
6 defendant's conduct or to conform the defendant's conduct to the  
7 requirements of law was substantially impaired.
- 8 (6) The age of the defendant at the time of the crime.
- 9 Sec. ~~83~~ **81**. K.S.A. 21-4703 is hereby amended to read as follows:  
10 21-4703. As used in this act:
- 11 (a) "Aggravating factors" mean substantial and compelling reasons  
12 justifying an exceptional sentence whereby the sentencing court may im-  
13 pose a departure sentence outside the standard sentencing range for a  
14 crime. Aggravating factors may result in dispositional or durational de-  
15 partures and shall be stated on the record by the court;
- 16 (b) "commission" means the Kansas sentencing commission;
- 17 (c) "criminal history" means and includes adult felony, class A mis-  
18 demeanor, class B person misdemeanor, or select misdemeanor convic-  
19 tions and comparable juvenile adjudications possessed by an offender at  
20 the time such offender is sentenced;
- 21 (d) "criminal history score" means the summation of the convictions  
22 described as criminal history that place an offender in one of the criminal  
23 history score categories listed on the horizontal axis of the sentencing  
24 guidelines grid for nondrug crimes and the sentencing guidelines grid for  
25 drug crimes;
- 26 (e) "decay factor" means prior convictions that are no longer consid-  
27 ered as part of an offender's criminal history score;
- 28 (f) "departure" means a sentence which is inconsistent with the pre-  
29 sumptive sentence for an offender;
- 30 (g) "dispositional departure" means a sentence which is inconsistent  
31 with the presumptive sentence by imposing a nonprison sanction when  
32 the presumptive sentence is prison or prison when the presumptive sen-  
33 tence is nonimprisonment;
- 34 (h) "dispositional line" means the solid black line on the sentencing  
35 guidelines grid for nondrug crimes and the sentencing guidelines grid for  
36 drug crimes which separates the grid blocks in which the presumptive  
37 sentence is a term of imprisonment and postrelease supervision from the  
38 grid blocks in which the presumptive sentence is nonimprisonment which  
39 may include local custodial sanctions;
- 40 (i) "durational departure" means a sentence which is inconsistent  
41 with the presumptive sentence as to term of imprisonment, or term of  
42 nonimprisonment;
- 43 (j) "good time" means a method of behavior control or sanctions util-

1 ized by the department of corrections. Good time can result in a decrease  
2 of up to 20% of the prison part of the sentence.

3 (k) “grid” means the sentencing guidelines grid ~~for nondrug crimes~~  
4 as provided in K.S.A. 21-4704 ~~or the sentencing guidelines grid for drug~~  
5 ~~crimes as provided in K.S.A. 21-4705, or both, and amendments thereto;~~

6 (l) “grid block” means a box on the grid formed by the intersection  
7 of the crime severity ranking of a current crime of conviction and an  
8 offender’s criminal history classification;

9 (m) “imprisonment” means imprisonment in a facility operated by  
10 the Kansas department of corrections;

11 (n) “mitigating factors” means substantial and compelling reasons jus-  
12 tifying an exceptional sentence whereby the sentencing court may impose  
13 a departure sentence outside of the standard sentencing range for an  
14 offense. Mitigating factors may result in dispositional or durational de-  
15 partures and shall be stated on the record by the court;

16 (o) “nonimprisonment,” “nonprison” or “nonprison sanction” means  
17 probation, community corrections, conservation camp, house arrest or  
18 any other community based disposition;

19 (p) “postrelease supervision” means the release of a prisoner to the  
20 community after having served a period of imprisonment or equivalent  
21 time served in a facility where credit for time served is awarded as set  
22 forth by the court, subject to conditions imposed by the Kansas parole  
23 board and to the secretary of correction’s supervision;

24 (q) “presumptive sentence” means the sentence provided in a grid  
25 block for an offender classified in that grid block by the combined effect  
26 of the crime severity ranking of the current crime of conviction and the  
27 offender’s criminal history;

28 (r) “prison” means a facility operated by the Kansas department of  
29 corrections; and

30 (s) “sentencing range” means the sentencing court’s discretionary  
31 range in imposing a nonappealable sentence.

32 ~~Sec. 84-82.~~ K.S.A. 2008 Supp. 21-4704 is hereby amended to read  
33 as follows: 21-4704. (a) For purposes of sentencing, the following sen-  
34 tencing guidelines grid ~~for nondrug crimes~~ shall be applied in felony cases  
35 for crimes committed on or after July 1, 1993:

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SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor No Record
I	653 620 592	848 886 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 48	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	6 5 5

LEGEND
Presumptive Probation
Probation
Presumptive Imprisonment

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SENTENCING RANGE - FELONY OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor or No Record
I	682 620 558	645 586 527	299 272 245	278 253 228	257 234 211	235 214 193	215 195 176	193 175 158	172 156 140
II	514 467 420	482 438 394	231 210 189	215 195 176	198 180 162	182 165 149	165 150 135	149 135 122	132 120 108
III	256 233 210	238 216 194	114 104 94	107 97 87	99 90 81	91 83 75	83 75 68	74 67 60	66 60 54
IV	178 162 146	129 117 105	79 72 65	74 67 60	68 62 56	63 57 51	57 52 47	52 47 42	46 42 38
V	143 130 117	103 94 85	63 57 51	59 54 49	55 50 45	51 46 41	46 42 38	40 36 32	35 32 29
VI	48 44 40	45 41 37	42 38 34	39 35 32	35 31 27	33 30 27	31 28 25	29 26 23	26 24 22
VII	35 32 29	33 30 27	31 28 25	29 26 23	26 24 22	24 22 20	22 20 18	21 19 17	20 18 16
VIII	26 24 22	24 22 20	22 20 18	20 18 16	18 16 14	17 15 13	16 14 12	18 16 14	17 15 14
IX	22 20 18	20 18 16	18 16 14	16 14 12	15 13 11	14 12 10	13 11 9	14 13 12	13 12 11
X	18 16 14	15 14 13	14 13 12	13 12 11	13 12 11	13 12 11	13 12 11	13 12 11	13 12 11

LEGEND
Presumptive Probation
Presumptive Apprehension/Boiler Plate
Presumptive Imprisonment

- 1 (b) The provisions of this section shall be applicable to the sentencing  
2 guidelines grid ~~for nondrug crimes~~. Sentences expressed in such grid  
3 represent months of imprisonment.
- 4 (c) The sentencing guidelines grid is a two-dimensional crime severity  
5 and criminal history classification tool. The grid's vertical axis is the crime  
6 severity scale which classifies current crimes of conviction. The grid's  
7 horizontal axis is the criminal history scale which classifies criminal  
8 histories.
- 9 (d) The sentencing guidelines grid ~~for nondrug crimes~~ as provided in  
10 this section defines presumptive punishments for felony convictions, sub-  
11 ject to judicial discretion to deviate for substantial and compelling reasons  
12 and impose a different sentence in recognition of aggravating and miti-  
13 gating factors as provided in this act. The appropriate punishment for a  
14 felony conviction should depend on the severity of the crime of conviction  
15 when compared to all other crimes and the offender's criminal history.
- 16 (e) (1) The sentencing court has discretion to sentence at any place  
17 within the sentencing range. The sentencing judge shall select the center  
18 of the range in the usual case and reserve the upper and lower limits for  
19 aggravating and mitigating factors insufficient to warrant a departure.
- 20 (2) In presumptive imprisonment cases, the sentencing court shall  
21 pronounce the complete sentence which shall include the prison sen-  
22 tence, the maximum potential reduction to such sentence as a result of  
23 good time and the period of postrelease supervision at the sentencing  
24 hearing. Failure to pronounce the period of postrelease supervision shall  
25 not negate the existence of such period of postrelease supervision.
- 26 (3) In presumptive nonprison cases, the sentencing court shall pro-  
27 nounce the prison sentence as well as the duration of the nonprison sanc-  
28 tion at the sentencing hearing.
- 29 (f) (1) Each grid block states the presumptive sentencing range for  
30 an offender whose crime of conviction and criminal history place such  
31 offender in that grid block. If an offense is classified in a grid block below  
32 the dispositional line, the presumptive disposition shall be nonimprison-  
33 ment. If an offense is classified in a grid block above the dispositional  
34 line, the presumptive disposition shall be imprisonment.
- 35 (2) (A) If an offense is classified in grid blocks ~~5-H, 5-I or 6-G~~ 6-E,  
36 6-F, 6-G, 6-H, 6-I, 7-C, 7-D, 7-E, 7-F, 8-C, 8-D, 8-E, 8-F, 9-C, 9-D or 9-  
37 E, the court may impose an optional nonprison sentence upon making  
38 the following findings on the record:
- 39 ~~(1)~~ (i) An appropriate treatment *or behavior modification* program  
40 exists which is likely to be more effective than the presumptive prison  
41 term in reducing the risk of offender recidivism; and
- 42 ~~(2)~~ (ii) the recommended ~~treatment~~ program is available and the of-  
43 fender can be admitted to such program within a reasonable period of

1 time; or

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

4 (B) *Any party requesting the nonprison sentence be served by at-*  
5 *tending and successfully completing a treatment or behavioral modifica-*  
6 *tion program shall notify the court and opposing counsel ~~20 days~~ prior*  
7 *to sentencing of the proposed program. The presentence investigation re-*  
8 *port by the court services officer shall verify the availability of the pro-*  
9 *gram and the adequacy of the provider of such program and the treatment*  
10 *or behavioral modification plan.*

11 (C) Any decision made by the court regarding the imposition of an  
12 optional nonprison sentence if the offense is classified in grid blocks ~~5-~~  
13 ~~H, 5-I or 6-G~~ **6-E, 6-F, 6-G, 6-H, 6-I, 7-C, 7-D, 7-E, 7-F, 8-C, 8-D,**  
14 **8-E, 8-F, 9-C, 9-D or 9-E**, shall not be considered a departure and shall  
15 not be subject to appeal.

16 ~~(g) The sentence for the violation of K.S.A. 21-3415, and amend-~~  
17 ~~ments thereto, aggravated battery against a law enforcement officer com-~~  
18 ~~mitted prior to July 1, 2006, or K.S.A. 21-3411, and amendments thereto,~~  
19 ~~aggravated assault against a law enforcement officer, which places the~~  
20 ~~defendant's sentence in grid block 6-H or 6-I shall be presumed impris-~~  
21 ~~onment. The court may impose an optional nonprison sentence upon~~  
22 ~~making a finding on the record that the nonprison sanction will serve~~  
23 ~~community safety interests by promoting offender reformation. Any de-~~  
24 ~~cision made by the court regarding the imposition of the optional non-~~  
25 ~~prison sentence, if the offense is classified in grid block 6-H or 6-I, shall~~  
26 ~~not be considered departure and shall not be subject to appeal.~~

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

34 ~~(i)~~ (h) The sentence for the violation of the felony provision of K.S.A.  
35 8-1567, subsection (b)(3) of K.S.A. 21-3412a, ~~subsections (b)(3) and sub-~~  
36 ~~section (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and~~  
37 ~~amendments thereto, shall be as provided by the specific mandatory sen-~~  
38 ~~tencing requirements of that section and shall not be subject to the pro-~~  
39 ~~visions of this section or K.S.A. 21-4707, and amendments thereto. If~~  
40 ~~because of the offender's criminal history classification the offender is~~  
41 ~~subject to presumptive imprisonment or if the judge departs from a pre-~~  
42 ~~sumptive probation sentence and the offender is subject to imprisonment,~~  
43 ~~the provisions of this section and K.S.A. 21-4707, and amendments~~

1 thereto, shall apply and the offender shall not be subject to the mandatory  
2 sentence as provided in K.S.A. 21-3412a, 21-3710, 21-4310 or 21-4318,  
3 and amendments thereto. Notwithstanding the provisions of any other  
4 section, the term of imprisonment imposed for the violation of the felony  
5 provision of K.S.A. 8-1567, subsection (b)(3) **(A)(i)** of K.S.A. 21-3412a,  
6 ~~subsections (b)(3) and subsection (b)(4)~~ of K.S.A. 21-3710, K.S.A. 21-4310  
7 and K.S.A. 21-4318, and amendments thereto, shall not be served in a  
8 state facility in the custody of the secretary of corrections, except that the  
9 term of imprisonment for felony violations of K.S.A. 8-1567, and amend-  
10 ments thereto, may be served in a state correctional facility designated  
11 by the secretary of corrections if the secretary determines that substance  
12 abuse treatment resources and facility capacity is available. The secre-  
13 tary's determination regarding the availability of treatment resources and  
14 facility capacity shall not be subject to review.

15 ~~(j)~~ (i) (1) The sentence for any persistent sex offender whose current  
16 convicted crime carries a presumptive term of imprisonment shall be  
17 double the maximum duration of the presumptive imprisonment term.  
18 The sentence for any persistent sex offender whose current conviction  
19 carries a presumptive nonprison term shall be presumed imprisonment  
20 and shall be double the maximum duration of the presumptive impris-  
21 onment term.

22 (2) Except as otherwise provided in this subsection, as used in this  
23 subsection, "persistent sex offender" means a person who: (A) (i) Has  
24 been convicted in this state of a sexually violent crime, as defined in K.S.A.  
25 22-3717 and amendments thereto; and (ii) at the time of the conviction  
26 under paragraph (A) (i) has at least one conviction for a sexually violent  
27 crime, as defined in K.S.A. 22-3717 and amendments thereto in this state  
28 or comparable felony under the laws of another state, the federal gov-  
29 ernment or a foreign government; or (B) (i) has been convicted of rape,  
30 K.S.A. 21-3502, and amendments thereto; and (ii) at the time of the  
31 conviction under paragraph (B) (i) has at least one conviction for rape in  
32 this state or comparable felony under the laws of another state, the federal  
33 government or a foreign government.

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

37 ~~(k)~~ (j) If it is shown at sentencing that the offender committed any  
38 felony violation for the benefit of, at the direction of, or in association  
39 with any criminal street gang, with the specific intent to promote, further  
40 or assist in any criminal conduct by gang members, the offender's sen-  
41 tence shall be presumed imprisonment. Any decision made by the court  
42 regarding the imposition of the optional nonprison sentence shall not be  
43 considered a departure and shall not be subject to appeal. As used in this

1 subsection, “criminal street gang” means any organization, association or  
2 group of three or more persons, whether formal or informal, having as  
3 one of its primary activities the commission of one or more person felonies  
4 or felony violations of ~~the uniform controlled substances act, K.S.A. 65-~~  
5 ~~4101 et seq. sections 1 through 17~~, and amendments thereto, which has  
6 a common name or common identifying sign or symbol, whose members,  
7 individually or collectively engage in or have engaged in the commission,  
8 attempted commission, conspiracy to commit or solicitation of two or  
9 more person felonies or felony violations of ~~the uniform controlled sub-~~  
10 ~~stances act, K.S.A. 65-4101 et seq. sections 1 through 17~~, and amend-  
11 ments thereto, or any substantially similar offense from another  
12 jurisdiction.

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

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

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

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

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

32 ~~(n)~~ *(n)* ~~The sentence for a third or subsequent violation of subsection (b)~~  
33 ~~of K.S.A. 21-3705, and amendments thereto, shall be presumptive im-~~  
34 ~~prisonment. Such sentence shall not be considered a departure and shall~~  
35 ~~not be subject to appeal.~~

36 *(l)* ~~The sentencing court shall not distinguish between the controlled~~  
37 ~~substances cocaine base (9041L000) and cocaine hydrochloride~~  
38 ~~(9041L005) when sentencing within the sentencing range of the grid~~  
39 ~~block.~~

40 ~~(o)~~ *(m)* The sentence for a felony violation of K.S.A. 21-3701 or 21-  
41 3715, and amendments thereto, when such person being sentenced has  
42 no prior convictions for a violation of K.S.A. 21-3701 or 21-3715, and  
43 amendments thereto; or the sentence for a felony violation of K.S.A. 21-

1 3701, and amendments thereto, when such person being sentenced has  
2 one or two prior felony convictions for a violation of K.S.A. 21-3701, 21-  
3 3715 or 21-3716, and amendments thereto; or the sentence for a felony  
4 violation of K.S.A. 21-3715, and amendments thereto, when such person  
5 being sentenced has one prior felony conviction for a violation of K.S.A.  
6 21-3701, 21-3715 or 21-3716, and amendments thereto, shall be the sen-  
7 tence as provided by this section, except that the court may order an  
8 optional nonprison sentence for a defendant to participate in a drug treat-  
9 ment program, including, but not limited to, an approved after-care plan,  
10 if the court makes the following findings on the record:

- 11 (1) Substance abuse was an underlying factor in the commission of  
12 the crime;
- 13 (2) substance abuse treatment in the community is likely to be more  
14 effective than a prison term in reducing the risk of offender recidivism;  
15 and
- 16 (3) participation in an intensive substance abuse treatment program  
17 will serve community safety interests.

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

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

24 ~~(p)~~ (n) The sentence for a felony violation of K.S.A. 21-3701, and  
25 amendments thereto, when such person being sentenced has any com-  
26 bination of three or more prior felony convictions for violations of K.S.A.  
27 21-3701, 21-3715 or 21-3716, and amendments thereto, or the sentence  
28 for a violation of K.S.A. 21-3715, and amendments thereto, when such  
29 person being sentenced has any combination of two or more prior con-  
30 victions for violations of K.S.A. 21-3701, 21-3715 and 21-3716, and  
31 amendments thereto, shall be presumed imprisonment and the defendant  
32 shall be sentenced to prison as provided by this section, except that the  
33 court may recommend that an offender be placed in the custody of the  
34 secretary of corrections, in a facility designated by the secretary to par-  
35 ticipate in an intensive substance abuse treatment program, upon making  
36 the following findings on the record:

- 37 (1) Substance abuse was an underlying factor in the commission of  
38 the crime;
- 39 (2) substance abuse treatment with a possibility of an early release  
40 from imprisonment is likely to be more effective than a prison term in  
41 reducing the risk of offender recidivism; and
- 42 (3) participation in an intensive substance abuse treatment program  
43 with the possibility of an early release from imprisonment will serve com-

1 munity safety interests by promoting offender reformation.

2 The intensive substance abuse treatment program shall be determined  
3 by the secretary of corrections, but shall be for a period of at least four  
4 months. Upon the successful completion of such intensive treatment pro-  
5 gram, the offender shall be returned to the court and the court may  
6 modify the sentence by directing that a less severe penalty be imposed  
7 in lieu of that originally adjudged within statutory limits. If the offender's  
8 term of imprisonment expires, the offender shall be placed under the  
9 applicable period of postrelease supervision.

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

12 Sec. ~~85~~ **83**. K.S.A. 21-4706 is hereby amended to read as follows:  
13 21-4706. (a) For crimes committed on or after July 1, 1993, the sentences  
14 of imprisonment shall represent the time a person shall actually serve,  
15 subject to a reduction of up to 15% of the primary sentence for good  
16 time as authorized by law. For crimes committed on or after January 1,  
17 2008, the sentences of imprisonment shall represent the time a person  
18 shall actually serve, subject to a reduction of up to 20% of the primary  
19 sentence for good time for drug severity level 3 or 4, *prior to such levels*  
20 **level's repeal**, or ~~non-drug~~ severity level 7 through 10 crimes and a re-  
21 duction for program credit as authorized by K.S.A. 21-4722, and amend-  
22 ments thereto.

23 (b) The sentencing court shall pronounce sentence in all felony cases.

24 (c) Violations of K.S.A. 21-3401, 21-3439, 21-3449, 21-3450 and 21-  
25 3801, and amendments thereto, are off-grid crimes for the purpose of  
26 sentencing. Except as otherwise provided by K.S.A. 21-4622 through 21-  
27 4627, and 21-4629 through 21-4631, and amendments thereto, the sen-  
28 tence shall be imprisonment for life and shall not be subject to statutory  
29 provisions for suspended sentence, community service or probation.

30 (d) As identified in K.S.A. 21-3447, 21-3502, 21-3504, 21-3506, 21-  
31 3513 and 21-3516, and amendments thereto, if the offender is 18 years  
32 of age or older and the victim is under 14 years of age, such violations  
33 are off-grid crimes for the purposes of sentencing. Except as provided in  
34 K.S.A. 21-4642, and amendments thereto, the sentence shall be impris-  
35 onment for life pursuant to K.S.A. 21-4643, and amendments thereto.

36 Sec. ~~86~~ **84**. K.S.A. 21-4707 is hereby amended to read as follows:  
37 21-4707. (a) The crime severity scale contained in the sentencing guide-  
38 lines grid ~~for non-drug crimes~~ as provided in K.S.A. 21-4704, and amend-  
39 ments thereto, consists of 10 levels of crimes. Crimes listed within each  
40 level are considered to be relatively equal in severity. Level 1 crimes are  
41 the most severe crimes and level 10 crimes are the least severe crimes.  
42 If a person is convicted of two or more crimes, then the severity level  
43 shall be determined by the most severe crime of conviction.

1 (b) When the statutory definition of a crime includes a broad range  
 2 of criminal conduct, the crime may be subclassified factually in more than  
 3 one crime category to capture the full range of criminal conduct covered  
 4 by the crime.

5 (c) The provisions of this subsection shall be applicable with regard  
 6 to ranking offenses according to the crime severity scale as provided in  
 7 this section:

8 (1) When considering an unranked offense in relation to the crime  
 9 severity scale, the sentencing judge should refer to comparable offenses  
 10 on the crime severity scale.

11 (2) Except for off-grid felony crimes, which are classified as person  
 12 felonies, all felony crimes omitted from the crime severity scale shall be  
 13 considered nonperson felonies.

14 (3) All unclassified felonies shall be scored as level 10 nonperson  
 15 crimes.

16 (4) The offense severity level of a crime for which the court has ac-  
 17 cepted a plea of guilty or nolo contendere pursuant to K.S.A. 22-3210,  
 18 and amendments thereto, or of a crime of which the defendant has been  
 19 convicted shall not be elevated or enhanced for sentencing purposes as a  
 20 result of the discovery of prior convictions or any other basis for such  
 21 enhancement subsequent to the acceptance of the plea or conviction. Any  
 22 such prior convictions discovered after the plea has been accepted by the  
 23 court shall be counted in the determination of the criminal history of the  
 24 offender.

25 (d) *No plea bargaining agreement may be entered into whereby the*  
 26 *prosecutor agrees to decline to use a prior drug conviction of the defend-*  
 27 *ant to elevate or enhance the severity level of a drug crime as provided*  
 28 *in section 3, 5 or 6, and amendments thereto, or agrees to exclude any*  
 29 *prior conviction from the defendant's criminal history.*

30 Sec. ~~87.~~ **85.** K.S.A. 21-4709 is hereby amended to read as follows:  
 31 21-4709. The criminal history scale is represented in abbreviated form  
 32 on the horizontal axis of the sentencing guidelines grid for non-drug crimes  
 33 and the sentencing guidelines grid for drug crimes. The relative severity  
 34 of each criminal history category decreases from left to right on such grids  
 35 *the grid*. Criminal history category A is the most serious classification.  
 36 Criminal history category I is the least serious classification. The criminal  
 37 history categories in the criminal history scale are:

38 Criminal  
 39 History

40 Category	Descriptive Criminal History
41 A	The offender's criminal history includes three or more adult 42 convictions or juvenile adjudications, in any combination, for 43 person felonies.

- 1       B    The offender’s criminal history includes two adult convictions
- 2            or juvenile adjudications, in any combination, for person
- 3            felonies.
- 4       C    The offender’s criminal history includes one adult conviction
- 5            or juvenile adjudication for a person felony, and one or more
- 6            adult conviction or juvenile adjudication for a nonperson felony.
- 7       D    The offender’s criminal history includes one adult conviction
- 8            or juvenile adjudication for a person felony, but no adult con-
- 9            viction or juvenile adjudications for a nonperson felony.
- 10       E    The offender’s criminal history includes three or more adult
- 11            convictions or juvenile adjudications for nonperson felonies,
- 12            but no adult conviction or juvenile adjudication for a person
- 13            felony.
- 14       F    The offender’s criminal history includes two adult convictions
- 15            or juvenile adjudications for nonperson felonies, but no adult
- 16            conviction or juvenile adjudication for a person felony.
- 17       G    The offender’s criminal history includes one adult conviction
- 18            or juvenile adjudication for a nonperson felony, but no adult
- 19            conviction or juvenile adjudication for a person felony.
- 20       H    The offender’s criminal history includes two or more adult con-
- 21            victions or juvenile adjudications for nonperson and/or select
- 22            misdemeanors, and no more than two adult convictions or ju-
- 23            venile adjudications for person misdemeanors, but no adult
- 24            conviction or juvenile adjudication for either a person or non-
- 25            person felony.
- 26       I    The offender’s criminal history includes no prior record; or,
- 27            one adult conviction or juvenile adjudication for a person, non-
- 28            person, or select misdemeanor, but no adult conviction or ju-
- 29            venile adjudication for either a person or nonperson felony.

30       Sec. ~~88~~ **86.** K.S.A. 21-4710 is hereby amended to read as follows:  
 31 21-4710. (a) Criminal history categories contained in the sentencing  
 32 guidelines grid for nondrug crimes and the sentencing guidelines grid for  
 33 drug crimes are based on the following types of prior convictions: Person  
 34 felony adult convictions, nonperson felony adult convictions, person fel-  
 35 ony juvenile adjudications, nonperson felony juvenile adjudications, per-  
 36 son misdemeanor adult convictions, nonperson class A misdemeanor  
 37 adult convictions, person misdemeanor juvenile adjudications, nonperson  
 38 class A misdemeanor juvenile adjudications, select class B nonperson mis-  
 39 demeanor adult convictions, select class B nonperson misdemeanor ju-  
 40 venile adjudications and convictions and adjudications for violations of  
 41 municipal ordinances or county resolutions which are comparable to any  
 42 crime classified under the state law of Kansas as a person misdemeanor,  
 43 select nonperson class B misdemeanor or nonperson class A misde-

1 meanor. A prior conviction is any conviction, other than another count in  
2 the current case which was brought in the same information or complaint  
3 or which was joined for trial with other counts in the current case pur-  
4 suant to K.S.A. 22-3203 and amendments thereto, which occurred prior  
5 to sentencing in the current case regardless of whether the offense that  
6 led to the prior conviction occurred before or after the current offense  
7 or the conviction in the current case.

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

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

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

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

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

20 (3) There will be no decay factor applicable for adult convictions.

21 (4) Except as otherwise provided, a juvenile adjudication, which  
22 would have been a nonperson class D or E felony if committed before  
23 July 1, 1993, or a ~~nondrug~~ *severity* level 6, 7, 8, 9 or 10, or drug level 4  
24 *prior to such level's repeal*, nonperson felony if committed on or after  
25 July 1, 1993, or a misdemeanor if committed by an adult, will decay if  
26 the current crime of conviction is committed after the offender reaches  
27 the age of 25.

28 (5) For convictions of crimes committed before July 1, 1993, a ju-  
29 venile adjudication which would constitute a class A, B or C felony, if  
30 committed by an adult, will not decay. For convictions of crimes com-  
31 mitted on or after July 1, 1993, a juvenile adjudication which would con-  
32 stitute an off-grid felony, a ~~nondrug~~ *severity* level 1, 2, 3, 4 or 5 felony,  
33 or a drug severity level 1, 2 or 3 felony *prior to such level's repeal*, if  
34 committed by an adult, will not decay.

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

37 (7) All person misdemeanors, class A nonperson misdemeanors and  
38 class B select nonperson misdemeanors, and all municipal ordinance and  
39 county resolution violations comparable to such misdemeanors, shall be  
40 considered and scored.

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

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

4 (10) Prior convictions of a crime defined by a statute which has since  
5 been determined unconstitutional by an appellate court shall not be used  
6 for criminal history scoring purposes.

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

12 ~~Sec. 89-87.~~ K.S.A. 21-4711 is hereby amended to read as follows:  
13 21-4711. In addition to the provisions of K.S.A. 21-4710, and amendments  
14 thereto, the following shall apply in determining an offender's criminal  
15 history classification as contained in the presumptive sentencing guide-  
16 lines grid ~~for non-drug crimes~~ and the presumptive sentencing guidelines  
17 grid for drug crimes *prior to the grid's repeal*:

18 (a) Every three prior adult convictions or juvenile adjudications of  
19 class A and class B person misdemeanors in the offender's criminal his-  
20 tory, or any combination thereof, shall be rated as one adult conviction  
21 or one juvenile adjudication of a person felony for criminal history pur-  
22 poses. Every three prior adult convictions or juvenile adjudications of  
23 assault as defined in K.S.A. 21-3408, and amendments thereto, occurring  
24 within a period commencing three years prior to the date of conviction  
25 for the current crime of conviction shall be rated as one adult conviction  
26 or one juvenile adjudication of a person felony for criminal history  
27 purposes.

28 (b) A conviction of subsection (a)(1) of K.S.A. 21-4204, and amend-  
29 ments thereto, criminal possession of firearms by a person who is both  
30 addicted to and an unlawful user of a controlled substance, subsection  
31 (a)(4) of K.S.A. 21-4204, and amendments thereto, possession of a firearm  
32 on school grounds or K.S.A. 21-4218, and amendments thereto, posses-  
33 sion of a firearm on the grounds or in the state capitol building, will be  
34 scored as a select class B nonperson misdemeanor conviction or adjudi-  
35 cation and shall not be scored as a person misdemeanor for criminal  
36 history purposes.

37 (c) (1) If the current crime of conviction was committed before July  
38 1, 1996, and is for subsection (b) of K.S.A. 21-3404, *and amendments*  
39 *thereto*, involuntary manslaughter in the commission of K.S.A. 8-1567,  
40 and amendments thereto, driving under the influence, then, each prior  
41 adult conviction or juvenile adjudication for K.S.A. 8-1567, and amend-  
42 ments thereto, shall count as one person felony for criminal history  
43 purposes.

1 (2) If the current crime of conviction was committed on or after July  
2 1, 1996, and is for a violation of an act described in K.S.A. 21-3442, and  
3 amendments thereto, each prior adult conviction, diversion in lieu of  
4 criminal prosecution or juvenile adjudication for: (A) An act described in  
5 K.S.A. 8-1567 and amendments thereto; or (B) a violation of a law of  
6 another state or an ordinance of any city, or resolution of any county,  
7 which prohibits the act described in K.S.A. 8-1567 and amendments  
8 thereto shall count as one person felony for criminal history purposes.

9 (d) Prior burglary adult convictions and juvenile adjudications will be  
10 scored for criminal history purposes as follows:

11 (1) As a prior person felony if the prior conviction or adjudication  
12 was classified as a burglary as described in subsection (a) of K.S.A. 21-  
13 3715 and amendments thereto.

14 (2) As a prior nonperson felony if the prior conviction or adjudication  
15 was classified as a burglary as described in subsection (b) or (c) of K.S.A.  
16 21-3715 and amendments thereto.

17 The facts required to classify prior burglary adult convictions and ju-  
18 venile adjudications must be established by the state by a preponderance  
19 of the evidence.

20 (e) Out-of-state convictions and juvenile adjudications will be used in  
21 classifying the offender's criminal history. An out-of-state crime will be  
22 classified as either a felony or a misdemeanor according to the convicting  
23 jurisdiction. If a crime is a felony in another state, it will be counted as a  
24 felony in Kansas. The state of Kansas shall classify the crime as person or  
25 nonperson. In designating a crime as person or nonperson comparable  
26 offenses shall be referred to. If the state of Kansas does not have a com-  
27 parable offense, the out-of-state conviction shall be classified as a non-  
28 person crime. Convictions or adjudications occurring within the federal  
29 system, other state systems, the District of Columbia, foreign, tribal or  
30 military courts are considered out-of-state convictions or adjudications.  
31 The facts required to classify out-of-state adult convictions and juvenile  
32 adjudications must be established by the state by a preponderance of the  
33 evidence.

34 (f) Except as provided in subsections (4), (5) and (6) of K.S.A. 21-  
35 4710, and amendments thereto, juvenile adjudications will be applied in  
36 the same manner as adult convictions. Out-of-state juvenile adjudications  
37 will be treated as juvenile adjudications in Kansas.

38 (g) A prior felony conviction of an attempt, a conspiracy or a solici-  
39 tation as provided in K.S.A. 21-3301, 21-3302 or 21-3303, and amend-  
40 ments thereto, to commit a crime shall be treated as a person or non-  
41 person crime in accordance with the designation assigned to the  
42 underlying crime.

43 (h) Drug crimes *designated as a drug severity level prior to the repeal*

1 *of the grid for drug crimes* are designated as nonperson crimes for crim-  
2 inal history scoring.

3 ~~Sec. 88.~~ K.S.A. 21-4713 is hereby amended to read as follows:  
4 21-4713. The prosecutor and the attorney for the defendant, or the de-  
5 fendant when acting pro se, may engage in discussions with a view toward  
6 reaching an agreement that, upon the entering of a plea to a charged  
7 offense or to a lesser or related offense, the prosecutor may do any of the  
8 following:

9 (a) Move for dismissal of other charges or counts;  
10 (b) recommend a particular sentence within the sentencing range ap-  
11 plicable to the offense or to the offense to which the offender pled guilty;  
12 (c) recommend a particular sentence outside of the sentencing range  
13 only when departure factors exist and shall be stated on the record;  
14 (d) agree to file a particular charge or count;  
15 (e) agree not to file charges or counts; or  
16 (f) make any other promise to the defendant, except that the prose-  
17 cutor shall not enter into any agreement to decline to use a prior drug  
18 conviction of the defendant to elevate or enhance the severity level of a  
19 drug crime as provided in ~~K.S.A. 65-4127a, 65-4127b and 65-4159 or~~  
20 ~~K.S.A. 1995 Supp. 65-4160 through 65-4164~~ section 3, 5 or 6, and amend-  
21 ments thereto, or make any agreement to exclude any prior conviction  
22 from the criminal history of the defendant.

23 ~~Sec. 89.~~ K.S.A. 2008 Supp. 21-4714 is hereby amended to read  
24 as follows: 21-4714. (a) The court shall order the preparation of the pre-  
25 sentence investigation report by the court services officer as soon as pos-  
26 sible after conviction of the defendant.

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

30 (1) A summary of the factual circumstances of the crime or crimes  
31 of conviction.

32 (2) If the defendant desires to do so, a summary of the defendant's  
33 version of the crime.

34 (3) When there is an identifiable victim, a victim report. The person  
35 preparing the victim report shall submit the report to the victim and  
36 request that the information be returned to be submitted as a part of the  
37 presentence investigation. To the extent possible, the report shall include  
38 a complete listing of restitution for damages suffered by the victim.

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

41 (5) A listing of prior adult convictions or juvenile adjudications for  
42 felony or misdemeanor crimes or violations of county resolutions or city  
43 ordinances comparable to any misdemeanor defined by state law. Such

1 listing shall include an assessment of the appropriate classification of the  
2 criminal history on the criminal history scale and the source of informa-  
3 tion regarding each listed prior conviction and any available source of  
4 journal entries or other documents through which the listed convictions  
5 may be verified. If any such journal entries or other documents are ob-  
6 tained by the court services officer, they shall be attached to the pre-  
7 sentence investigation report. Any prior criminal history worksheets of  
8 the defendant shall also be attached.

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

12 (7) If the proposed grid block classification is a grid block which pre-  
13 sumes imprisonment, the presumptive prison term range and the pre-  
14 sumptive duration of postprison supervision as it relates to the crime  
15 severity scale.

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

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

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

31 (c) The presentence report will become part of the court record and  
32 shall be accessible to the public, except that the official version, defend-  
33 ant's version and the victim's statement, any psychological reports, risk  
34 and needs assessments and drug and alcohol reports and assessments shall  
35 be accessible only to the parties, the sentencing judge, the department  
36 of corrections, and if requested, the Kansas sentencing commission. If  
37 the offender is committed to the custody of the secretary of corrections,  
38 the report shall be sent to the secretary and, in accordance with K.S.A.  
39 75-5220, and amendments thereto, to the warden of the state correctional  
40 institution to which the defendant is conveyed.

41 (d) The criminal history worksheet will not substitute as a present-  
42 ence report.

43 (e) The presentence report will not include optional report compo-

1 nents, which would be subject to the discretion of the sentencing court  
2 in each district except for psychological reports and drug and alcohol  
3 reports.

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

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

11 Sec. ~~92~~. **90.** K.S.A. 21-4717 is hereby amended to read as follows:  
12 21-4717. (a) The following aggravating factors, which apply to drug crimes  
13 committed on or after July 1, 1993, *through June 30, 2010, and sections*  
14 *1 through 17, and amendments thereto, on and after July 1, 2010*, under  
15 the sentencing guidelines system, may be considered in determining  
16 whether substantial and compelling reasons for departure exist:

17 (1) The crime was committed as part of a major organized drug man-  
18 ufacture, ~~production~~, cultivation or ~~delivery~~ *distribution* activity. Two or  
19 more of the following nonexclusive factors constitute evidence of major  
20 organized drug manufacture, ~~production~~, cultivation or ~~delivery~~ *distrib-*  
21 *ution* activity:

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

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

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

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

32 (E) Building acquisitions or building modifications including but not  
33 limited to painting, wiring, plumbing or lighting which advanced or fa-  
34 cilitated the commission of the offense.

35 (F) Possession of large amounts of illegal drugs or substantial quan-  
36 tities of controlled substances.

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

40 (2) The offender possessed illegal drugs:

41 (A) *To distribute*, with intent to ~~sell, which were sold or were offered~~  
42 ~~for sale to a person under 18 years of age~~ *distribute or which were dis-*  
43 *tributed or offered for distribution to a minor; or*

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

4 (3) The offender, 18 or more years of age, employs, hires, uses, per-  
5 suades, induces, entices or coerces any individual under 16 years of age  
6 to violate or assist in avoiding detection or apprehension for violation of  
7 any provision of ~~the uniform controlled substances act, K.S.A. 65-4101 et~~  
8 ~~seq. sections 1 through 17~~, and amendments thereto, or any attempt,  
9 conspiracy or solicitation as defined in K.S.A. 21-3301, 21-3302 or 21-  
10 3303, and amendments thereto, to commit a violation of any provision of  
11 ~~the uniform controlled substances act sections 1 through 17, and amend-~~  
12 ~~ments thereto~~, regardless of whether the offender knew the age of the  
13 individual under 16 years of age.

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

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

18 ~~Sec. 92.~~ **91.** K.S.A. 21-4720 is hereby amended to read as follows:  
19 21-4720. (a) The provisions of subsections (a), (b), (c), (d), (e) and (h) of  
20 K.S.A. 21-4608 and amendments thereto regarding multiple sentences  
21 shall apply to the sentencing of offenders for crimes committed on or  
22 after July 1, 1993, pursuant to the sentencing guidelines system as pro-  
23 vided in this act. The mandatory consecutive requirements contained in  
24 subsections (c), (d) and (e) shall not apply if such application would result  
25 in a manifest injustice.

26 (b) The sentencing judge shall otherwise have discretion to impose  
27 concurrent or consecutive sentences in multiple conviction cases. The  
28 sentencing judge shall state on the record if the sentence is to be served  
29 concurrently or consecutively. In cases where consecutive sentences may  
30 be imposed by the sentencing judge, the following shall apply:

31 (1) When the sentencing judge imposes multiple sentences consec-  
32 utively, the consecutive sentences shall consist of an imprisonment term  
33 which is the sum of the consecutive imprisonment terms, and a super-  
34 vision term. The postrelease supervision term will be based on the longest  
35 supervision term imposed for any of the crimes.

36 (2) The sentencing judge must establish a base sentence for the pri-  
37 mary crime. The primary crime is the crime with the highest crime se-  
38 verity ranking. An off-grid crime shall not be used as the primary crime  
39 in determining the base sentence when imposing multiple sentences. If  
40 sentences for off-grid and on-grid convictions are ordered to run consec-  
41 utively, the offender shall not begin to serve the on-grid sentence until  
42 paroled from the off-grid sentence, and the postrelease supervision term  
43 will be based on the off-grid crime. If more than one crime of conviction

1 is classified in the same crime category, the sentencing judge must des-  
2 ignate which crime will serve as the primary crime. ~~In the instance of~~  
3 ~~sentencing with both the drug grid and the nondrug grid and simulta-~~  
4 ~~nously having a presumption of imprisonment and probation, the sen-~~  
5 ~~tencing judge will use the crime which presumes imprisonment as the~~  
6 ~~primary crime. In the instance of sentencing with both the drug grid and~~  
7 ~~the nondrug grid and simultaneously having a presumption of either both~~  
8 ~~probation or both imprisonment, the sentencing judge will use the crime~~  
9 ~~with the longest sentence term within the grid block range as the primary~~  
10 ~~crime.~~

11 (3) The base sentence is set using the total criminal history score  
12 assigned.

13 (4) The total prison sentence imposed in a case involving multiple  
14 convictions arising from multiple counts within an information, complaint  
15 or indictment cannot exceed twice the base sentence. This limit shall  
16 apply only to the total sentence, and it shall not be necessary to reduce  
17 the duration of any of the nonbase sentences imposed to be served con-  
18 secutively to the base sentence. The postrelease supervision term will  
19 reflect only the longest such term assigned to any of the crimes for which  
20 consecutive sentences are imposed. Supervision periods will not be  
21 aggregated.

22 (5) Nonbase sentences will not have criminal history scores applied,  
23 as calculated in the criminal history I column of the grid, but base sen-  
24 tences will have the full criminal history score assigned. In the event a  
25 conviction designated as the primary crime in a multiple conviction case  
26 is reversed on appeal, the appellate court shall remand the multiple con-  
27 viction case for resentencing. Upon resentencing, if the case remains a  
28 multiple conviction case the court shall follow all of the provisions of this  
29 section concerning the sentencing of multiple conviction cases.

30 (6) If the sentence for the primary crime is a prison term, the entire  
31 imprisonment term of the consecutive sentences will be served in prison.

32 (7) If the sentence for the consecutive sentences is a prison term, the  
33 postrelease supervision term is a term of postrelease supervision as es-  
34 tablished for the primary crime.

35 (8) If the sentence for the primary crime is a nonprison sentence, a  
36 nonprison term will be imposed for each crime conviction, but the non-  
37 prison terms shall not be aggregated or served consecutively even though  
38 the underlying prison sentences have been ordered to be served consec-  
39 utively. Upon revocation of the nonprison sentence, the offender shall  
40 serve the prison sentences consecutively as provided in this section.

41 (c) The following shall apply for a departure from the presumptive  
42 sentence based on aggravating factors within the context of consecutive  
43 sentences:

- 1 (1) The court may depart from the presumptive limits for consecutive  
2 sentences only if the judge finds substantial and compelling reasons to  
3 impose a departure sentence for any of the individual crimes being sen-  
4 tenced consecutively.
- 5 (2) When a departure sentence is imposed for any of the individual  
6 crimes sentenced consecutively, the imprisonment term of that departure  
7 sentence shall not exceed twice the maximum presumptive imprisonment  
8 term that may be imposed for that crime.
- 9 (3) The total imprisonment term of the consecutive sentences, in-  
10 cluding the imprisonment term for the departure crime, shall not exceed  
11 twice the maximum presumptive imprisonment term of the departure  
12 sentence following aggravation.
- 13 ~~Sec. 94. 92.~~ K.S.A. 21-4722 is hereby amended to read as follows:  
14 21-4722. (a) For purposes of determining release of an inmate, the fol-  
15 lowing shall apply with regard to good time calculations:
- 16 (1) A system shall be developed whereby good behavior by inmates  
17 is the expected norm and negative behavior will be punished; and
- 18 (2) the amount of good time which can be earned by an inmate and  
19 subtracted from any sentence is limited to: (A) For a crime committed  
20 on or after July 1, 1993, an amount equal to 15% of the prison part of  
21 the sentence; or (B) for a drug severity level 3 or 4 *prior to such level's*  
22 *repeal*, or a ~~non-drug~~ severity level 7 through 10 crime committed on or  
23 after January 1, 2008, an amount equal to 20% of the prison part of the  
24 sentence.
- 25 (b) Any time which is earned and subtracted from the prison part of  
26 the sentence of any inmate pursuant to good time calculation shall be  
27 added to such inmate's postrelease supervision obligation.
- 28 (c) The secretary of corrections is hereby authorized to adopt rules  
29 and regulations to carry out the provisions of this section regarding good  
30 time calculations. Such rules and regulations shall provide circumstances  
31 upon which an inmate may earn good time credits and for the forfeiture  
32 of earned credits and such circumstances may include factors substantially  
33 related to program and work participation and conduct and the inmate's  
34 willingness to examine and confront the past behavior patterns that re-  
35 sulted in the commission of the inmate's crimes.
- 36 (d) An inmate shall not be awarded good time credits pursuant to  
37 this section for any review period established by the secretary of correc-  
38 tions in which a court finds that the inmate has done any of the following  
39 while in the custody of the secretary of corrections:
- 40 (1) Filed a false or malicious action or claim with the court;  
41 (2) brought an action or claim with the court solely or primarily for  
42 delay or harassment;  
43 (3) testified falsely or otherwise submitted false evidence or infor-

1 mation to the court;

2 (4) attempted to create or obtain a false affidavit, testimony or evi-  
3 dence; or

4 (5) abused the discovery process in any judicial action or proceeding.

5 (e) (1) For purposes of determining release of an inmate who is serv-  
6 ing only a sentence for a ~~nondrug~~ severity level 4 through 10 crime or a  
7 drug severity level 3 or 4 crime *prior to such level's repeal*, committed  
8 on or after January 1, 2008, in addition to any good time credits earned  
9 and retained, the following shall apply with regard to program credit  
10 calculations:

11 (A) A system shall be developed whereby program credits may be  
12 earned by inmates for the successful completion of a general education  
13 diploma, a technical or vocational training program, a substance abuse  
14 treatment program or any other program designated by the secretary  
15 which has been shown to reduce offender's risk after release; and

16 (B) the amount of time which can be earned and retained by an  
17 inmate for the successful completion of programs and subtracted from  
18 any sentence is limited to not more than 60 days.

19 (2) Any time which is earned and subtracted from the prison part of  
20 the sentence of any inmate pursuant to program credit calculation shall  
21 be added to such inmate's postrelease supervision obligation, if  
22 applicable.

23 (3) When separate sentences of imprisonment for different crimes  
24 are imposed on a defendant on the same date, a defendant shall only be  
25 eligible for program credits if such crimes are a ~~nondrug~~ severity level 4  
26 through 10 or a drug severity level 3 or 4 *prior to such level's repeal*.

27 (4) Program credits shall not be earned by any offender successfully  
28 completing a sex offender treatment program.

29 (5) The secretary of corrections is hereby authorized to adopt rules  
30 and regulations to carry out the provisions of this subsection regarding  
31 program credit calculations. Such rules and regulations shall provide cir-  
32 cumstances upon which an inmate may earn program credits and for the  
33 forfeiture of earned credits and such circumstances may include factors  
34 substantially related to program participation and conduct.

35 (6) The secretary of corrections shall report to the Kansas sentencing  
36 commission and the Kansas reentry policy council the data on the pro-  
37 gram credit calculations.

38 ~~Sec. 95-93.~~ K.S.A. 21-4729 is hereby amended to read as follows:  
39 21-4729. (a) There is hereby established a nonprison sanction of certified  
40 drug abuse treatment programs for certain offenders who are sentenced  
41 on or after November 1, 2003. Placement of offenders in certified drug  
42 abuse treatment programs by the court shall be limited to placement of  
43 adult offenders, convicted of a felony violation of K.S.A. 65-4160 or 65-

1 4162, *prior to such section's repeal or section 6*, and amendments thereto:

2 (1) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or  
3 4-I of the sentencing guidelines grid for drug crimes, *prior to such grid's*  
4 *repeal or classified in grid blocks 10-E, 10-F 10-G, 10-H or 10-I of the*  
5 *sentencing guidelines grid* and such offender has no felony conviction of  
6 K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, *prior to such sec-*  
7 *tion's repeal or section 3, 5 or 16*, and amendments thereto, or any sub-  
8 stantially similar offense from another jurisdiction; or

9 (2) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of  
10 the sentencing guidelines grid for drug crimes, *prior to such grid's repeal*  
11 *or classified in grid blocks 10-A, 10-B, 10-C or 10-D of the sentencing*  
12 *guidelines grid* and such offender has no felony conviction of K.S.A. 65-  
13 4142, 65-4159, 65-4161, 65-4163 or 65-4164, *prior to such section's repeal*  
14 *or section 3, 5 or 16*, and amendments thereto, or any substantially similar  
15 offense from another jurisdiction, if such person felonies committed by  
16 the offender were severity level 8, 9 or 10 or nongrid offenses of the  
17 sentencing guidelines grid ~~for non-drug crimes~~ and the court finds and  
18 sets forth with particularity the reasons for finding that the safety of the  
19 members of the public will not be jeopardized by such placement in a  
20 drug abuse treatment program.

21 (b) As a part of the presentence investigation pursuant to K.S.A. 21-  
22 4714, and amendments thereto, offenders who meet the requirements of  
23 subsection (a) shall be subject to:

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

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

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

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

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

37 (f) (1) Offenders in drug abuse treatment programs shall be dis-  
38 charged from such program if the offender:

39 (A) Is convicted of a new felony; or

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

43 (2) Offenders who are discharged from such program shall be subject

1 to the revocation provisions of subsection (n) of K.S.A. 21-4603d, and  
2 amendments thereto.

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

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

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

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

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

19 Sec. ~~96~~ **94**. K.S.A. 22-2512 is hereby amended to read as follows:  
20 22-2512. (1) Property seized under a search warrant or validly seized  
21 without a warrant shall be safely kept by the officer seizing the same  
22 unless otherwise directed by the magistrate, and shall be so kept as long  
23 as necessary for the purpose of being produced as evidence on any trial.  
24 The property seized may not be taken from the officer having it in custody  
25 so long as it is or may be required as evidence in any trial. The officer  
26 seizing the property shall give a receipt to the person detained or arrested  
27 particularly describing each article of property being held and shall file a  
28 copy of such receipt with the magistrate before whom the person detained  
29 or arrested is taken. Where seized property is no longer required as ev-  
30 idence in the prosecution of any indictment or information, the court  
31 which has jurisdiction of such property may transfer the same to the  
32 jurisdiction of any other court, including courts of another state or federal  
33 courts, where it is shown to the satisfaction of the court that such property  
34 is required as evidence in any prosecution in such other court.

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

41 (b) In any prosecution, representative samples of hazardous materials  
42 accompanied by photographs, videotapes, laboratory analysis reports or  
43 other means used to verify and document the identity and quantity of the

1 material shall be deemed competent evidence of such hazardous mate-  
2 rials and shall be admissible in any proceeding, hearing or trial as if such  
3 materials had been introduced as evidence.

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

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

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

16 (a) Property stolen, embezzled, obtained by false pretenses, or oth-  
17 erwise obtained unlawfully from the rightful owner thereof shall be re-  
18 stored to the owner;

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

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

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

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

39 (f) controlled substances forfeited ~~under the uniform controlled sub-~~  
40 ~~stances act for violations of sections 1 through 17, and amendments~~  
41 ~~thereto,~~ shall be dealt with as provided under K.S.A. 60-4101 through 60-  
42 4126, and amendments thereto;

43 (g) unless otherwise provided by law, all other property shall be dis-

1 posed of in such manner as the court in its sound discretion shall direct.

2 Sec. ~~97.~~ **95.** K.S.A. 22-2515 is hereby amended to read as follows:  
3 22-2515. (a) An ex parte order authorizing the interception of a wire, oral  
4 or electronic communication may be issued by a judge of competent  
5 jurisdiction. The attorney general, district attorney or county attorney may  
6 make an application to any judge of competent jurisdiction for an order  
7 authorizing the interception of a wire, oral or electronic communication  
8 by an investigative or law enforcement officer and agency having respon-  
9 sibility for the investigation of the offense regarding which the application  
10 is made, when such interception may provide evidence of the commission  
11 of any of the following offenses:

- 12 (1) Any crime directly and immediately affecting the safety of a hu-  
13 man life which is a felony;
- 14 (2) murder;
- 15 (3) kidnapping;
- 16 (4) treason;
- 17 (5) sedition;
- 18 (6) racketeering;
- 19 (7) commercial bribery;
- 20 (8) robbery;
- 21 (9) theft, if the offense would constitute a felony;
- 22 (10) bribery;
- 23 (11) any *felony* violation of ~~the uniform controlled substances act, if~~  
24 ~~the offense would constitute a felony~~ *sections 1 through 17, and amend-*  
25 *ments thereto*;
- 26 (12) commercial gambling;
- 27 (13) sports bribery;
- 28 (14) tampering with a sports contest;
- 29 (15) aggravated escape;
- 30 (16) aggravated failure to appear;
- 31 (17) arson;
- 32 (18) terrorism;
- 33 (19) illegal use of weapons of mass destruction; or
- 34 (20) any conspiracy to commit any of the foregoing offenses.

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

42 (c) Any investigative or law enforcement officer who, by any means  
43 authorized by this act or by chapter 119 of title 18 of the United States

1 code, has obtained knowledge of the contents of any wire, oral or elec-  
2 tronic communication, or evidence derived therefrom, may use such con-  
3 tents to the extent such use is appropriate to the proper performance of  
4 such officer's official duties.

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

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

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

31 ~~Sec. 98.~~ **96.** K.S.A. 22-2802 is hereby amended to read as follows:  
32 22-2802. (1) Any person charged with a crime shall, at the person's first  
33 appearance before a magistrate, be ordered released pending preliminary  
34 examination or trial upon the execution of an appearance bond in an  
35 amount specified by the magistrate and sufficient to assure the appear-  
36 ance of such person before the magistrate when ordered and to assure  
37 the public safety. If the person is being bound over for a felony, the bond  
38 shall also be conditioned on the person's appearance in the district court  
39 or by way of a two-way electronic audio-video communication as provided  
40 in subsection (14) at the time required by the court to answer the charge  
41 against such person and at any time thereafter that the court requires.  
42 Unless the magistrate makes a specific finding otherwise, if the person is  
43 being bonded out for a person felony or a person misdemeanor, the bond

- 1 shall be conditioned on the person being prohibited from having any  
2 contact with the alleged victim of such offense for a period of at least 72  
3 hours. The magistrate may impose such of the following additional con-  
4 ditions of release as will reasonably assure the appearance of the person  
5 for preliminary examination or trial:
- 6 (a) Place the person in the custody of a designated person or organ-  
7 ization agreeing to supervise such person;
  - 8 (b) place restrictions on the travel, association or place of abode of  
9 the person during the period of release;
  - 10 (c) impose any other condition deemed reasonably necessary to as-  
11 sure appearance as required, including a condition requiring that the  
12 person return to custody during specified hours;
  - 13 (d) place the person under a house arrest program pursuant to K.S.A.  
14 21-4603b, and amendments thereto; or
  - 15 (e) place the person under the supervision of a court services officer  
16 responsible for monitoring the person's compliance with any conditions  
17 of release ordered by the magistrate.
- 18 (2) In addition to any conditions of release provided in subsection (1),  
19 for any person charged with a felony, the magistrate may order such  
20 person to submit to a drug abuse examination and evaluation in a public  
21 or private treatment facility or state institution and, if determined by the  
22 head of such facility or institution that such person is a drug abuser or  
23 incapacitated by drugs, to submit to treatment for such drug abuse, as a  
24 condition of release.
- 25 (3) The appearance bond shall be executed with sufficient solvent  
26 sureties who are residents of the state of Kansas, unless the magistrate  
27 determines, in the exercise of such magistrate's discretion, that requiring  
28 sureties is not necessary to assure the appearance of the person at the  
29 time ordered.
- 30 (4) A deposit of cash in the amount of the bond may be made in lieu  
31 of the execution of the bond pursuant to paragraph (3). Except as pro-  
32 vided in paragraph (5), such deposit shall be in the full amount of the  
33 bond and in no event shall a deposit of cash in less than the full amount  
34 of bond be permitted. Any person charged with a crime who is released  
35 on a cash bond shall be entitled to a refund of all moneys paid for the  
36 cash bond, after deduction of any outstanding restitution, costs, fines and  
37 fees, after the final disposition of the criminal case if the person complies  
38 with all requirements to appear in court. The court may not exclude the  
39 option of posting bond pursuant to paragraph (3).
- 40 (5) Except as provided further, the amount of the appearance bond  
41 shall be the same whether executed as described in subsection (3) or  
42 posted with a deposit of cash as described in subsection (4). When the  
43 appearance bond has been set at \$2,500 or less and the most serious

1 charge against the person is a misdemeanor, a severity level 8, 9 or 10  
2 nonperson felony, ~~a drug severity level 4 felony~~ or a violation of K.S.A.  
3 8-1567, and amendments thereto, the magistrate may allow the person  
4 to deposit cash with the clerk in the amount of 10% of the bond, provided  
5 the person meets at least the following qualifications:

- 6 (A) Is a resident of the state of Kansas;
- 7 (B) has a criminal history score category of G, H or I;
- 8 (C) has no prior history of failure to appear for any court appearances;
- 9 (D) has no detainer or hold from any other jurisdiction;
- 10 (E) has not been extradited from, and is not awaiting extradition to,  
11 another state; and
- 12 (F) has not been detained for an alleged violation of probation.

13 (6) In the discretion of the court, a person charged with a crime may  
14 be released upon the person's own recognizance by guaranteeing pay-  
15 ment of the amount of the bond for the person's failure to comply with  
16 all requirements to appear in court. The release of a person charged with  
17 a crime upon the person's own recognizance shall not require the deposit  
18 of any cash by the person.

19 (7) The court shall not impose any administrative fee.

20 (8) In determining which conditions of release will reasonably assure  
21 appearance and the public safety, the magistrate shall, on the basis of  
22 available information, take into account the nature and circumstances of  
23 the crime charged; the weight of the evidence against the defendant; the  
24 defendant's family ties, employment, financial resources, character, men-  
25 tal condition, length of residence in the community, record of convictions,  
26 record of appearance or failure to appear at court proceedings or of flight  
27 to avoid prosecution; the likelihood or propensity of the defendant to  
28 commit crimes while on release, including whether the defendant will be  
29 likely to threaten, harass or cause injury to the victim of the crime or any  
30 witnesses thereto; and whether the defendant is on probation or parole  
31 from a previous offense at the time of the alleged commission of the  
32 subsequent offense.

33 (9) The appearance bond shall set forth all of the conditions of  
34 release.

35 (10) A person for whom conditions of release are imposed and who  
36 continues to be detained as a result of the person's inability to meet the  
37 conditions of release shall be entitled, upon application, to have the con-  
38 ditions reviewed without unnecessary delay by the magistrate who im-  
39 posed them. If the magistrate who imposed conditions of release is not  
40 available, any other magistrate in the county may review such conditions.

41 (11) A magistrate ordering the release of a person on any conditions  
42 specified in this section may at any time amend the order to impose  
43 additional or different conditions of release. If the imposition of additional

1 or different conditions results in the detention of the person, the provi-  
2 sions of subsection (10) shall apply.

3 (12) Statements or information offered in determining the conditions  
4 of release need not conform to the rules of evidence. No statement or  
5 admission of the defendant made at such a proceeding shall be received  
6 as evidence in any subsequent proceeding against the defendant.

7 (13) The appearance bond and any security required as a condition  
8 of the defendant's release shall be deposited in the office of the magistrate  
9 or the clerk of the court where the release is ordered. If the defendant  
10 is bound to appear before a magistrate or court other than the one or-  
11 dering the release, the order of release, together with the bond and se-  
12 curity shall be transmitted to the magistrate or clerk of the court before  
13 whom the defendant is bound to appear.

14 (14) Proceedings before a magistrate as provided in this section to  
15 determine the release conditions of a person charged with a crime in-  
16 cluding release upon execution of an appearance bond may be conducted  
17 by two-way electronic audio-video communication between the defend-  
18 ant and the judge in lieu of personal presence of the defendant or de-  
19 fendant's counsel in the courtroom in the discretion of the court. The  
20 defendant may be accompanied by the defendant's counsel. The defend-  
21 ant shall be informed of the defendant's right to be personally present in  
22 the courtroom during such proceeding if the defendant so requests. Ex-  
23 ercising the right to be present shall in no way prejudice the defendant.

24 (15) The magistrate may order the person to pay for any costs asso-  
25 ciated with the supervision of the conditions of release of the appearance  
26 bond in an amount not to exceed \$10 per week of such supervision.

27 ~~Sec. 99.~~ **97.** K.S.A. 22-2908 is hereby amended to read as follows:  
28 22-2908. (a) In determining whether diversion of a defendant is in the  
29 interests of justice and of benefit to the defendant and the community,  
30 the county or district attorney shall consider at least the following factors  
31 among all factors considered:

32 (1) The nature of the crime charged and the circumstances surround-  
33 ing it;

34 (2) any special characteristics or circumstances of the defendant;

35 (3) whether the defendant is a first-time offender and if the defend-  
36 ant has previously participated in diversion, according to the certification  
37 of the Kansas bureau of investigation or the division of vehicles of the  
38 department of revenue;

39 (4) whether there is a probability that the defendant will cooperate  
40 with and benefit from diversion;

41 (5) whether the available diversion program is appropriate to the  
42 needs of the defendant;

43 (6) the impact of the diversion of the defendant upon the community;

- 1 (7) recommendations, if any, of the involved law enforcement agency;
- 2 (8) recommendations, if any, of the victim;
- 3 (9) provisions for restitution; and
- 4 (10) any mitigating circumstances.

5 (b) A county or district attorney shall not enter into a diversion agree-  
6 ment in lieu of further criminal proceedings on a complaint if:

- 7 (1) The complaint alleges a violation of K.S.A. 8-1567 and amend-  
8 ments thereto and the defendant: (A) Has previously participated in di-  
9 version upon a complaint alleging a violation of that statute or an ordi-  
10 nance of a city in this state which prohibits the acts prohibited by that  
11 statute; (B) has previously been convicted of or pleaded nolo contendere  
12 to a violation of that statute or a violation of a law of another state or of  
13 a political subdivision of this or any other state, which law prohibits the  
14 acts prohibited by that statute; or (C) during the time of the alleged  
15 violation was involved in a motor vehicle accident or collision resulting in  
16 personal injury or death; or

- 17 (2) the complaint alleges that the defendant committed a class A or  
18 B felony or for crimes committed on or after July 1, 1993, an off-grid  
19 crime, a severity level 1, 2 or 3 felony ~~for nondrug crimes or drug severity~~  
20 ~~level 1 or 2 felony for drug crimes.~~

21 (c) A county or district attorney may enter into a diversion agreement  
22 in lieu of further criminal proceedings on a complaint for violations of  
23 article 10 of chapter 32 of the Kansas Statutes Annotated, and amend-  
24 ments thereto, if such diversion carries the same penalties as the convic-  
25 tion for the corresponding violations. If the defendant has previously par-  
26 ticipated in one or more diversions for violations of article 10 of chapter  
27 32 of the Kansas Statutes Annotated, and amendments thereto, then each  
28 subsequent diversion shall carry the same penalties as the conviction for  
29 the corresponding violations.

30 ~~Sec. 100. 98.~~ K.S.A. 22-2909 is hereby amended to read as follows:  
31 22-2909. (a) A diversion agreement shall provide that if the defendant  
32 fulfills the obligations of the program described therein, as determined  
33 by the attorney general or county or district attorney, such attorney shall  
34 act to have the criminal charges against the defendant dismissed with  
35 prejudice. The diversion agreement shall include specifically the waiver  
36 of all rights under the law or the constitution of Kansas or of the United  
37 States to a speedy arraignment, preliminary examinations and hearings,  
38 and a speedy trial, and in the case of diversion under subsection (c) waiver  
39 of the rights to counsel and trial by jury. The diversion agreement may  
40 include, but is not limited to, provisions concerning payment of restitu-  
41 tion, including court costs and diversion costs, residence in a specified  
42 facility, maintenance of gainful employment, and participation in pro-  
43 grams offering medical, educational, vocational, social and psychological

1 services, corrective and preventive guidance and other rehabilitative serv-  
2 ices. If a county creates a local fund under the property crime restitution  
3 and compensation act, a county or district attorney may require in all  
4 diversion agreements as a condition of diversion the payment of a diver-  
5 sion fee in an amount not to exceed \$100. Such fees shall be deposited  
6 into the local fund and disbursed pursuant to recommendations of the  
7 local board under the property crime restitution and victims compensa-  
8 tion act.

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

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

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

31 (2) enroll in and successfully complete an alcohol and drug safety  
32 action program or a treatment program, or both, as provided in K.S.A. 8-  
33 1008, and amendments thereto, and specified by the agreement, and pay  
34 the assessment required by K.S.A. 8-1008, and amendments thereto.

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

1 conducted on the record of the stipulation of facts relating to the  
2 complaint.

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

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

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

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

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

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

1 to the attorney general or any county, district or city attorney or court.  
2 Sec. ~~101~~ **99**. K.S.A. 22-3303 is hereby amended to read as follows:  
3 22-3303. (1) A defendant who is charged with a felony and is found to be  
4 incompetent to stand trial shall be committed for evaluation and treat-  
5 ment to the state security hospital or any appropriate county or private  
6 institution. A defendant who is charged with a misdemeanor and is found  
7 to be incompetent to stand trial shall be committed for evaluation and  
8 treatment to any appropriate state, county or private institution. Any such  
9 commitment shall be for a period of not to exceed 90 days. Within 90  
10 days after the defendant's commitment to such institution, the chief med-  
11 ical officer of such institution shall certify to the court whether the de-  
12 fendant has a substantial probability of attaining competency to stand trial  
13 in the foreseeable future. If such probability does exist, the court shall  
14 order the defendant to remain in an appropriate state, county or private  
15 institution until the defendant attains competency to stand trial or for a  
16 period of six months from the date of the original commitment, whichever  
17 occurs first. If such probability does not exist, the court shall order the  
18 secretary of social and rehabilitation services to commence involuntary  
19 commitment proceedings pursuant to article 29 of chapter 59 of the Kan-  
20 sas Statutes Annotated, and any amendments thereto. When a defendant  
21 is charged with any off-grid felony, any ~~non-drug~~ severity level 1 through  
22 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or  
23 21-3719, and amendments thereto, and commitment proceedings have  
24 commenced, for such proceeding, "mentally ill person subject to invol-  
25 untary commitment for care and treatment" means a mentally ill person,  
26 as defined in subsection (e) of K.S.A. 59-2946, and amendments thereto,  
27 who is likely to cause harm to self and others, as defined in subsection  
28 (f)(3) of K.S.A. 59-2946, and amendments thereto. The other provisions  
29 of subsection (f) of K.S.A. 59-2946, and amendments thereto, shall not  
30 apply.  
31 (2) If a defendant who was found to have had a substantial probability  
32 of attaining competency to stand trial, as provided in subsection (1), has  
33 not attained competency to stand trial within six months from the date  
34 of the original commitment, the court shall order the secretary of social  
35 and rehabilitation services to commence involuntary commitment pro-  
36 ceedings pursuant to article 29 of chapter 59 of the Kansas Statutes An-  
37 notated, and any amendments thereto. When a defendant is charged with  
38 any off-grid felony, any ~~non-drug~~ severity level 1 through 3 felony, or a  
39 violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, and  
40 amendments thereto, and commitment proceedings have commenced,  
41 for such proceeding, "mentally ill person subject to involuntary commit-  
42 ment for care and treatment" means a mentally ill person, as defined in  
43 subsection (e) of K.S.A. 59-2946, and amendments thereto, who is likely

1 to cause harm to self and others, as defined in subsection (f)(3) of K.S.A.  
2 59-2946, and amendments thereto. The other provisions of subsection (f)  
3 of K.S.A. 59-2946, and amendments thereto, shall not apply.

4 (3) When reasonable grounds exist to believe that a defendant who  
5 has been adjudged incompetent to stand trial is competent, the court in  
6 which the criminal case is pending shall conduct a hearing in accordance  
7 with K.S.A. 22-3302 and amendments thereto to determine the person's  
8 present mental condition. Reasonable notice of such hearings shall be  
9 given to the prosecuting attorney, the defendant and the defendant's at-  
10 torney of record, if any. If the court, following such hearing, finds the  
11 defendant to be competent, the proceedings pending against the defend-  
12 ant shall be resumed.

13 (4) A defendant committed to a public institution under the provi-  
14 sions of this section who is thereafter sentenced for the crime charged at  
15 the time of commitment may be credited with all or any part of the time  
16 during which the defendant was committed and confined in such public  
17 institution.

18 ~~Sec. 102.~~ **100.** K.S.A. 22-3412 is hereby amended to read as follows:  
19 22-3412. (a) (1) For crimes committed before July 1, 1993, peremptory  
20 challenges shall be allowed as follows:

21 (A) Each defendant charged with a class A felony shall be allowed 12  
22 peremptory challenges.

23 (B) Each defendant charged with a class B felony shall be allowed  
24 eight peremptory challenges.

25 (C) Each defendant charged with a felony other than class A or class  
26 B felony shall be allowed six peremptory challenges.

27 (D) Each defendant charged with a misdemeanor shall be allowed  
28 three peremptory challenges.

29 (E) Additional peremptory challenges shall not be allowed on account  
30 of separate counts charged in the complaint, information or indictment.

31 (F) The prosecution shall be allowed the same number of peremptory  
32 challenges as all the defendants.

33 (2) For crimes committed on or after July 1, 1993, peremptory chal-  
34 lenges shall be allowed as follows:

35 (A) Each defendant charged with an off-grid felony ~~or a nondrug or~~  
36 ~~drug felony ranked at~~ a severity level 1 *felony or a drug severity level 1*  
37 *felony prior to repeal*, shall be allowed 12 peremptory challenges.

38 (B) Each defendant charged with a ~~nondrug~~ felony ranked at severity  
39 level 2, 3, 4, 5 or 6, or a drug felony ranked at severity level 2 or 3 *prior*  
40 *to repeal*, shall be allowed 8 peremptory challenges.

41 (C) Each defendant charged with an unclassified felony, a ~~nondrug~~  
42 severity level 7, 8, 9 or 10 *felony*, or a drug severity level 4 *felony prior*  
43 *to repeal*, shall be allowed six peremptory challenges.

1 (D) Each defendant charged with a misdemeanor shall be allowed  
2 three peremptory challenges.

3 (E) The prosecution shall be allowed the same number of peremp-  
4 tory challenges as all defendants.

5 (F) The most serious penalty offense charged against each defendant  
6 furnishes the criterion for determining the allowed number of peremp-  
7 tory challenges for that defendant.

8 (G) Additional peremptory challenges shall not be allowed when sep-  
9 arate counts are charged in the complaint, information or indictment.

10 (H) Except as otherwise provided in this subsection, the provisions  
11 of this section shall apply. In applying the provisions of this section, the  
12 trial court may determine the number of peremptory challenges to allow  
13 by reviewing the classification for the crime charged, or nearest compa-  
14 rable felony, as it was classified under the criminal law in effect prior to  
15 July 1, 1993. If the severity level of the most serious crime charged raises  
16 the potential penalty above that of another crime which was classified  
17 higher under the criminal law in effect prior to July 1, 1993, the defendant  
18 shall be allowed the number of peremptory challenges as for that higher  
19 classified crime under the prior system.

20 (I) The trial court shall resolve any conflicts with a liberal construc-  
21 tion in favor of allowing the greater number of peremptory challenges.

22 (b) After the parties have interposed all of their challenges to jurors,  
23 or have waived further challenges, the jury shall be sworn to try the case.

24 (c) Immediately after the jury is empaneled and sworn, a trial judge  
25 may empanel one or more alternate or additional jurors whenever, in the  
26 judge's discretion, the judge believes it advisable to have such jurors avail-  
27 able to replace jurors who, prior to the time the jury retires to consider  
28 its verdict, become or are found to be unable to perform their duties.  
29 Such jurors shall be selected in the same manner, have the same quali-  
30 fications, and be subject to the same examination and challenges and take  
31 the same oath and have the same functions, powers and privileges as the  
32 regular jurors. Each party shall be entitled to one peremptory challenge  
33 to such alternate jurors. Such alternate jurors shall be seated near the  
34 other jurors, with equal power and facilities for seeing and hearing the  
35 proceedings in the case, and they must attend at all times upon the trial  
36 of the cause in company with the other jurors. They shall obey the orders  
37 of and be bound by the admonition of the court upon each adjournment,  
38 but if the regular jurors are ordered to be kept in custody during the trial  
39 of the cause, such alternate jurors also shall be kept in confinement with  
40 the other jurors. Upon final submission of the case to the jury, the alter-  
41 nate jurors may be discharged or they may be retained separately and not  
42 discharged until the final decision of the jury. If the alternate jurors are  
43 not discharged on final submission of the case and if any regular juror

1 shall be discharged from jury service in any such action prior to the jury  
2 reaching its verdict, the court shall draw the name of an alternate juror  
3 who shall replace the juror so discharged and be subject to the same rules  
4 and regulations as though such juror had been selected as one of the  
5 original jurors.

6 ~~Sec. 103.~~ **101.** K.S.A. 22-3604 is hereby amended to read as follows:  
7 22-3604. (1) Except as provided in subsection (3), a defendant shall not  
8 be held in jail nor subject to an appearance bond during the pendency  
9 of an appeal by the prosecution.

10 (2) The time during which an appeal by the prosecution is pending  
11 shall not be counted for the purpose of determining whether a defendant  
12 is entitled to discharge under K.S.A. 22-3402 and amendments thereto.

13 (3) A defendant charged with a class A, B or C felony or, if the felony  
14 was committed on or after July 1, 1993, an off-grid felony, a ~~non~~drug  
15 severity level 1 through 5 felony or a drug severity level 1 through 3 felony  
16 crime *prior to such level's repeal*, shall not be released from jail or the  
17 conditions of such person's appearance bond during the pendency of an  
18 appeal by the prosecution. The time during which an appeal by the pros-  
19 ecution is pending in a class A, B or C felony or, if the felony was com-  
20 mitted on or after July 1, 1993, an off-grid felony, a ~~non~~drug severity level  
21 1 through 5 felony or a drug severity level 1 through 3 felony case *prior*  
22 *to such level's repeal*, shall not be counted for the purpose of determining  
23 whether the defendant is entitled to discharge under K.S.A. 22-3402 and  
24 amendments thereto.

25 ~~Sec. 104.~~ **102.** K.S.A. 2008 Supp. 22-3716 is hereby amended to read  
26 as follows: 22-3716. (a) At any time during probation, assignment to a  
27 community correctional services program, suspension of sentence or pur-  
28 suant to subsection (d) for defendants who committed a crime prior to  
29 July 1, 1993, and at any time during which a defendant is serving a non-  
30 prison sanction for a crime committed on or after July 1, 1993, or pursuant  
31 to subsection (d), the court may issue a warrant for the arrest of a def-  
32 endant for violation of any of the conditions of release or assignment, a  
33 notice to appear to answer to a charge of violation or a violation of the  
34 defendant's nonprison sanction. The notice shall be personally served  
35 upon the defendant. The warrant shall authorize all officers named in the  
36 warrant to return the defendant to the custody of the court or to any  
37 certified detention facility designated by the court. Any court services  
38 officer or community correctional services officer may arrest the defend-  
39 ant without a warrant or may deputize any other officer with power of  
40 arrest to do so by giving the officer a written or verbal statement setting  
41 forth that the defendant has, in the judgment of the court services officer  
42 or community correctional services officer, violated the conditions of the  
43 defendant's release or a nonprison sanction. A written statement deliv-

1 ered to the official in charge of a county jail or other place of detention  
2 shall be sufficient warrant for the detention of the defendant. After mak-  
3 ing an arrest, the court services officer or community correctional services  
4 officer shall present to the detaining authorities a similar statement of the  
5 circumstances of violation. Provisions regarding release on bail of persons  
6 charged with a crime shall be applicable to defendants arrested under  
7 these provisions.

8 (b) Upon arrest and detention pursuant to subsection (a), the court  
9 services officer or community correctional services officer shall immedi-  
10 ately notify the court and shall submit in writing a report showing in what  
11 manner the defendant has violated the conditions of release or assignment  
12 or a nonprison sanction. Thereupon, or upon an arrest by warrant as  
13 provided in this section, the court shall cause the defendant to be brought  
14 before it without unnecessary delay for a hearing on the violation charged.  
15 The hearing shall be in open court and the state shall have the burden of  
16 establishing the violation. The defendant shall have the right to be rep-  
17 resented by counsel and shall be informed by the judge that, if the de-  
18 fendant is financially unable to obtain counsel, an attorney will be ap-  
19 pointed to represent the defendant. The defendant shall have the right  
20 to present the testimony of witnesses and other evidence on the defend-  
21 ant's behalf. Relevant written statements made under oath may be ad-  
22 mitted and considered by the court along with other evidence presented  
23 at the hearing. Except as otherwise provided, if the violation is estab-  
24 lished, the court may continue or revoke the probation, assignment to a  
25 community correctional services program, suspension of sentence or non-  
26 prison sanction and may require the defendant to serve the sentence  
27 imposed, or any lesser sentence, and, if imposition of sentence was sus-  
28 pended, may impose any sentence which might originally have been im-  
29 posed. Except as otherwise provided, no offender for whom a violation  
30 of conditions of release or assignment or a nonprison sanction has been  
31 established as provided in this section shall be required to serve any time  
32 for the sentence imposed or which might originally have been imposed  
33 in a state facility in the custody of the secretary of corrections for such  
34 violation, unless such person has already at least one prior assignment to  
35 a community correctional services program related to the crime for which  
36 the original sentence was imposed, except these provisions shall not apply  
37 to offenders who violate a condition of release or assignment or a non-  
38 prison sanction by committing a new misdemeanor or felony offense. The  
39 provisions of this subsection shall not apply to adult felony offenders as  
40 described in subsection (a)(3) of K.S.A. 75-5291, and amendments  
41 thereto. The court may require an offender for whom a violation of con-  
42 ditions of release or assignment or a nonprison sanction has been estab-  
43 lished as provided in this section to serve any time for the sentence im-

1 posed or which might originally have been imposed in a state facility in  
2 the custody of the secretary of corrections without a prior assignment to  
3 a community correctional services program if the court finds and sets  
4 forth with particularity the reasons for finding that the safety of the mem-  
5 bers of the public will be jeopardized or that the welfare of the inmate  
6 will not be served by such assignment to a community correctional serv-  
7 ices program. When a new felony is committed while the offender is on  
8 probation or assignment to a community correctional services program,  
9 the new sentence shall be imposed pursuant to the consecutive sentenc-  
10 ing requirements of K.S.A. 21-4608 and amendments thereto, and the  
11 court may sentence the offender to imprisonment for the new conviction,  
12 even when the new crime of conviction otherwise presumes a nonprison  
13 sentence. In this event, imposition of a prison sentence for the new crime  
14 does not constitute a departure.

15 (c) A defendant who is on probation, assigned to a community cor-  
16 rectional services program, under suspension of sentence or serving a  
17 nonprison sanction and for whose return a warrant has been issued by  
18 the court shall be considered a fugitive from justice if it is found that the  
19 warrant cannot be served. If it appears that the defendant has violated  
20 the provisions of the defendant's release or assignment or a nonprison  
21 sanction, the court shall determine whether the time from the issuing of  
22 the warrant to the date of the defendant's arrest, or any part of it, shall  
23 be counted as time served on probation, assignment to a community cor-  
24 rectional services program, suspended sentence or pursuant to a nonpri-  
25 son sanction.

26 (d) The court shall have 30 days following the date probation, assign-  
27 ment to a community correctional service program, suspension of sen-  
28 tence or a nonprison sanction was to end to issue a warrant for the arrest  
29 or notice to appear for the defendant to answer a charge of a violation of  
30 the conditions of probation, assignment to a community correctional serv-  
31 ice program, suspension of sentence or a nonprison sanction.

32 (e) Notwithstanding the provisions of any other law to the contrary,  
33 an offender whose nonprison sanction is revoked and a term of impris-  
34 onment imposed pursuant to either the sentencing guidelines grid ~~for~~  
35 ~~non-drug~~ or drug crimes *prior to such grid's repeal* shall not serve a period  
36 of postrelease supervision upon the completion of the prison portion of  
37 that sentence. The provisions of this subsection shall not apply to offend-  
38 ers sentenced to a nonprison sanction pursuant to a dispositional depart-  
39 ure, whose offense falls within a border box of either the sentencing  
40 guidelines grid ~~for non-drug~~ or drug crimes *prior to such grid's repeal*,  
41 offenders sentenced for a "sexually violent crime" or a "sexually moti-  
42 vated crime" as defined by K.S.A. 22-3717, and amendments thereto, ~~or~~  
43 *offenders sentenced pursuant to K.S.A. 21-4704, and amendments thereto,*

1 *wherein the sentence is presumptive imprisonment but a nonprison sanc-*  
2 *tion may be imposed without a departure or offenders whose nonprison*  
3 *sanction was revoked as a result of a conviction for a new misdemeanor*  
4 *or felony offense. The provisions of this subsection shall not apply to*  
5 *offenders who are serving or are to begin serving a sentence for any other*  
6 *felony offense that is not excluded from postrelease supervision by this*  
7 *subsection on the effective date of this subsection. The provisions of this*  
8 *subsection shall be applied retroactively. The department of corrections*  
9 *shall conduct a review of all persons who are in the custody of the de-*  
10 *partment as a result of only a revocation of a nonprison sanction. On or*  
11 *before September 1, 2000, the department shall have discharged from*  
12 *postrelease supervision those offenders as required by this subsection.*

13 (f) Offenders who have been sentenced pursuant to K.S.A. 21-4729,  
14 and amendments thereto, and who subsequently violate a condition of  
15 the drug and alcohol abuse treatment program shall be subject to an  
16 additional nonprison sanction for any such subsequent violation. Such  
17 nonprison sanctions shall include, but not be limited to, up to 60 days in  
18 a county jail, fines, community service, intensified treatment, house arrest  
19 and electronic monitoring.

20 ~~Sec. 105.~~ **103.** K.S.A. 2008 Supp. 22-3717 is hereby amended to read  
21 as follows: 22-3717. (a) Except as otherwise provided by this section;  
22 K.S.A. 1993 Supp. 21-4628 prior to its repeal; K.S.A. 21-4635 through  
23 21-4638, and amendments thereto; K.S.A. 8-1567, and amendments  
24 thereto; K.S.A. 21-4642, and amendments thereto; and K.S.A. 21-4624,  
25 and amendments thereto, an inmate, including an inmate sentenced pur-  
26 suant to K.S.A. 21-4618, and amendments thereto, shall be eligible for  
27 parole after serving the entire minimum sentence imposed by the court,  
28 less good time credits.

29 (b) (1) Except as provided by K.S.A. 21-4635 through 21-4638, and  
30 amendments thereto, an inmate sentenced to imprisonment for the crime  
31 of capital murder, or an inmate sentenced for the crime of murder in the  
32 first degree based upon a finding of premeditated murder, committed on  
33 or after July 1, 1994, shall be eligible for parole after serving 25 years of  
34 confinement, without deduction of any good time credits.

35 (2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993  
36 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638,  
37 and amendments thereto, an inmate sentenced to imprisonment for an  
38 off-grid offense committed on or after July 1, 1993, but prior to July 1,  
39 1999, shall be eligible for parole after serving 15 years of confinement,  
40 without deduction of any good time credits and an inmate sentenced to  
41 imprisonment for an off-grid offense committed on or after July 1, 1999,  
42 shall be eligible for parole after serving 20 years of confinement without  
43 deduction of any good time credits.

- 1 (3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its  
2 repeal, an inmate sentenced for a class A felony committed before July  
3 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, and  
4 amendments thereto, shall be eligible for parole after serving 15 years of  
5 confinement, without deduction of any good time credits.
- 6 (4) An inmate sentenced to imprisonment for a violation of subsec-  
7 tion (a) of K.S.A. 21-3402, and amendments thereto, committed on or  
8 after July 1, 1996, but prior to July 1, 1999, shall be eligible for parole  
9 after serving 10 years of confinement without deduction of any good time  
10 credits.
- 11 (5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-  
12 4643, and amendments thereto, committed on or after July 1, 2006, shall  
13 be eligible for parole after serving the mandatory term of imprisonment  
14 without deduction of any good time credits.
- 15 (c) (1) Except as provided in subsection (e), if an inmate is sentenced  
16 to imprisonment for more than one crime and the sentences run consec-  
17 utively, the inmate shall be eligible for parole after serving the total of:
- 18 (A) The aggregate minimum sentences, as determined pursuant to  
19 K.S.A. 21-4608 and amendments thereto, less good time credits for those  
20 crimes which are not class A felonies; and  
21 (B) an additional 15 years, without deduction of good time credits,  
22 for each crime which is a class A felony.
- 23 (2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-  
24 4643, and amendments thereto, for crimes committed on or after July 1,  
25 2006, the inmate shall be eligible for parole after serving the mandatory  
26 term of imprisonment.
- 27 (d) (1) Persons sentenced for crimes, other than off-grid crimes,  
28 committed on or after July 1, 1993, or persons subject to subparagraph  
29 (G), will not be eligible for parole, but will be released to a mandatory  
30 period of postrelease supervision upon completion of the prison portion  
31 of their sentence as follows:
- 32 (A) Except as provided in subparagraphs (D) and (E), persons sen-  
33 tenced for ~~non-drug~~ severity level 1 through 4 crimes and drug severity  
34 levels 1 and 2 crimes *prior to such level's repeal*, must serve 36 months,  
35 plus the amount of good time and program credit earned and retained  
36 pursuant to K.S.A. 21-4722, and amendments thereto, on postrelease  
37 supervision.
- 38 (B) Except as provided in subparagraphs (D) and (E), persons sen-  
39 tenced for ~~non-drug~~ severity levels 5 and 6 crimes and drug severity level  
40 3 crimes *prior to such level's repeal*, must serve 24 months, plus the  
41 amount of good time and program credit earned and retained pursuant  
42 to K.S.A. 21-4722, and amendments thereto, on postrelease supervision.
- 43 (C) Except as provided in subparagraphs (D) and (E), persons sen-

1 tenced for ~~non-drug~~ severity level 7 through 10 crimes and drug severity  
2 level 4 crimes *prior to such level's repeal*, must serve 12 months, plus the  
3 amount of good time and program credit earned and retained pursuant  
4 to K.S.A. 21-4722, and amendments thereto, on postrelease supervision.

5 (D) (i) The sentencing judge shall impose the postrelease supervi-  
6 sion period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C),  
7 unless the judge finds substantial and compelling reasons to impose a  
8 departure based upon a finding that the current crime of conviction was  
9 sexually motivated. In that event, departure may be imposed to extend  
10 the postrelease supervision to a period of up to 60 months.

11 (ii) If the sentencing judge departs from the presumptive postrelease  
12 supervision period, the judge shall state on the record at the time of  
13 sentencing the substantial and compelling reasons for the departure. De-  
14 partures in this section are subject to appeal pursuant to K.S.A. 21-4721,  
15 and amendments thereto.

16 (iii) In determining whether substantial and compelling reasons exist,  
17 the court shall consider:

18 (a) Written briefs or oral arguments submitted by either the defend-  
19 ant or the state;

20 (b) any evidence received during the proceeding;

21 (c) the presentence report, the victim's impact statement and any  
22 psychological evaluation as ordered by the court pursuant to subsection  
23 (e) of K.S.A. 21-4714, and amendments thereto; and

24 (d) any other evidence the court finds trustworthy and reliable.

25 (iv) The sentencing judge may order that a psychological evaluation  
26 be prepared and the recommended programming be completed by the  
27 offender. The department of corrections or the parole board shall ensure  
28 that court ordered sex offender treatment be carried out.

29 (v) In carrying out the provisions of subparagraph (d)(1)(D), the court  
30 shall refer to K.S.A. 21-4718, and amendments thereto.

31 (vi) Upon petition, the parole board may provide for early discharge  
32 from the postrelease supervision period upon completion of court or-  
33 dered programs and completion of the presumptive postrelease super-  
34 vision period, as determined by the crime of conviction, pursuant to sub-  
35 paragraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from  
36 postrelease supervision is at the discretion of the parole board.

37 (vii) Persons convicted of crimes deemed sexually violent or sexually  
38 motivated, shall be registered according to the offender registration act,  
39 K.S.A. 22-4901 through 22-4910, and amendments thereto.

40 (viii) Persons convicted of K.S.A. 21-3510 or 21-3511, and amend-  
41 ments thereto, shall be required to participate in a treatment program  
42 for sex offenders during the postrelease supervision period.

43 (E) The period of postrelease supervision provided in subparagraphs

- 1 (A) and (B) may be reduced by up to 12 months and the period of post-  
2 release supervision provided in subparagraph (C) may be reduced by up  
3 to six months based on the offender's compliance with conditions of su-  
4 pervision and overall performance while on postrelease supervision. The  
5 reduction in the supervision period shall be on an earned basis pursuant  
6 to rules and regulations adopted by the secretary of corrections.
- 7 (F) In cases where sentences for crimes from more than one severity  
8 level have been imposed, the offender shall serve the longest period of  
9 postrelease supervision as provided by this section available for any crime  
10 upon which sentence was imposed irrespective of the severity level of the  
11 crime. Supervision periods will not aggregate.
- 12 (G) Except as provided in subsection (u), persons convicted of a sex-  
13 ually violent crime committed on or after July 1, 2006, and who are re-  
14 leased from prison, shall be released to a mandatory period of postrelease  
15 supervision for the duration of the person's natural life.
- 16 (2) As used in this section, "sexually violent crime" means:
- 17 (A) Rape, K.S.A. 21-3502, and amendments thereto;
- 18 (B) indecent liberties with a child, K.S.A. 21-3503, and amendments  
19 thereto;
- 20 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, and  
21 amendments thereto;
- 22 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505,  
23 and amendments thereto;
- 24 (E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments  
25 thereto;
- 26 (F) indecent solicitation of a child, K.S.A. 21-3510, and amendments  
27 thereto;
- 28 (G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and  
29 amendments thereto;
- 30 (H) sexual exploitation of a child, K.S.A. 21-3516, and amendments  
31 thereto;
- 32 (I) aggravated sexual battery, K.S.A. 21-3518, and amendments  
33 thereto;
- 34 (J) aggravated incest, K.S.A. 21-3603, and amendments thereto; or
- 35 (K) an attempt, conspiracy or criminal solicitation, as defined in  
36 K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of a sex-  
37 ually violent crime as defined in this section.
- 38 "Sexually motivated" means that one of the purposes for which the  
39 defendant committed the crime was for the purpose of the defendant's  
40 sexual gratification.
- 41 (e) If an inmate is sentenced to imprisonment for a crime committed  
42 while on parole or conditional release, the inmate shall be eligible for  
43 parole as provided by subsection (c), except that the Kansas parole board

1 may postpone the inmate's parole eligibility date by assessing a penalty  
2 not exceeding the period of time which could have been assessed if the  
3 inmate's parole or conditional release had been violated for reasons other  
4 than conviction of a crime.

5 (f) If a person is sentenced to prison for a crime committed on or  
6 after July 1, 1993, while on probation, parole, conditional release or in a  
7 community corrections program, for a crime committed prior to July 1,  
8 1993, and the person is not eligible for retroactive application of the  
9 sentencing guidelines and amendments thereto pursuant to K.S.A. 21-  
10 4724, and amendments thereto, the new sentence shall not be aggregated  
11 with the old sentence, but shall begin when the person is paroled or  
12 reaches the conditional release date on the old sentence. If the offender  
13 was past the offender's conditional release date at the time the new of-  
14 fense was committed, the new sentence shall not be aggregated with the  
15 old sentence but shall begin when the person is ordered released by the  
16 Kansas parole board or reaches the maximum sentence expiration date  
17 on the old sentence, whichever is earlier. The new sentence shall then  
18 be served as otherwise provided by law. The period of postrelease su-  
19 pervision shall be based on the new sentence, except that those offenders  
20 whose old sentence is a term of imprisonment for life, imposed pursuant  
21 to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate  
22 sentence with a maximum term of life imprisonment, for which there is  
23 no conditional release or maximum sentence expiration date, shall remain  
24 on postrelease supervision for life or until discharged from supervision  
25 by the Kansas parole board.

26 (g) Subject to the provisions of this section, the Kansas parole board  
27 may release on parole those persons confined in institutions who are el-  
28 igible for parole when: (1) The board believes that the inmate should be  
29 released for hospitalization, for deportation or to answer the warrant or  
30 other process of a court and is of the opinion that there is reasonable  
31 probability that the inmate can be released without detriment to the com-  
32 munity or to the inmate; or (2) the secretary of corrections has reported  
33 to the board in writing that the inmate has satisfactorily completed the  
34 programs required by any agreement entered under K.S.A. 75-5210a, and  
35 amendments thereto, or any revision of such agreement, and the board  
36 believes that the inmate is able and willing to fulfill the obligations of a  
37 law abiding citizen and is of the opinion that there is reasonable proba-  
38 bility that the inmate can be released without detriment to the community  
39 or to the inmate. Parole shall not be granted as an award of clemency and  
40 shall not be considered a reduction of sentence or a pardon.

41 (h) The Kansas parole board shall hold a parole hearing at least the  
42 month prior to the month an inmate will be eligible for parole under  
43 subsections (a), (b) and (c). At least the month preceding the parole hear-

1 ing, the county or district attorney of the county where the inmate was  
2 convicted shall give written notice of the time and place of the public  
3 comment sessions for the inmate to any victim of the inmate's crime who  
4 is alive and whose address is known to the county or district attorney or,  
5 if the victim is deceased, to the victim's family if the family's address is  
6 known to the county or district attorney. Except as otherwise provided,  
7 failure to notify pursuant to this section shall not be a reason to postpone  
8 a parole hearing. In the case of any inmate convicted of an off-grid felony  
9 or a class A felony the secretary of corrections shall give written notice  
10 of the time and place of the public comment session for such inmate at  
11 least one month preceding the public comment session to any victim of  
12 such inmate's crime or the victim's family pursuant to K.S.A. 74-7338,  
13 and amendments thereto. If notification is not given to such victim or  
14 such victim's family in the case of any inmate convicted of an off-grid  
15 felony or a class A felony, the board shall postpone a decision on parole  
16 of the inmate to a time at least 30 days after notification is given as  
17 provided in this section. Nothing in this section shall create a cause of  
18 action against the state or an employee of the state acting within the scope  
19 of the employee's employment as a result of the failure to notify pursuant  
20 to this section. If granted parole, the inmate may be released on parole  
21 on the date specified by the board, but not earlier than the date the  
22 inmate is eligible for parole under subsections (a), (b) and (c). At each  
23 parole hearing and, if parole is not granted, at such intervals thereafter  
24 as it determines appropriate, the Kansas parole board shall consider: (1)  
25 Whether the inmate has satisfactorily completed the programs required  
26 by any agreement entered under K.S.A. 75-5210a, and amendments  
27 thereto, or any revision of such agreement; and (2) all pertinent infor-  
28 mation regarding such inmate, including, but not limited to, the circum-  
29 stances of the offense of the inmate; the presentence report; the previous  
30 social history and criminal record of the inmate; the conduct, employ-  
31 ment, and attitude of the inmate in prison; the reports of such physical  
32 and mental examinations as have been made, including, but not limited  
33 to, risk factors revealed by any risk assessment of the inmate; comments  
34 of the victim and the victim's family including in person comments, con-  
35 temporaneous comments and prerecorded comments made by any tech-  
36 nological means; comments of the public; official comments; any rec-  
37 ommendation by the staff of the facility where the inmate is incarcerated;  
38 proportionality of the time the inmate has served to the sentence a person  
39 would receive under the Kansas sentencing guidelines for the conduct  
40 that resulted in the inmate's incarceration; and capacity of state correc-  
41 tional institutions.

42 (i) In those cases involving inmates sentenced for a crime committed  
43 after July 1, 1993, the parole board will review the inmates proposed

1 release plan. The board may schedule a hearing if they desire. The board  
2 may impose any condition they deem necessary to insure public safety,  
3 aid in the reintegration of the inmate into the community, or items not  
4 completed under the agreement entered into under K.S.A. 75-5210a, and  
5 amendments thereto. The board may not advance or delay an inmate's  
6 release date. Every inmate while on postrelease supervision shall remain  
7 in the legal custody of the secretary of corrections and is subject to the  
8 orders of the secretary.

9 (j) Before ordering the parole of any inmate, the Kansas parole board  
10 shall have the inmate appear ~~before~~ either in person or via a video con-  
11 ferencing format and shall interview the inmate unless impractical be-  
12 cause of the inmate's physical or mental condition or absence from the  
13 institution. Every inmate while on parole shall remain in the legal custody  
14 of the secretary of corrections and is subject to the orders of the secretary.  
15 Whenever the Kansas parole board formally considers placing an inmate  
16 on parole and no agreement has been entered into with the inmate under  
17 K.S.A. 75-5210a, and amendments thereto, the board shall notify the  
18 inmate in writing of the reasons for not granting parole. If an agreement  
19 has been entered under K.S.A. 75-5210a, and amendments thereto, and  
20 the inmate has not satisfactorily completed the programs specified in the  
21 agreement, or any revision of such agreement, the board shall notify the  
22 inmate in writing of the specific programs the inmate must satisfactorily  
23 complete before parole will be granted. If parole is not granted only  
24 because of a failure to satisfactorily complete such programs, the board  
25 shall grant parole upon the secretary's certification that the inmate has  
26 successfully completed such programs. If an agreement has been entered  
27 under K.S.A. 75-5210a, and amendments thereto, and the secretary of  
28 corrections has reported to the board in writing that the inmate has sat-  
29 isfactorily completed the programs required by such agreement, or any  
30 revision thereof, the board shall not require further program participa-  
31 tion. However, if the board determines that other pertinent information  
32 regarding the inmate warrants the inmate's not being released on parole,  
33 the board shall state in writing the reasons for not granting the parole. If  
34 parole is denied for an inmate sentenced for a crime other than a class A  
35 or class B felony or an off-grid felony, the board shall hold another parole  
36 hearing for the inmate not later than one year after the denial unless the  
37 parole board finds that it is not reasonable to expect that parole would  
38 be granted at a hearing if held in the next three years or during the interim  
39 period of a deferral. In such case, the parole board may defer subsequent  
40 parole hearings for up to three years but any such deferral by the board  
41 shall require the board to state the basis for its findings. If parole is denied  
42 for an inmate sentenced for a class A or class B felony or an off-grid  
43 felony, the board shall hold another parole hearing for the inmate not

1 later than three years after the denial unless the parole board finds that  
2 it is not reasonable to expect that parole would be granted at a hearing if  
3 held in the next 10 years or during the interim period of a deferral. In  
4 such case, the parole board may defer subsequent parole hearings for up  
5 to 10 years but any such deferral shall require the board to state the basis  
6 for its findings.

7 (k) Parolees and persons on postrelease supervision shall be assigned,  
8 upon release, to the appropriate level of supervision pursuant to the cri-  
9 teria established by the secretary of corrections.

10 (l) The Kansas parole board shall adopt rules and regulations in ac-  
11 cordance with K.S.A. 77-415 et seq., and amendments thereto, not in-  
12 consistent with the law and as it may deem proper or necessary, with  
13 respect to the conduct of parole hearings, postrelease supervision reviews,  
14 revocation hearings, orders of restitution, reimbursement of expenditures  
15 by the state board of indigents' defense services and other conditions to  
16 be imposed upon parolees or releasees. Whenever an order for parole or  
17 postrelease supervision is issued it shall recite the conditions thereof.

18 (m) Whenever the Kansas parole board orders the parole of an in-  
19 mate or establishes conditions for an inmate placed on postrelease su-  
20 pervision, the board:

21 (1) Unless it finds compelling circumstances which would render a  
22 plan of payment unworkable, shall order as a condition of parole or post-  
23 release supervision that the parolee or the person on postrelease super-  
24 vision pay any transportation expenses resulting from returning the pa-  
25 rolee or the person on postrelease supervision to this state to answer  
26 criminal charges or a warrant for a violation of a condition of probation,  
27 assignment to a community correctional services program, parole, con-  
28 ditional release or postrelease supervision;

29 (2) to the extent practicable, shall order as a condition of parole or  
30 postrelease supervision that the parolee or the person on postrelease su-  
31 pervision make progress towards or successfully complete the equivalent  
32 of a secondary education if the inmate has not previously completed such  
33 educational equivalent and is capable of doing so;

34 (3) may order that the parolee or person on postrelease supervision  
35 perform community or public service work for local governmental agen-  
36 cies, private corporations organized not-for-profit or charitable or social  
37 service organizations performing services for the community;

38 (4) may order the parolee or person on postrelease supervision to pay  
39 the administrative fee imposed pursuant to K.S.A. 22-4529, and amend-  
40 ments thereto, unless the board finds compelling circumstances which  
41 would render payment unworkable; and

42 (5) unless it finds compelling circumstances which would render a  
43 plan of payment unworkable, shall order that the parolee or person on

1 postrelease supervision reimburse the state for all or part of the expend-  
2 itures by the state board of indigents' defense services to provide counsel  
3 and other defense services to the person. In determining the amount and  
4 method of payment of such sum, the parole board shall take account of  
5 the financial resources of the person and the nature of the burden that  
6 the payment of such sum will impose. Such amount shall not exceed the  
7 amount claimed by appointed counsel on the payment voucher for indi-  
8 gents' defense services or the amount prescribed by the board of indi-  
9 gents' defense services reimbursement tables as provided in K.S.A. 22-  
10 4522, and amendments thereto, whichever is less, minus any previous  
11 payments for such services.

12 (n) If the court which sentenced an inmate specified at the time of  
13 sentencing the amount and the recipient of any restitution ordered as a  
14 condition of parole or postrelease supervision, the Kansas parole board  
15 shall order as a condition of parole or postrelease supervision that the  
16 inmate pay restitution in the amount and manner provided in the journal  
17 entry unless the board finds compelling circumstances which would ren-  
18 der a plan of restitution unworkable.

19 (o) Whenever the Kansas parole board grants the parole of an inmate,  
20 the board, within 10 days of the date of the decision to grant parole, shall  
21 give written notice of the decision to the county or district attorney of the  
22 county where the inmate was sentenced.

23 (p) When an inmate is to be released on postrelease supervision, the  
24 secretary, within 30 days prior to release, shall provide the county or  
25 district attorney of the county where the inmate was sentenced written  
26 notice of the release date.

27 (q) Inmates shall be released on postrelease supervision upon the  
28 termination of the prison portion of their sentence. Time served while  
29 on postrelease supervision will vest.

30 (r) An inmate who is allocated regular good time credits as provided  
31 in K.S.A. 22-3725, and amendments thereto, may receive meritorious  
32 good time credits in increments of not more than 90 days per meritorious  
33 act. These credits may be awarded by the secretary of corrections when  
34 an inmate has acted in a heroic or outstanding manner in coming to the  
35 assistance of another person in a life threatening situation, preventing  
36 injury or death to a person, preventing the destruction of property or  
37 taking actions which result in a financial savings to the state.

38 (s) ~~The provisions of subsections (d)(1)(A), (d)(1)(B), (d)(1)(C) and~~  
39 ~~(d)(1)(E) shall be applied retroactively as provided in subsection (t).~~

40 ~~(t) For offenders sentenced prior to the effective date of this act who~~  
41 ~~are eligible for modification of their postrelease supervision obligation,~~  
42 ~~the department of corrections shall modify the period of postrelease su-~~  
43 ~~per vision as provided for by this section for offenders convicted of severity~~

1 ~~level 9 and 10 crimes on the sentencing guidelines grid for nondrug~~  
 2 ~~crimes and severity level 4 crimes on the sentencing guidelines grid for~~  
 3 ~~drug crimes on or before September 1, 2000, for offenders convicted of~~  
 4 ~~severity level 7 and 8 crimes on the sentencing guidelines grid for nondrug~~  
 5 ~~crimes on or before November 1, 2000, and for offenders convicted of~~  
 6 ~~severity level 5 and 6 crimes on the sentencing guidelines grid for nondrug~~  
 7 ~~crimes and severity level 3 crimes on the sentencing guidelines grid for~~  
 8 ~~drug crimes on or before January 1, 2001.~~

9 ~~(u)~~ An inmate sentenced to imprisonment pursuant to K.S.A. 21-  
 10 4643, and amendments thereto, for crimes committed on or after July 1,  
 11 2006, shall be placed on parole for life and shall not be discharged from  
 12 supervision by the Kansas parole board. When the board orders the parole  
 13 of an inmate pursuant to this subsection, the board shall order as a con-  
 14 dition of parole that the inmate be electronically monitored for the du-  
 15 ration of the inmate's natural life.

16 ~~(v)~~ (t) Whenever the Kansas parole board or the court orders a person  
 17 to be electronically monitored, the board or court shall order the person  
 18 to reimburse the state for all or part of the cost of such monitoring. In  
 19 determining the amount and method of payment of such sum, the board  
 20 or court shall take account of the financial resources of the person and  
 21 the nature of the burden that the payment of such sum will impose.

22 ~~Sec. 106. 104.~~ K.S.A. 22-3901 is hereby amended to read as follows:  
 23 22-3901. The following unlawful activities and the use of real or personal  
 24 property in maintaining and carrying on such activities are hereby de-  
 25 clared to be common nuisances:

- 26 (a) Commercial gambling;
- 27 (b) dealing in gambling devices;
- 28 (c) possession of gambling devices;
- 29 (d) promoting obscenity;
- 30 (e) promoting prostitution;
- 31 (f) habitually promoting prostitution;
- 32 (g) violations of any law regulating controlled substances;
- 33 (h) habitual violations of any law regulating the sale or exchange of
- 34 alcoholic liquor or cereal malt beverages, by any person not licensed pur-
- 35 suant to chapter 41 of the Kansas Statutes Annotated;
- 36 (i) habitual violations of any law regulating the sale or exchange of
- 37 cigarettes or tobacco products, by any person not licensed pursuant to
- 38 article 33 of chapter 79 of the Kansas Statutes Annotated;
- 39 (j) any felony committed for the benefit of, at the direction of, or in
- 40 association with any criminal street gang, with the specific intent to pro-
- 41 mote, further or assist in any criminal conduct by gang members. As used
- 42 in this subsection, "criminal street gang" means any organization, asso-
- 43 ciation or group, whether formal or informal:

- 1 (1) Consisting of three or more persons;
- 2 (2) having as one of its primary activities the commission of one or  
3 more person felonies, person misdemeanors, felony violations of ~~the uni-~~  
4 ~~form controlled substances act, K.S.A. 65-4101 et seq. sections 1 through~~  
5 ~~17, and amendments thereto, or the comparable juvenile offenses, which~~  
6 ~~if committed by an adult would constitute the commission of such felonies~~  
7 ~~or misdemeanors;~~
- 8 (3) which has a common name or common identifying sign or symbol;
- 9 and
- 10 (4) whose members, individually or collectively engage in or have  
11 engaged in the commission, attempted commission, conspiracy to commit  
12 or solicitation of two or more person felonies, person misdemeanors, fel-  
13 ony violations of ~~the uniform controlled substances act, K.S.A. 65-4101~~  
14 ~~et seq. sections 1 through 17, and amendments thereto, or the comparable~~  
15 ~~juvenile offenses, which if committed by an adult would constitute the~~  
16 ~~commission of such felonies or misdemeanors, or any substantially similar~~  
17 ~~offense from another jurisdiction; or~~
- 18 (k) use of pyrotechnics, pyrotechnic devices or pyrotechnic materials  
19 in violation of K.S.A. 2008 Supp. 31-170, and amendments thereto.
- 20 Any real property used as a place where any such activities are carried  
21 on or permitted to be carried on and any effects, equipment, parapher-  
22 nalia, fixtures, appliances, musical instruments or other personal property  
23 designed for and used on such premises in connection with such unlawful  
24 activities are subject to the provisions of K.S.A. 22-3902, 22-3903 and 22-  
25 3904, and amendments thereto.
- 26 ~~Sec. 107.~~ **105.** K.S.A. 22-4405 is hereby amended to read as follows:  
27 22-4405. Any person who ~~shall escape~~ *escapes* from custody while in this  
28 state pursuant to the agreement on detainers shall be guilty of a *severity*  
29 *level 10, nonperson* felony ~~and upon conviction thereof shall be impris-~~  
30 ~~oned for a term of not less than one nor more than 10 years. On or after~~  
31 ~~July 1, 1993, any person who shall escape from custody while in this state~~  
32 ~~pursuant to the agreement on detainers shall be guilty of an unranked~~  
33 ~~felony and upon conviction the court shall fix an appropriate sentence.~~
- 34 ~~Sec. 108.~~ **106.** K.S.A. 2008 Supp. 22-4902 is hereby amended to read  
35 as follows: 22-4902. As used in this act, unless the context otherwise  
36 requires:
- 37 (a) “Offender” means: (1) A sex offender as defined in subsection (b);  
38 (2) a violent offender as defined in subsection (d);  
39 (3) a sexually violent predator as defined in subsection (f);  
40 (4) any person who, on and after the effective date of this act, is  
41 convicted of any of the following crimes when the victim is less than 18  
42 years of age:
- 43 (A) Kidnapping as defined in K.S.A. 21-3420 and amendments

- 1   thereto, except by a parent;
- 2   (B) aggravated kidnapping as defined in K.S.A. 21-3421 and amend-
- 3   ments thereto; or
- 4   (C) criminal restraint as defined in K.S.A. 21-3424 and amendments
- 5   thereto, except by a parent;
- 6   (5) any person convicted of any of the following criminal sexual con-
- 7   duct if one of the parties involved is less than 18 years of age:
- 8   (A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;
- 9   (B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-
- 10   3505, and amendments thereto;
- 11   (C) promoting prostitution as defined by K.S.A. 21-3513, and amend-
- 12   ments thereto;
- 13   (D) patronizing a prostitute as defined by K.S.A. 21-3515, and
- 14   amendments thereto;
- 15   (E) lewd and lascivious behavior as defined by K.S.A. 21-3508, and
- 16   amendments thereto; or
- 17   (F) unlawful sexual relations as defined by K.S.A. 21-3520, and
- 18   amendments thereto;
- 19   (6) any person who has been required to register under any federal,
- 20   military or other state's law or is otherwise required to be registered;
- 21   (7) any person who, on or after July 1, 2006, is convicted of any person
- 22   felony and the court makes a finding on the record that a deadly weapon
- 23   was used in the commission of such person felony;
- 24   (8) any person who has been convicted of an offense in effect at any
- 25   time prior to the effective date of this act, that is comparable to any crime
- 26   defined in subsection (4), (5), (7) or (11), or any federal, military or other
- 27   state conviction for an offense that under the laws of this state would be
- 28   an offense defined in subsection (4), (5), (7) or (11);
- 29   (9) any person who has been convicted of an attempt, conspiracy or
- 30   criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303
- 31   and amendments thereto, of an offense defined in subsection (4), (5), (7)
- 32   or (10);
- 33   (10) any person who has been convicted of aggravated trafficking as
- 34   defined in K.S.A. 21-3447, and amendments thereto; or
- 35   (11) any person who has been convicted of: (A) Unlawful manufac-
- 36   ture or attempting such of any controlled substance *or controlled sub-*
- 37   *stance analog* as defined by K.S.A. 65-4159, *prior to its repeal or section*
- 38   3, and amendments thereto, unless the court makes a finding on the
- 39   record that the manufacturing or attempting to manufacture such con-
- 40   trolled substance was for such person's personal use;
- 41   (B) possession of ephedrine, pseudoephedrine, red phosphorus, lith-
- 42   ium metal, sodium metal, iodine, anhydrous ammonia, pressurized am-
- 43   monia or phenylpropanolamine, or their salts, isomers or salts of isomers

1 with intent to use the product to manufacture a controlled substance as  
2 defined by K.S.A. 65-7006 *prior to its repeal or section 9 or 10*, and  
3 amendments thereto, unless the court makes a finding on the record that  
4 the possession of such product was intended to be used to manufacture  
5 a controlled substance for such person's personal use; or

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

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

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

19 (c) "Sexually violent crime" means:

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

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

23 (3) aggravated indecent liberties with a child as defined in K.S.A. 21-  
24 3504 and amendments thereto;

25 (4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of  
26 K.S.A. 21-3505 and amendments thereto;

27 (5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and  
28 amendments thereto;

29 (6) indecent solicitation of a child as defined by K.S.A. 21-3510 and  
30 amendments thereto;

31 (7) aggravated indecent solicitation of a child as defined by K.S.A.  
32 21-3511 and amendments thereto;

33 (8) sexual exploitation of a child as defined by K.S.A. 21-3516 and  
34 amendments thereto;

35 (9) sexual battery as defined by K.S.A. 21-3517 and amendments  
36 thereto;

37 (10) aggravated sexual battery as defined by K.S.A. 21-3518 and  
38 amendments thereto;

39 (11) aggravated incest as defined by K.S.A. 21-3603 and amendments  
40 thereto; or

41 (12) electronic solicitation as defined by K.S.A. 21-3523, and amend-  
42 ments thereto, committed on and after the effective date of this act;

43 (13) any conviction for an offense in effect at any time prior to the

- 1 effective date of this act, that is comparable to a sexually violent crime as  
2 defined in subparagraphs (1) through (11), or any federal, military or  
3 other state conviction for an offense that under the laws of this state would  
4 be a sexually violent crime as defined in this section;
- 5 (14) an attempt, conspiracy or criminal solicitation, as defined in  
6 K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of a sex-  
7 ually violent crime, as defined in this section; or
- 8 (15) any act which at the time of sentencing for the offense has been  
9 determined beyond a reasonable doubt to have been sexually motivated.  
10 As used in this subparagraph, “sexually motivated” means that one of the  
11 purposes for which the defendant committed the crime was for the pur-  
12 pose of the defendant’s sexual gratification.
- 13 (d) “Violent offender” includes any person who, after the effective  
14 date of this act, is convicted of any of the following crimes:
- 15 (1) Capital murder as defined by K.S.A. 21-3439 and amendments  
16 thereto;
- 17 (2) murder in the first degree as defined by K.S.A. 21-3401 and  
18 amendments thereto;
- 19 (3) murder in the second degree as defined by K.S.A. 21-3402 and  
20 amendments thereto;
- 21 (4) voluntary manslaughter as defined by K.S.A. 21-3403 and amend-  
22 ments thereto;
- 23 (5) involuntary manslaughter as defined by K.S.A. 21-3404 and  
24 amendments thereto; or
- 25 (6) any conviction for an offense in effect at any time prior to the  
26 effective date of this act, that is comparable to any crime defined in this  
27 subsection, or any federal, military or other state conviction for an offense  
28 that under the laws of this state would be an offense defined in this  
29 subsection; or
- 30 (7) an attempt, conspiracy or criminal solicitation, as defined in  
31 K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an of-  
32 fense defined in this subsection.
- 33 (e) “Law enforcement agency having jurisdiction” means the sheriff  
34 of the county in which the offender expects to reside upon the offender’s  
35 discharge, parole or release.
- 36 (f) “Sexually violent predator” means any person who, on or after July  
37 1, 2001, is found to be a sexually violent predator pursuant to K.S.A. 59-  
38 29a01 et seq. and amendments thereto.
- 39 (g) “Nonresident student or worker” includes any offender who  
40 crosses into the state or county for more than 14 days, or for an aggregate  
41 period exceeding 30 days in a calendar year, for the purposes of employ-  
42 ment, with or without compensation, or to attend school as a student.
- 43 (h) “Aggravated offenses” means engaging in sexual acts involving

1 penetration with victims of any age through the use of force or the threat  
2 of serious violence, or engaging in sexual acts involving penetration with  
3 victims less than 14 years of age, and includes the following offenses:

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

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

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

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

13 ~~Sec. 109.~~ **107.** K.S.A. 22-4903 is hereby amended to read as follows:  
14 22-4903. (a) Any person who is required to register as provided in the  
15 Kansas offender registration act who violates any of the provisions of such  
16 act, including all duties set out in K.S.A. 22-4904 through 22-4907, and  
17 amendments thereto, is guilty of a severity level ~~5~~ 9, person felony. Any  
18 violation of any provision of such act, including a violation of the duties  
19 set forth in K.S.A. 22-4904 through K.S.A. 22-4907, and amendments  
20 thereto, which continues for more than 30 consecutive days shall, upon  
21 the 31st consecutive day, constitute a new and separate offense and shall  
22 continue to constitute a new and separate offense upon completion of  
23 every 30 days thereafter for as long as the offense continues.

24 (b) Prosecution of violations under subsection (a), shall be held: (1)  
25 In the county in which the offender resides; (2) if the offender is tem-  
26 porarily domiciled in a county and is required to be registered, in such  
27 county; or (3) in the county in which the offender is required to be reg-  
28 istered under this act.

29 ~~Sec. 110.~~ **108.** K.S.A. 22-4906 is hereby amended to read as follows:  
30 22-4906. (a) Except as provided in subsection (d), any person required to  
31 register as provided in this act shall be required to register: (1) Upon the  
32 first conviction of a sexually violent crime as defined in subsection (c) of  
33 K.S.A. 22-4902, and amendments thereto, any offense as defined in sub-  
34 section (a) of K.S.A. 22-4902, and amendments thereto, or any offense as  
35 defined in subsection (d) of K.S.A. 22-4902, and amendments thereto, if  
36 not confined, for a period of 10 years after conviction, or, if confined, for  
37 a period of 10 years after paroled, discharged or released, whichever date  
38 is most recent. The ten-year period shall not apply to any person while  
39 the person is incarcerated in any jail or correctional facility. The ten-year  
40 registration requirement does not include any time period when any per-  
41 son who is required to register under this act knowingly or willfully fails  
42 to comply with the registration requirement; or (2) upon a second or  
43 subsequent conviction for such person’s lifetime.

1 (b) Upon the first conviction, liability for registration terminates, if  
2 not confined, at the expiration of 10 years from the date of conviction,  
3 or, if confined, at the expiration of 10 years from the date of parole,  
4 discharge or release, whichever date is most recent. The ten-year period  
5 shall not apply to any person while the person is incarcerated in any jail  
6 or correctional facility. The ten-year registration requirement does not  
7 include any time period when any person who is required to register  
8 under this act knowingly or willfully fails to comply with the registration  
9 requirement. Liability for registration does not terminate if the convicted  
10 offender again becomes liable to register as provided by this act during  
11 that period.

12 (c) Any person who has been convicted of an aggravated offense shall  
13 be required to register for such person's lifetime.

14 (d) Any person who has been convicted of any of the following of-  
15 fenses shall be required to register for such person's lifetime:

16 (1) Aggravated trafficking, as defined in K.S.A. 21-3447, and amend-  
17 ments thereto, if the victim is less than 14 years of age;

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

20 (3) aggravated indecent liberties with a child, as defined in subsection  
21 (a)(3) of K.S.A. 21-3504, and amendments thereto;

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

24 (5) promoting prostitution, as defined in K.S.A. 21-3513, and amend-  
25 ments thereto, if the prostitute is less than 14 years of age; or

26 (6) sexual exploitation of a child, as defined in subsection (a)(5) or  
27 (a)(6) of K.S.A. 21-3516, and amendments thereto.

28 (e) Any person who has been declared a sexually violent predator  
29 pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall reg-  
30 ister for such person's lifetime.

31 (f) Any nonresident worker shall register for the duration of such  
32 person's employment. The provisions of this subsection are in addition to  
33 subsections (a) and (b).

34 (g) Any nonresident student shall register for the duration of such  
35 person's attendance at a school or educational institution as provided in  
36 this act. The provisions of this subsection are in addition to subsections  
37 (a) and (b).

38 (h) (1) Notwithstanding any other provisions of this section, a person  
39 who is adjudicated as a juvenile offender for an act which if committed  
40 by an adult would constitute the commission of a sexually violent crime  
41 set forth in subsection (c) of K.S.A. 22-4902, and amendments thereto,  
42 and such crime is an off-grid felony or a felony ranked in severity level 1  
43 of the nondrug grid as provided in K.S.A. 21-4704, and amendments

1 thereto, shall be required to register until such person reaches 18 years  
2 of age, at the expiration of five years from the date of adjudication or, if  
3 confined, from release from confinement, whichever date occurs later.  
4 The five-year period shall not apply to any person while that person is  
5 incarcerated in any jail, juvenile facility or correctional facility. The five-  
6 year registration requirement does not include any time period when any  
7 person who is required to register under this act knowingly or willfully  
8 fails to comply with the registration requirement.

9 (2) (A) A person who is adjudicated as a juvenile offender for an act  
10 which if committed by an adult would constitute the commission of a  
11 sexually violent crime set forth in subsection (c) of K.S.A. 22-4902, and  
12 amendments thereto, and such crime is not an off-grid felony or a felony  
13 ranked in severity level 1 ~~of the nondrug grid~~ as provided in K.S.A. 21-  
14 4704, and amendments thereto, may, by the court:

15 (i) Be required to register pursuant to the provisions of paragraph  
16 (1);

17 (ii) not be required to register if the judge, on the record, finds sub-  
18 stantial and compelling reasons therefor; or

19 (iii) be required to register with the sheriff pursuant to K.S.A. 22-  
20 4904, and amendments thereto, but such registration information shall  
21 not be open to inspection by the public or posted on any internet website,  
22 as provided in K.S.A. 22-4909, and amendments thereto. If the court  
23 requires the juvenile to register but such registration is not open to the  
24 public, the juvenile shall provide a copy of such court order to the sheriff  
25 at the time of registration. The sheriff shall forward a copy of such court  
26 order to the Kansas bureau of investigation.

27 (B) If such juvenile offender violates a condition of release during  
28 the term of the conditional release, the judge may require the juvenile  
29 offender to register pursuant to paragraph (1).

30 (3) Liability for registration does not terminate if the adjudicated of-  
31 fender again becomes liable to register as provided by this act during the  
32 required period.

33 (4) The provisions of paragraph (2)(A)(ii) shall apply to adjudications  
34 on and after the effective date of this act and retroactively to adjudications  
35 prior to July 1, 2007.

36 (i) Any person moving to the state of Kansas who has been convicted  
37 in another state, and who was required to register under that state's laws,  
38 shall register for the same length of time required by that state or Kansas,  
39 whichever length of time is longer. The provisions of this subsection shall  
40 apply to convictions prior to June 1, 2006 and to persons who moved to  
41 Kansas prior to June 1, 2006.

42 ~~Sec. 109.~~ **109.** K.S.A. 36-601 is hereby amended to read as follows:  
43 36-601. As used in this act:

- 1 (a) “Hotel” means the same as provided in K.S.A. 36-501, and  
2 amendments thereto;
- 3 (b) “innkeeper” means the owner, operator, manager or keeper of a  
4 hotel;
- 5 (c) “minor” means an unemancipated person under the age of 18  
6 years;
- 7 (d) “alcoholic liquor” means the same as provided in subsection (b)  
8 of K.S.A. 41-102, and amendments thereto;
- 9 (e) “cereal malt beverage” means the same as provided in subsection  
10 (a) of K.S.A. 41-2701, and amendments thereto;
- 11 (f) “controlled substance” means the same as provided in ~~K.S.A. 65-~~  
12 ~~4101 et seq.~~ *section 1*, and amendments thereto.
- 13 ~~Sec. 112.~~ **110.** K.S.A. 36-604 is hereby amended to read as follows:  
14 36-604. An innkeeper may eject a person from the hotel premises, without  
15 return of such person’s room rental payment, for any of the following  
16 reasons:
- 17 (a) Nonpayment of the hotel’s charges for accommodations or  
18 services;
- 19 (b) the person is engaged in disorderly conduct as defined in K.S.A.  
20 21-4101, and amendments thereto, or has been the subject of complaints  
21 from other guests of the hotel;
- 22 (c) the person is using the premises for an unlawful act, including but  
23 not limited to the unlawful use or possession of controlled substances by  
24 such person in violation of ~~K.S.A. 65-4101 et seq.~~ *sections 1 through 17*,  
25 and amendments thereto, or the use of the premises for the consumption  
26 of alcoholic liquor or cereal malt beverage by any person under the age  
27 of 21 years in violation of K.S.A. 41-727, and amendments thereto;
- 28 (d) the person has brought property onto the hotel premises which  
29 may be dangerous to other persons as defined in K.S.A. 21-4201 et seq.,  
30 and amendments thereto;
- 31 (e) the person is not a registered guest of the hotel;
- 32 (f) the person has exceeded the limitations for guest room occupancy  
33 established by the hotel;
- 34 (g) the person has obtained the accommodation under false  
35 pretenses;
- 36 (h) the person is a minor and is not under the supervision of the adult  
37 who has obtained the accommodation;
- 38 (i) the person has violated any federal, state or local laws or regula-  
39 tions relating to the hotel; or
- 40 (j) the person has violated any rule of the hotel which is posted in a  
41 conspicuous place and manner in the hotel as provided in K.S.A. 36-605,  
42 except that no such rule may authorize the innkeeper to eject or to refuse  
43 or deny service or accommodations to a person because of race, religion,

- 1 color, sex, disability, national origin or ancestry.
- 2 Sec. ~~113~~ **111**. K.S.A. 2008 Supp. 38-2255 is hereby amended to read
- 3 as follows: 38-2255. (a) *Considerations*. Prior to entering an order of dis-
- 4 position, the court shall give consideration to:
- 5 (1) The child's physical, mental and emotional condition;
- 6 (2) the child's need for assistance;
- 7 (3) the manner in which the parent participated in the abuse, neglect
- 8 or abandonment of the child;
- 9 (4) any relevant information from the intake and assessment process;
- 10 and
- 11 (5) the evidence received at the dispositional hearing.
- 12 (b) *Placement with a parent*. The court may place the child in the
- 13 custody of either of the child's parents subject to terms and conditions
- 14 which the court prescribes to assure the proper care and protection of
- 15 the child, including, but not limited to:
- 16 (1) Supervision of the child and the parent by a court services officer;
- 17 (2) participation by the child and the parent in available programs
- 18 operated by an appropriate individual or agency; and
- 19 (3) any special treatment or care which the child needs for the child's
- 20 physical, mental or emotional health and safety.
- 21 (c) *Removal of a child from custody of a parent*. The court shall not
- 22 enter an order removing a child from the custody of a parent pursuant
- 23 to this section unless the court first finds probable cause that: (1)(A) The
- 24 child is likely to sustain harm if not immediately removed from the home;
- 25 (B) allowing the child to remain in home is contrary to the welfare
- 26 of the child; or
- 27 (C) immediate placement of the child is in the best interest of the
- 28 child; and
- 29 (2) reasonable efforts have been made to maintain the family unit
- 30 and prevent the unnecessary removal of the child from the child's home
- 31 or that an emergency exists which threatens the safety to the child.
- 32 (d) *Custody of a child removed from the custody of a parent*. If the
- 33 court has made the findings required by subsection (c), the court shall
- 34 enter an order awarding custody to a relative of the child or to a person
- 35 with whom the child has close emotional ties, to any other suitable person,
- 36 to a shelter facility, to a youth residential facility or to the secretary. Cus-
- 37 tody awarded under this subsection shall continue until further order of
- 38 the court.
- 39 (1) When custody is awarded to the secretary, the secretary shall con-
- 40 sider any placement recommendation by the court and notify the court
- 41 of the placement or proposed placement of the child within 10 days of
- 42 the order awarding custody.
- 43 (A) After providing the parties or interested parties notice and op-

1 opportunity to be heard, the court may determine whether the secretary's  
2 placement or proposed placement is contrary to the welfare or in the best  
3 interests of the child. In making that determination the court shall con-  
4 sider the health and safety needs of the child and the resources available  
5 to meet the needs of children in the custody of the secretary. If the court  
6 determines that the placement or proposed placement is contrary to the  
7 welfare or not in the best interests of the child, the court shall notify the  
8 secretary, who shall then make an alternative placement.

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

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

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

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

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

37 (e) *Further determinations regarding a child removed from the home.*  
38 If custody has been awarded under subsection (d) to a person other than  
39 a parent, a permanency plan shall be provided or prepared pursuant to  
40 K.S.A. 2008 Supp. 38-2264, and amendments thereto. If a permanency  
41 plan is provided at the dispositional hearing, the court may determine  
42 whether reintegration is a viable alternative or, if reintegration is not a  
43 viable alternative, whether the child should be placed for adoption or a

- 1 permanent custodian appointed. In determining whether reintegration is  
2 a viable alternative, the court shall consider:
- 3 (1) Whether a parent has been found by a court to have committed  
4 one of the following crimes or to have violated the law of another state  
5 prohibiting such crimes or to have aided and abetted, attempted, con-  
6 spired or solicited the commission of one of these crimes: Murder in the  
7 first degree, K.S.A. 21-3401, and amendments thereto, murder in the  
8 second degree, K.S.A. 21-3402, and amendments thereto, capital murder,  
9 K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A.  
10 21-3403, and amendments thereto, or a felony battery that resulted in  
11 bodily injury;
- 12 (2) whether a parent has subjected the child or another child to ag-  
13 gravated circumstances;
- 14 (3) whether a parent has previously been found to be an unfit parent  
15 in proceedings under this code or in comparable proceedings under the  
16 laws of another state or the federal government;
- 17 (4) whether the child has been in extended out of home placement;
- 18 (5) whether the parents have failed to work diligently toward  
19 reintegration;
- 20 (6) whether the secretary has provided the family with services nec-  
21 essary for the safe return of the child to the home; and
- 22 (7) whether it is reasonable to expect reintegration to occur within a  
23 time frame consistent with the child's developmental needs.
- 24 (f) *Proceedings if reintegration is not a viable alternative.* If the court  
25 determines that reintegration is not a viable alternative, proceedings to  
26 terminate parental rights and permit placement of the child for adoption  
27 or appointment of a permanent custodian shall be initiated unless the  
28 court finds that compelling reasons have been documented in the case  
29 plan why adoption or appointment of a permanent custodian would not  
30 be in the best interests of the child. If compelling reasons have not been  
31 documented, the county or district attorney shall file a motion within 30  
32 days to terminate parental rights or a motion to appoint a permanent  
33 custodian within 30 days and the court shall hold a hearing on the motion  
34 within 90 days of its filing. No hearing is required when the parents  
35 voluntarily relinquish parental rights or consent to the appointment of a  
36 permanent custodian.
- 37 (g) *Additional Orders.* In addition to or in lieu of any other order  
38 authorized by this section:
- 39 (1) The court may order the child and the parents of any child who  
40 has been adjudicated a child in need of care to attend counseling sessions  
41 as the court directs. The expense of the counseling may be assessed as  
42 an expense in the case. No mental health provider shall charge a greater  
43 fee for court-ordered counseling than the provider would have charged

1 to the person receiving counseling if the person had requested counseling  
2 on the person's own initiative.

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

18 (3) If child support has been requested and the parent or parents  
19 have a duty to support the child, the court may order one or both parents  
20 to pay child support and, when custody is awarded to the secretary, the  
21 court shall order one or both parents to pay child support. The court shall  
22 determine, for each parent separately, whether the parent is already sub-  
23 ject to an order to pay support for the child. If the parent is not presently  
24 ordered to pay support for any child who is subject to the jurisdiction of  
25 the court and the court has personal jurisdiction over the parent, the court  
26 shall order the parent to pay child support in an amount determined  
27 under K.S.A. 2008 Supp. 38-2277, and amendments thereto. Except for  
28 good cause shown, the court shall issue an immediate income withholding  
29 order pursuant to K.S.A. 23-4,105 et seq., and amendments thereto, for  
30 each parent ordered to pay support under this subsection, regardless of  
31 whether a payor has been identified for the parent. A parent ordered to  
32 pay child support under this subsection shall be notified, at the hearing  
33 or otherwise, that the child support order may be registered pursuant to  
34 K.S.A. 2008 Supp. 38-2279, and amendments thereto. The parent shall  
35 also be informed that, after registration, the income withholding order  
36 may be served on the parent's employer without further notice to the  
37 parent and the child support order may be enforced by any method al-  
38 lowed by law. Failure to provide this notice shall not affect the validity of  
39 the child support order.

40 ~~Sec. 114.112.~~ K.S.A. 2008 Supp. 38-2346 is hereby amended to read  
41 as follows: 38-2346. (a) Except as provided in subsection (b), each county  
42 or district attorney may adopt a policy and establish guidelines for an  
43 immediate intervention program by which a juvenile may avoid prose-

- 1 cution. In addition to the county or district attorney adopting policies and  
2 guidelines for the immediate intervention programs, the court, the county  
3 or district attorney and the director of the intake and assessment center,  
4 pursuant to a written agreement, may develop local programs to:
- 5 (1) Provide for the direct referral of cases by the county or district  
6 attorney or the intake and assessment worker, or both, to youth courts,  
7 restorative justice centers, hearing officers or other local programs as  
8 sanctioned by the court.
- 9 (2) Allow intake and assessment workers to issue a summons, as de-  
10 fined in subsection (e) or if the county or district attorney has adopted  
11 appropriate policies and guidelines, allow law enforcement officers to  
12 issue such a summons.
- 13 (3) Allow the intake and assessment centers to directly purchase serv-  
14 ices for the juvenile and the juvenile's family.
- 15 (4) Allow intake and assessment workers to direct the release of a  
16 juvenile prior to a detention hearing after the completion of the intake  
17 and assessment process if the juvenile intake and assessment worker has  
18 reason to believe that if released the juvenile will appear for further pro-  
19 ceedings and is not dangerous to self or others.
- 20 (b) An immediate intervention program shall provide that an alleged  
21 juvenile offender is ineligible for such program if the juvenile faces pend-  
22 ing charges as a juvenile offender, for committing acts which, if commit-  
23 ted by an adult, would constitute:
- 24 (1) A violation of K.S.A. 8-1567, and amendments thereto, and the  
25 juvenile: (A) Has previously participated in an immediate intervention  
26 program instead of prosecution of a complaint alleging a violation of that  
27 statute or an ordinance of a city in this state which prohibits the acts  
28 prohibited by that statute; (B) has previously been adjudicated of a vio-  
29 lation of that statute or a violation of a law of another state or of a political  
30 subdivision of this or any other state, which law prohibits the acts pro-  
31 hibited by that statute; or (C) during the time of the alleged violation was  
32 involved in a motor vehicle accident or collision resulting in personal  
33 injury or death; or
- 34 (2) a violation of an off-grid crime; ~~or a severity level 1, 2 or 3 felony~~  
35 ~~for nondrug crimes or drug severity level 1 or 2 felony for drug crimes.~~
- 36 (c) An immediate intervention program may include a stipulation,  
37 agreed to by the juvenile, the juvenile's attorney and the attorney general  
38 or county or district attorney, of the facts upon which the charge is based  
39 and a provision that if the juvenile fails to fulfill the terms of the specific  
40 immediate intervention agreement and the immediate intervention pro-  
41 ceedings are resumed, the proceedings, including any proceedings on  
42 appeal, shall be conducted on the record of the stipulation of facts.
- 43 (d) The county or district attorney may require the parent of a ju-

1 venile to be a part of the immediate intervention program.

2 (e) “Summons” means a written order issued by an intake and as-  
3 sessment worker or a law enforcement officer directing that a juvenile  
4 appear before a designated court at a stated time and place to answer a  
5 pending charge.

6 (f) The provisions of this section shall not be applicable in judicial  
7 districts that adopt district court rules pursuant to K.S.A. 20-342, and  
8 amendments thereto, for the administration of immediate intervention  
9 programs by the district court.

10 Sec. ~~115~~ **113**. K.S.A. 2008 Supp. 38-2347 is hereby amended to read  
11 as follows: 38-2347. (a) (1) Except as otherwise provided in this section,  
12 at any time after commencement of proceedings under this code against  
13 a juvenile and prior to the beginning of an evidentiary hearing at which  
14 the court may enter a sentence as provided in K.S.A. 2008 Supp. 38-2356,  
15 and amendments thereto, the county or district attorney or the county or  
16 district attorney’s designee may file a motion requesting that the court  
17 authorize prosecution of the juvenile as an adult under the applicable  
18 criminal statute. The juvenile shall be presumed to be a juvenile unless  
19 good cause is shown to prosecute the juvenile as an adult.

20 (2) The alleged juvenile offender shall be presumed to be an adult if  
21 the alleged juvenile offender was: (A) 14, 15, 16 or 17 years of age at the  
22 time of the offense or offenses alleged in the complaint, if any such of-  
23 fense: (i) If committed by an adult, would constitute an off-grid crime, a  
24 person felony; ~~or a non-drug severity level 1 through 6 felony or any drug~~  
25 ~~severity level 1, 2 or 3 felony~~; or (ii) was committed while in possession  
26 of a firearm; or (B) charged with a felony or with more than one offense,  
27 one or more of which constitutes a felony, after having been adjudicated  
28 or convicted in a separate juvenile proceeding as having committed an  
29 offense which would constitute a felony if committed by an adult and the  
30 adjudications or convictions occurred prior to the date of the commission  
31 of the new act charged and prior to the beginning of an evidentiary hear-  
32 ing at which the court may enter a sentence as provided in K.S.A. 2008  
33 Supp. 38-2356, and amendments thereto. If the juvenile is presumed to  
34 be an adult, the burden is on the juvenile to rebut the presumption by a  
35 preponderance of the evidence.

36 (3) At any time after commencement of proceedings under this code  
37 against a juvenile offender and prior to the beginning of an evidentiary  
38 hearing at which the court may enter a sentence as provided in K.S.A.  
39 2008 Supp. 38-2356, and amendments thereto, the county or district at-  
40 torney or the county or district attorney’s designee may file a motion  
41 requesting that the court designate the proceedings as an extended juris-  
42 diction juvenile prosecution.

43 (4) If the county or district attorney or the county or district attorney’s

1 designee files a motion to designate the proceedings as an extended ju-  
2 risdiction juvenile prosecution and the juvenile was 14, 15, 16 or 17 years  
3 of age at the time of the offense or offenses alleged in the complaint and:  
4 (A) charged with an offense: (i) If committed by an adult, would constitute  
5 an off-grid crime, a person felony; ~~or a non-drug~~ severity level 1 through  
6 6 felony ~~or any drug severity level 1, 2 or 3 felony~~; or (ii) was committed  
7 while in possession of a firearm; or (B) charged with a felony or with more  
8 than, one offense, one or more of which constitutes a felony, after having  
9 been adjudicated or convicted in a separate juvenile proceeding as having  
10 committed an act which would constitute a felony if committed by an  
11 adult and the adjudications or convictions occurred prior to the date of  
12 the commission of the new offense charged, the burden is on the juvenile  
13 to rebut the designation of an extended jurisdiction juvenile prosecution  
14 by a preponderance of the evidence. In all other motions requesting that  
15 the court designate the proceedings as an extended jurisdiction juvenile  
16 prosecution, the juvenile is presumed to be a juvenile. The burden of  
17 proof is on the prosecutor to prove the juvenile should be designated as  
18 an extended jurisdiction juvenile.

19 (b) The motion also may contain a statement that the prosecuting  
20 attorney will introduce evidence of the offenses alleged in the complaint  
21 and request that, on hearing the motion and authorizing prosecution as  
22 an adult or designating the proceedings as an extended jurisdiction ju-  
23 venile prosecution under this code, the court may make the findings re-  
24 quired in a preliminary examination provided for in K.S.A. 22-2902, and  
25 amendments thereto, and the finding that there is no necessity for further  
26 preliminary examination.

27 (c) (1) Upon receiving the motion, the court shall set a time and place  
28 for hearing. The court shall give notice of the hearing to the juvenile,  
29 each parent, if service is possible, and the attorney representing the ju-  
30 venile. The motion shall be heard and determined prior to any further  
31 proceedings on the complaint.

32 (2) At the hearing, the court shall inform the juvenile of the following:

33 (A) The nature of the charges in the complaint;

34 (B) the right of the juvenile to be presumed innocent of each charge;

35 (C) the right to trial without unnecessary delay and to confront and  
36 cross-examine witnesses appearing in support of the allegations of the  
37 complaint;

38 (D) the right to subpoena witnesses;

39 (E) the right of the juvenile to testify or to decline to testify; and

40 (F) the sentencing alternatives the court may select as the result of  
41 the juvenile being prosecuted under an extended jurisdiction juvenile  
42 prosecution.

43 (d) If the juvenile fails to appear for hearing on the motion after

1 having been served with notice of the hearing, the court may hear and  
2 determine the motion in the absence of the juvenile. If the court is unable  
3 to obtain service of process and give notice of the hearing, the court may  
4 hear and determine the motion in the absence of the alleged juvenile  
5 offender after having given notice of the hearing at least once a week for  
6 two consecutive weeks in the official county newspaper of the county  
7 where the hearing will be held.

8 (e) In determining whether or not prosecution as an adult should be  
9 authorized or designating the proceeding as an extended jurisdiction ju-  
10 venile prosecution, the court shall consider each of the following factors:

11 (1) The seriousness of the alleged offense and whether the protection  
12 of the community requires prosecution as an adult or designating the  
13 proceeding as an extended jurisdiction juvenile prosecution;

14 (2) whether the alleged offense was committed in an aggressive, vi-  
15 olent, premeditated or willful manner;

16 (3) whether the offense was against a person or against property.  
17 Greater weight shall be given to offenses against persons, especially if  
18 personal injury resulted;

19 (4) the number of alleged offenses unadjudicated and pending against  
20 the juvenile;

21 (5) the previous history of the juvenile, including whether the juvenile  
22 had been adjudicated a juvenile offender under this code or the Kansas  
23 juvenile justice code and, if so, whether the offenses were against persons  
24 or property, and any other previous history of antisocial behavior or pat-  
25 terns of physical violence;

26 (6) the sophistication or maturity of the juvenile as determined by  
27 consideration of the juvenile's home, environment, emotional attitude,  
28 pattern of living or desire to be treated as an adult;

29 (7) whether there are facilities or programs available to the court  
30 which are likely to rehabilitate the juvenile prior to the expiration of the  
31 court's jurisdiction under this code; and

32 (8) whether the interests of the juvenile or of the community would  
33 be better served by criminal prosecution or extended jurisdiction juvenile  
34 prosecution.

35 The insufficiency of evidence pertaining to any one or more of the  
36 factors listed in this subsection, in and of itself, shall not be determinative  
37 of the issue. Subject to the provisions of K.S.A. 2008 Supp. 38-2354, and  
38 amendments thereto, written reports and other materials relating to the  
39 juvenile's mental, physical, educational and social history may be consid-  
40 ered by the court.

41 (f) (1) The court may authorize prosecution as an adult upon com-  
42 pletion of the hearing if the court finds from a preponderance of the  
43 evidence that the alleged juvenile offender should be prosecuted as an

1 adult for the offense charged. In that case, the court shall direct the  
2 alleged juvenile offender be prosecuted under the applicable criminal  
3 statute and that the proceedings filed under this code be dismissed.

4 (2) The court may designate the proceeding as an extended jurisdic-  
5 tion juvenile prosecution upon completion of the hearing if the juvenile  
6 has failed to rebut the presumption or the court finds from a preponder-  
7 ance of the evidence that the juvenile should be prosecuted under an  
8 extended jurisdiction juvenile prosecution.

9 (3) After a proceeding in which prosecution as an adult is requested  
10 pursuant to subsection (a)(2), and prosecution as an adult is not author-  
11 ized, the court may designate the proceedings to be an extended jurisdic-  
12 tion juvenile prosecution.

13 (4) A juvenile who is the subject of an extended jurisdiction juvenile  
14 prosecution shall have the right to a trial by jury, to the effective assistance  
15 of counsel and to all other rights of a defendant pursuant to the Kansas  
16 code of criminal procedure. Each court shall adopt local rules to establish  
17 the basic procedures for extended jurisdiction juvenile prosecution in  
18 such court's jurisdiction.

19 (g) If the juvenile is present in court and the court also finds from  
20 the evidence that it appears a felony has been committed and that there  
21 is probable cause to believe the felony has been committed by the juve-  
22 nile, the court may direct that there is no necessity for further preliminary  
23 examination on the charges as provided for in K.S.A. 22-2902, and amend-  
24 ments thereto. In that case, the court shall order the juvenile bound over  
25 to the district judge having jurisdiction to try the case.

26 (h) If the juvenile is convicted, the authorization for prosecution as  
27 an adult shall attach and apply to any future prosecutions of the juvenile  
28 which are or would be cognizable under this code. If the juvenile is not  
29 convicted, the authorization for prosecution as an adult shall not attach  
30 and shall not apply to future prosecutions of the juvenile which are or  
31 would be cognizable under this code.

32 (i) If the juvenile is prosecuted as an adult under subsection (a)(2)  
33 and is not convicted in adult court of an offense listed in subsection (a)(2)  
34 but is convicted or adjudicated of a lesser included offense, the juvenile  
35 shall be a juvenile offender and receive a sentence pursuant to K.S.A.  
36 2008 Supp. 38-2361, and amendments thereto.

37 ~~Sec. 116.114.~~ K.S.A. 2008 Supp. 38-2369 is hereby amended to read  
38 as follows: 38-2369. (a) For the purpose of committing juvenile offenders  
39 to a juvenile correctional facility, the following placements shall be ap-  
40 plied by the judge in felony or misdemeanor cases. If used, the court shall  
41 establish a specific term of commitment as specified in this subsection,  
42 unless the judge conducts a departure hearing and finds substantial and  
43 compelling reasons to impose a departure sentence as provided in K.S.A.

1 2008 Supp. 38-2371, and amendments thereto.

2 (1) *Violent Offenders.* (A) The violent offender I is defined as an  
3 offender adjudicated as a juvenile offender for an offense which, if com-  
4 mitted by an adult, would constitute an off-grid felony. Offenders in this  
5 category may be committed to a juvenile correctional facility for a mini-  
6 mum term of 60 months and up to a maximum term of the offender  
7 reaching the age of 22 years, six months. The aftercare term for this  
8 offender is set at a minimum term of six months and up to a maximum  
9 term of the offender reaching the age of 23 years.

10 (B) The violent offender II is defined as an offender adjudicated as  
11 a juvenile offender for an offense which, if committed by an adult, would  
12 constitute a ~~nondrug~~ severity level 1, 2 or 3 felony. Offenders in this  
13 category may be committed to a juvenile correctional facility for a mini-  
14 mum term of 24 months and up to a maximum term of the offender  
15 reaching the age 22 years, six months. The aftercare term for this offender  
16 is set at a minimum term of six months and up to a maximum term of  
17 the offender reaching the age of 23 years.

18 (2) *Serious Offenders.* (A) The serious offender I is defined as an  
19 offender adjudicated as a juvenile offender for an offense which, if com-  
20 mitted by an adult, would constitute a ~~nondrug~~ severity level 4, 5 or 6  
21 person felony ~~or a severity level 1 or 2 drug felony~~. Offenders in this  
22 category may be committed to a juvenile correctional facility for a mini-  
23 mum term of 18 months and up to a maximum term of 36 months. The  
24 aftercare term for this offender is set at a minimum term of six months  
25 and up to a maximum term of 24 months.

26 (B) The serious offender II is defined as an offender adjudicated as  
27 a juvenile offender for an offense which, if committed by an adult, would  
28 constitute a ~~nondrug~~ severity level 7, 8, 9 or 10 person felony with one  
29 prior felony adjudication. Offenders in this category may be committed  
30 to a juvenile correctional facility for a minimum term of nine months and  
31 up to a maximum term of 18 months. The aftercare term for this offender  
32 is set at a minimum term of six months and up to a maximum term of 24  
33 months.

34 (3) *Chronic Offenders.* (A) The chronic offender I, chronic felon is  
35 defined as an offender adjudicated as a juvenile offender for an offense  
36 which, if committed by an adult, would constitute:

37 ~~(i) one present nonperson felony adjudication and two prior felony~~  
38 ~~adjudications; or~~

39 ~~(ii) one present severity level 3 drug felony adjudication and two prior~~  
40 ~~felony adjudications.~~

41 Offenders in this category may be committed to a juvenile correctional  
42 facility for a minimum term of six months and up to a maximum term of  
43 18 months. The aftercare term for this offender is set at a minimum term

1 of six months and up to a maximum term of 12 months.

2 (B) The chronic offender II, escalating felon is defined as an offender  
3 adjudicated as a juvenile offender for an offense which, if committed by  
4 an adult, would constitute:

5 (i) One present felony adjudication and either two prior misde-  
6 meanor adjudications or one prior person or nonperson felony adjudica-  
7 tion; *or*

8 (ii) one present felony adjudication and two prior severity level 4 drug  
9 adjudications; *prior to such ~~levels~~ level's repeal*

10 ~~(iii) one present severity level 3 drug felony adjudication and either~~  
11 ~~two prior misdemeanor adjudications or one prior person or nonperson~~  
12 ~~felony adjudication; or~~

13 ~~—(iv) one present severity level 3 drug felony adjudication and two~~  
14 ~~prior severity level 4 drug adjudications.~~

15 Offenders in this category may be committed to a juvenile correctional  
16 facility for a minimum term of six months and up to a maximum term of  
17 18 months. The aftercare term for this offender is set at a minimum term  
18 of six months and up to a maximum term of 12 months.

19 (C) The chronic offender III, escalating misdemeanor is defined as  
20 an offender adjudicated as a juvenile offender for an offense which, if  
21 committed by an adult, would constitute:

22 (i) One present misdemeanor adjudication and either two prior mis-  
23 demeanor adjudications or one prior person or nonperson felony adju-  
24 dication and two placement failures; *or*

25 (ii) one present misdemeanor adjudication and two prior severity  
26 level 4 drug felony adjudications; *prior to such ~~levels~~ level's repeal* and  
27 two placement failures;

28 ~~—(iii) one present severity level 4 drug felony adjudication and either~~  
29 ~~two prior misdemeanor adjudications or one prior person or nonperson~~  
30 ~~felony adjudication and two placement failures; or~~

31 ~~—(iv) one present severity level 4 drug felony adjudication and two~~  
32 ~~prior severity level 4 drug felony adjudications and two placement~~  
33 ~~failures.~~

34 Offenders in this category may be committed to a juvenile correctional  
35 facility for a minimum term of three months and up to a maximum term  
36 of six months. The aftercare term for this offender is set at a minimum  
37 term of three months and up to a maximum term of six months.

38 (4) *Conditional Release Violators*. Upon finding the juvenile violated  
39 a requirement or requirements of conditional release, the court may:

40 (A) Subject to the limitations in subsection (a) of K.S.A. 2008 Supp.  
41 38-2366, and amendments thereto, commit the offender directly to a  
42 juvenile correctional facility for a minimum term of three months and up  
43 to a maximum term of six months. The aftercare term for this offender

1 shall be a minimum of two months and a maximum of six months, or the  
2 length of the aftercare originally ordered, which ever is longer.

3 (B) Enter one or more of the following orders:

4 (i) Recommend additional conditions be added to those of the exist-  
5 ing conditional release.

6 (ii) Order the offender to serve a period of sanctions pursuant to  
7 subsection (f) of K.S.A. 2008 Supp. 38-2361, and amendments thereto.

8 (iii) Revoke or restrict the juvenile's driving privileges as described in  
9 subsection (c) of K.S.A. 2008 Supp. 38-2361, and amendments thereto.

10 (C) Discharge the offender from the custody of the commissioner,  
11 release the commissioner from further responsibilities in the case and  
12 enter any other appropriate orders.

13 (b) As used in this section: (1) "Placement failure" means a juvenile  
14 offender in the custody of the juvenile justice authority has significantly  
15 failed the terms of conditional release or has been placed out-of-home in  
16 a community placement accredited by the commissioner and has signif-  
17 icantly violated the terms of that placement or violated the terms of  
18 probation.

19 (2) "Adjudication" includes out-of-state juvenile adjudications. An  
20 out-of-state offense, which if committed by an adult would constitute the  
21 commission of a felony or misdemeanor, shall be classified as either a  
22 felony or a misdemeanor according to the adjudicating jurisdiction. If an  
23 offense which if committed by an adult would constitute the commission  
24 of a felony is a felony in another state, it will be deemed a felony in Kansas.  
25 The state of Kansas shall classify the offense, which if committed by an  
26 adult would constitute the commission of a felony or misdemeanor, as  
27 person or nonperson. In designating such offense as person or nonperson,  
28 reference to comparable offenses shall be made. If the state of Kansas  
29 does not have a comparable offense, the out-of-state adjudication shall  
30 be classified as a nonperson offense.

31 (c) All appropriate community placement options shall have been ex-  
32 hausted before a chronic offender III, escalating misdemeanant shall be  
33 placed in a juvenile correctional facility. A court finding shall be made  
34 acknowledging that appropriate community placement options have been  
35 pursued and no such option is appropriate.

36 (d) The commissioner shall work with the community to provide on-  
37 going support and incentives for the development of additional commu-  
38 nity placements to ensure that the chronic offender III, escalating mis-  
39 demeanant sentencing category is not frequently utilized.

40 ~~Sec. 117. 115.~~ K.S.A. 2008 Supp. 38-2374 is hereby amended to read  
41 as follows: 38-2374. (a) When a juvenile offender has satisfactorily com-  
42 pleted the term of incarceration at the juvenile correctional facility to  
43 which the juvenile offender was committed or placed, the person in

1 charge of the juvenile correctional facility shall have authority to release  
2 the juvenile offender under appropriate conditions and for a specified  
3 period of time. Prior to release from a juvenile correctional facility, the  
4 commissioner shall consider any recommendations made by the juvenile  
5 offender's community case management officer.

6 (b) At least 20 days prior to releasing a juvenile offender as provided  
7 in subsection (a), the person in charge of the juvenile correctional facility  
8 shall notify the committing court of the date and conditions upon which  
9 it is proposed the juvenile offender is to be released. The person in charge  
10 of the juvenile correctional facility shall notify the school district in which  
11 the juvenile offender will be residing if the juvenile is still required to  
12 attend a school. Such notification to the school shall include the name of  
13 the juvenile offender, address upon release, contact person with whom  
14 the juvenile offender will be residing upon release, anticipated date of  
15 release, anticipated date of enrollment in school, name and phone num-  
16 ber of case worker, crime or crimes of adjudication if not confidential  
17 based upon other statutes, conditions of release and any other information  
18 the commissioner deems appropriate. To ensure the educational success  
19 of the student, the community case manager or a representative from the  
20 residential facility where the juvenile offender will reside shall contact  
21 the principal of the receiving school in a timely manner to review the  
22 juvenile offender's case. If such juvenile offender's offense would have  
23 constituted an off-grid crime, ~~non-drug~~ felony crime ranked at severity  
24 level 1, 2, 3, 4 or 5, ~~or a drug felony crime ranked at severity level 1, 2~~  
25 ~~or 3~~, on or after July 1, 1993, if committed by an adult, the person in  
26 charge of the juvenile correctional facility shall notify the county or district  
27 attorney of the county where the offender was adjudicated a juvenile  
28 offender of the date and conditions upon which it is proposed the juvenile  
29 offender is to be released. The county or district attorney shall give writ-  
30 ten notice at least five days prior to the release of the juvenile offender  
31 to: (1) Any victim of the juvenile offender's crime who is alive and whose  
32 address is known to the court or, if the victim is deceased, to the victim's  
33 family if the family's address is known to the court; and (2) the local law  
34 enforcement agency. Failure to notify pursuant to this section shall not  
35 be a reason to postpone a release. Nothing in this section shall create a  
36 cause of action against the state or county or an employee of the state or  
37 county acting within the scope of the employee's employment as a result  
38 of the failure to notify pursuant to this section.

39 (c) Upon receipt of the notice required by subsection (b), the court  
40 shall review the terms of the proposed conditional release and may rec-  
41 ommend modifications or additions to the terms.

42 (d) If, during the conditional release, the juvenile offender is not re-  
43 turning to the county from which committed, the person in charge of the

1 juvenile correctional facility shall also give notice to the court of the  
2 county in which the juvenile offender is to be residing.

3 (e) To assure compliance with conditional release from a juvenile  
4 correctional facility, the commissioner shall have the authority to pre-  
5 scribe the manner in which compliance with the conditions shall be su-  
6 pervised. When requested by the commissioner, the appropriate court  
7 may assist in supervising compliance with the conditions of release during  
8 the term of the conditional release. The commissioner may require the  
9 parent of the juvenile offender to cooperate and participate with the con-  
10 ditional release.

11 (f) For acts committed before July 1, 1999, the juvenile justice au-  
12 thority shall notify at least 45 days prior to the discharge of the juvenile  
13 offender the county or district attorney of the county where the offender  
14 was adjudicated a juvenile offender of the release of such juvenile of-  
15 fender, if such juvenile offender's offense would have constituted a class  
16 A, B or C felony before July 1, 1993, or an off-grid crime, a ~~non-drug~~  
17 crime ranked at severity level 1, 2, 3, 4 or 5 or a drug crime ranked at  
18 severity level 1, 2 or 3 *prior to such level's repeal*, on or after July 1, 1993,  
19 if committed by an adult. The county or district attorney shall give written  
20 notice at least 30 days prior to the release of the juvenile offender to: (1)  
21 Any victim of the juvenile offender's crime who is alive and whose address  
22 is known to the court or, if the victim is deceased, to the victim's family  
23 if the family's address is known to the court; and (2) the local law en-  
24 forcement agency. Failure to notify pursuant to this section shall not be  
25 a reason to postpone a release. Nothing in this section shall create a cause  
26 of action against the state or county or an employee of the state or county  
27 acting within the scope of the employee's employment as a result of the  
28 failure to notify pursuant to this section.

29 (g) Conditional release programs shall include, but not be limited to,  
30 the treatment options of aftercare services.

31 ~~118. 116.~~ K.S.A. 2008 Supp. 38-2376 is hereby amended to read  
32 as follows: 38-2376. (a) When a juvenile offender has reached the age of  
33 23 years, has been convicted as an adult while serving a term of incar-  
34 ceration at a juvenile correctional facility, or has completed the prescribed  
35 terms of incarceration at a juvenile correctional facility, together with any  
36 conditional release following the program, the juvenile shall be discharged  
37 by the commissioner from any further obligation under the commitment  
38 unless the juvenile was sentenced pursuant to an extended jurisdiction  
39 juvenile prosecution upon court order and the commissioner transfers  
40 the juvenile to the custody of the secretary of corrections. The discharge  
41 shall operate as a full and complete release from any obligations imposed  
42 on the juvenile offender arising from the offense for which the juvenile  
43 offender was committed.

1 (b) At least 45 days prior to the discharge of the juvenile offender,  
2 the juvenile justice authority shall notify the court and the county or  
3 district attorney of the county where the offender was adjudicated a ju-  
4 venile offender of the pending discharge of such juvenile offender, the  
5 offense would have constituted a class A, B or C felony before July 1,  
6 1993, or an off-grid crime, a ~~non-drug~~ crime ranked at severity level 1, 2,  
7 3, 4 or 5 or a drug crime ranked at severity level 1, 2 or 3 *prior to such*  
8 *level's repeal*, on or after July 1, 1993, if committed by an adult. The  
9 county or district attorney shall give written notice at least 30 days prior  
10 to the discharge of the juvenile offender pursuant to K.S.A. 2008 Supp.  
11 38-2379, and amendments thereto.

12 Sec. ~~119~~ **117**. K.S.A. 2008 Supp. 38-2377 is hereby amended to read  
13 as follows: 38-2377. (a) The commissioner shall notify the county or dis-  
14 trict attorney, the court, the local law enforcement agency and the school  
15 district in which the juvenile offender will be residing of such pending  
16 release at least 45 days before release if the juvenile is still required to  
17 attend school, if the juvenile offender has committed an act prior to July  
18 1, 1999, which, if committed by a person 18 years of age or over, would  
19 have constituted: (1) A class A or B felony, before July 1, 1993, or (2) an  
20 off-grid crime, a ~~non-drug~~ crime ranked at severity level 1, 2, 3, 4 or 5 or  
21 a drug crime ranked at severity level 1, 2 or 3 *prior to such level's repeal*,  
22 if the offense was committed on or after July 1, 1993, and, if such juvenile  
23 is to be released. The county or district attorney shall give written notice  
24 at least 30 days prior to discharge of the juvenile offender pursuant to  
25 K.S.A. 2008 Supp. 38-2379, and amendments thereto. The county attor-  
26 ney, district attorney or the court on its own motion may file a motion  
27 with the court for a hearing to determine if the juvenile offender should  
28 be retained in the custody of the commissioner, pursuant to K.S.A. 2008  
29 Supp. 38-2376, and amendments thereto. The court shall fix a time and  
30 place for hearing and shall notify each party of the time and place.

31 (b) Following the hearing if the court orders the commissioner to  
32 retain custody, the juvenile offender shall not be held in a juvenile cor-  
33 rectional facility for longer than the maximum term of imprisonment  
34 which could be imposed upon an adult convicted of the offense or of-  
35 fenses which the juvenile offender has been adjudicated to have  
36 committed.

37 (c) As used in this section, "maximum term of imprisonment" means  
38 the greatest maximum sentence authorized by K.S.A. 21-4501, and  
39 amendments thereto, applying any enhanced penalty which would be  
40 applicable under K.S.A. 21-4504, and amendments thereto, and comput-  
41 ing terms as consecutive when required by K.S.A. 21-4608, and amend-  
42 ments thereto.

43 Sec. ~~120~~ **118**. K.S.A. 2008 Supp. 39-717 is hereby amended to read

1 as follows: 39-717. (a) Assistance granted under the provisions of this act  
2 shall not:

3 (1) Be sold or otherwise disposed of to others by the client or by  
4 anyone else except under the rules and regulations of the secretary of  
5 social and rehabilitation services; or

6 (2) knowingly be purchased, acquired or possessed by anyone unless  
7 the purchase, acquisition or possession is authorized by the rules and  
8 regulations of the secretary of social and rehabilitation services or the  
9 laws under which the assistance was granted.

10 (b) ~~(1)~~ Any person convicted of violating the provisions of this section  
11 ~~shall be guilty of a class A nonperson misdemeanor~~, if the value of the  
12 assistance sold or otherwise disposed of, purchased, acquired or possessed  
13 ~~was less than \$1,000.~~

14 ~~(2) Any person convicted of violating the provisions of this section~~  
15 ~~shall be guilty of a severity level 9, nonperson felony if the value of the~~  
16 ~~assistance sold or otherwise disposed of, purchased, acquired or possessed~~  
17 ~~was at least \$1,000 but less than \$25,000.~~

18 ~~(3) Any person convicted of violating the provisions of this section~~  
19 ~~shall be guilty of a severity level 7, nonperson felony if the value of the~~  
20 ~~assistance sold or otherwise disposed of, purchased, acquired or possessed~~  
21 ~~was \$25,000 or more.:~~

22 (1) *\$100,000 or more is guilty of a severity level 5, nonperson felony.*

23 (2) *At least \$75,000 but less than \$100,000 is guilty of a severity level*  
24 *6, nonperson felony.*

25 (3) *At least \$50,000 but less than \$75,000 is guilty of a severity level*  
26 *7, nonperson felony.*

27 (4) *At least \$25,000 but less than \$50,000 is guilty of a severity level*  
28 *8, nonperson felony.*

29 (5) *At least \$2,000 but less than \$25,000 is guilty of a severity level*  
30 *9, nonperson felony.*

31 (6) *At least \$1,000 but less than \$2,000 is guilty of a severity level 10,*  
32 *nonperson felony.*

33 (7) *At least \$500 but less than \$1,000 is guilty of a class A nonperson*  
34 *misdemeanor.*

35 (8) *Less than \$500 is guilty of a class B nonperson misdemeanor.*

36 (c) None of the money paid, payable, or to be paid, or any tangible  
37 assistance received under this act shall be subject to execution, levy, at-  
38 tachment, garnishment, or other legal process, or to the operation of any  
39 bankruptcy or insolvency law.

40 Sec. ~~121~~ **119.** K.S.A. 39-720 is hereby amended to read as follows:  
41 39-720. (a) Any person who obtains or attempts to obtain, or aids or abets  
42 any other person to obtain, by means of a willfully false statement or  
43 representation, or by impersonation, collusion, or other fraudulent device,

- 1 assistance to which the applicant or client is not entitled, ~~shall be guilty~~  
2 ~~of the crime of theft, as defined by K.S.A. 21-3701, and he~~ *in an amount*  
3 *of:*
- 4 (1) *\$100,000 or more is guilty of a severity level 5, nonperson felony.*
  - 5 (2) *At least \$75,000 but less than \$100,000 is guilty of a severity level*  
6 *6, nonperson felony.*
  - 7 (3) *At least \$50,000 but less than \$75,000 is guilty of a severity level*  
8 *7, nonperson felony.*
  - 9 (4) *At least \$25,000 but less than \$50,000 is guilty of a severity level*  
10 *8, nonperson felony.*
  - 11 (5) *At least \$2,000 but less than \$25,000 is guilty of a severity level*  
12 *9, nonperson felony.*
  - 13 (6) *At least \$1,000 but less than \$2,000 is guilty of a severity level 10,*  
14 *nonperson felony.*
  - 15 (7) *At least \$500 but less than \$1,000 is guilty of a class A nonperson*  
16 *misdemeanor.*
  - 17 (8) *Less than \$500 is guilty of a class B nonperson misdemeanor.*
- 18 (b) *In addition to the provisions of this section, the person shall be*  
19 *required to remit to the secretary the amount of any assistance given ~~him~~*  
20 *to such person under such fraudulent act.*
- 21 (c) *In any civil action for the recovery of assistance on the grounds*  
22 *the assistance was fraudulently obtained, proof that the recipient of the*  
23 *assistance possesses or did possess resources which does or would have*  
24 *rendered ~~him~~ such recipient ineligible to receive such assistance shall be*  
25 *deemed prima facie evidence that such assistance was fraudulently*  
26 *obtained.*
- 27 ~~Sec. 122.~~ **120.** K.S.A. 2008 Supp. 40-2,118 is hereby amended to  
28 read as follows: 40-2,118. (a) For purposes of this act a “fraudulent in-  
29 surance act” means an act committed by any person who, knowingly and  
30 with intent to defraud, presents, causes to be presented or prepares with  
31 knowledge or belief that it will be presented to or by an insurer, purported  
32 insurer, broker or any agent thereof, any written statement as part of, or  
33 in support of, an application for the issuance of, or the rating of an in-  
34 surance policy for personal or commercial insurance, or a claim for pay-  
35 ment or other benefit pursuant to an insurance policy for commercial or  
36 personal insurance which such person knows to contain materially false  
37 information concerning any fact material thereto; or conceals, for the  
38 purpose of misleading, information concerning any fact material thereto.
- 39 (b) An insurer that has knowledge or a good faith belief that a fraud-  
40 ulent insurance act is being or has been committed shall provide to the  
41 commissioner, on a form prescribed by the commissioner, any and all  
42 information and such additional information relating to such fraudulent  
43 insurance act as the commissioner may require.

1 (c) Any other person that has knowledge or a good faith belief that a  
2 fraudulent insurance act is being or has been committed may provide to  
3 the commissioner, on a form prescribed by the commissioner, any and  
4 all information and such additional information relating to such fraudu-  
5 lent insurance act as the commissioner may request.

6 (d) (1) Each insurer shall have antifraud initiatives reasonably cal-  
7 culated to detect fraudulent insurance acts. Antifraud initiatives may in-  
8 clude: fraud investigators, who may be insurer employees or independent  
9 contractors; or an antifraud plan submitted to the commissioner no later  
10 than July 1, 2007. Each insurer that submits an antifraud plan shall notify  
11 the commissioner of any material change in the information contained in  
12 the antifraud plan within 30 days after such change occurs. Such insurer  
13 shall submit to the commissioner in writing the amended antifraud plan.

14 The requirement for submitting any antifraud plan, or any amendment  
15 thereof, to the commissioner shall expire on the date specified in para-  
16 graph (2) of this subsection unless the legislature reviews and reenacts  
17 the provisions of paragraph (2) pursuant to K.S.A. 45-229, and amend-  
18 ments thereto.

19 (2) Any antifraud plan, or any amendment thereof, submitted to the  
20 commissioner for informational purposes only shall be confidential and  
21 not be a public record and shall not be subject to discovery or subpoena  
22 in a civil action unless following an in camera review, the court determines  
23 that the antifraud plan is relevant and otherwise admissible under the  
24 rules of evidence set forth in article 4, chapter 60 of the Kansas Statutes  
25 Annotated, and amendments thereto. The provisions of this paragraph  
26 shall expire on July 1, 2011, unless the legislature reviews and reenacts  
27 this provision pursuant to K.S.A. 45-229, and amendments thereto, prior  
28 to July 1, 2011.

29 (e) (1) Except as otherwise specifically provided in K.S.A. 21-3718  
30 ~~and amendments thereto~~ and K.S.A. 44-5,125, and amendments thereto,  
31 a fraudulent insurance act shall constitute a severity level 6, nonperson  
32 felony, if the amount involved is ~~\$25,000 or more, a severity level 7,~~  
33 ~~nonperson felony if the amount is at least \$5,000 but less than \$25,000,~~  
34 ~~a severity level 8, nonperson felony if the amount is at least \$1,000 but~~  
35 ~~less than \$5,000, and a class C nonperson misdemeanor if the amount is~~  
36 ~~less than \$1,000.:~~

37 (A) *\$100,000 or more is a severity level 5, nonperson felony.*

38 (B) *At least \$75,000 but less than \$100,000 is a severity level 6, non-*  
39 *person felony.*

40 (C) *At least \$50,000 but less than \$75,000 is a severity level 7, non-*  
41 *person felony.*

42 (D) *At least \$25,000 but less than \$50,000 is a severity level 8, non-*  
43 *person felony.*

- 1     (E) *At least \$2,000 but less than \$25,000 is a severity level 9, non-*  
 2 *person felony.*
- 3     (F) *At least \$1,000 but less than \$2,000 is a severity level 10, non-*  
 4 *person felony.*
- 5     (G) *At least \$500 but less than \$1,000 is a class A nonperson*  
 6 *misdemeanor.*
- 7     (H) *Less than \$500 is a class B nonperson misdemeanor.*
- 8     (2) Any combination of fraudulent acts as defined in subsection (a)  
 9 which occur in a period of six consecutive months which involves \$25,000  
 10 or more shall have a presumptive sentence of imprisonment regardless  
 11 of its location on the sentencing grid block.
- 12     (f) In addition to any other penalty, a person who violates this statute  
 13 shall be ordered to make restitution to the insurer or any other person  
 14 or entity for any financial loss sustained as a result of such violation. An  
 15 insurer shall not be required to provide coverage or pay any claim in-  
 16 volving a fraudulent insurance act.
- 17     (g) This act shall apply to all insurance applications, ratings, claims  
 18 and other benefits made pursuant to any insurance policy.
- 19     Sec. ~~123.~~ **121.** K.S.A. 2008 Supp. 40-247 is hereby amended to read  
 20 as follows: 40-247. (a) An insurance agent or broker who acts in negoti-  
 21 ating or renewing or continuing a contract of insurance including any type  
 22 of annuity by an insurance company lawfully doing business in this state,  
 23 and who receives any money or substitute for money as a premium for  
 24 such a contract from the insured, whether such agent or broker shall be  
 25 entitled to an interest in same or otherwise, shall be deemed to hold such  
 26 premium in trust for the company making the contract. If such agent or  
 27 broker fails to pay the same over to the company after written demand  
 28 made upon such agent or broker, less such agent's or broker's commission  
 29 and any deductions, to which by the written consent of the company such  
 30 agent or broker may be entitled, such failure shall be prima facie evidence  
 31 that such agent or broker has used or applied the premium for a purpose  
 32 other than paying the same over to the company.
- 33     (b) (1) An agent or broker who violates the provisions of this section  
 34 ~~shall be guilty of a~~
- 35 ~~—(A)—Severity level 7, nonperson felony if the value of the insurance~~  
 36 ~~premium is \$25,000 or more;~~
- 37 ~~—(B)—severity level 9, nonperson felony if the value of the insurance~~  
 38 ~~premium is at least \$1,000 but less than \$25,000; or~~
- 39 ~~—(C)—class A nonperson misdemeanor if the value of the insurance~~  
 40 ~~premium is less than \$1,000., if the value of the insurance premium is:~~
- 41     (A) *\$100,000 or more is guilty of a severity level 5, nonperson felony.*
- 42     (B) *At least \$75,000 but less than \$100,000 is guilty of a severity level*  
 43 *6, nonperson felony.*

1 (C) *At least \$50,000 but less than \$75,000 is guilty of a severity level*  
2 *7, nonperson felony.*

3 (D) *At least \$25,000 but less than \$50,000 is guilty of a severity level*  
4 *8, nonperson felony.*

5 (E) *At least \$2,000 but less than \$25,000 is guilty of a severity level*  
6 *9, nonperson felony.*

7 (F) *At least \$1,000 but less than \$2,000 is guilty of a severity level 10,*  
8 *nonperson felony.*

9 (G) *At least \$500 but less than \$1,000 is guilty of a class A nonperson*  
10 *misdemeanor.*

11 (H) *Less than \$500 is guilty of a class B nonperson misdemeanor.*

12 (2) If the value of the insurance premium is less than \$1,000 and such  
13 agent or broker has, within five years immediately preceding commission  
14 of the crime, been convicted of violating this section two or more times  
15 shall be guilty of a severity level 9, nonperson felony.

16 Sec. ~~124~~ **122**. K.S.A. 2008 Supp. 40-5013 is hereby amended to read  
17 as follows: 40-5013. (a) If the commissioner determines after notice and  
18 opportunity for a hearing that any person has engaged or is engaging in  
19 any act or practice constituting a violation of any provision of this act, the  
20 Kansas insurance statutes or any rule and regulation or order thereunder,  
21 the commissioner may in the exercise of discretion, order any one or more  
22 of the following:

23 (1) Payment of a monetary penalty of not more than \$1,000 for each  
24 and every act or violation, unless the person knew or reasonably should  
25 have known such person was in violation of this act, the Kansas insurance  
26 statutes or any rule and regulation or order thereunder, in which case the  
27 penalty shall be not more than \$2,000 for each and every act or violation;

28 (2) suspension or revocation of the person's license or certificate if  
29 such person knew or reasonably should have known that such person was  
30 in violation of this act, the Kansas insurance statutes or any rule and  
31 regulation or order thereunder; or

32 (3) that such person cease and desist from the unlawful act or practice  
33 and take such affirmative action as in the judgment of the commissioner  
34 will carry out the purposes of the violated or potentially violated provision.

35 (b) If any person fails to file any report or other information with the  
36 commissioner as required by statute or fails to respond to any proper  
37 inquiry of the commissioner, the commissioner, after notice and oppor-  
38 tunity for hearing, may impose a penalty of up to \$500 for each violation  
39 or act, along with an additional penalty of up to \$100 for each week  
40 thereafter that such report or other information is not provided to the  
41 commissioner.

42 (c) If the commissioner makes written findings of fact that there is a  
43 situation involving an immediate danger to the public health, safety or

1 welfare or the public interest will be irreparably harmed by delay in  
 2 suing an order under paragraph (3) of subsection (a), the commissioner  
 3 may issue an emergency temporary cease and desist order. Such order,  
 4 even when not an order within the meaning of K.S.A. 77-502, and amend-  
 5 ments thereto, shall be subject to the same procedures as an emergency  
 6 order issued under K.S.A. 77-536, and amendments thereto. Upon the  
 7 entry of such an order, the commissioner shall promptly notify the person  
 8 subject to the order that: (1) It has been entered; (2) the reasons therefor;  
 9 and (3) that upon written request within 15 days after service of the order  
 10 the matter will be set for a hearing which shall be conducted in accord-  
 11 ance with the provisions of the Kansas administrative procedure act. If  
 12 no hearing is requested and none is ordered by the commissioner, the  
 13 order will remain in effect until it is modified or vacated by the commis-  
 14 sioner. If a hearing is requested or ordered, the commissioner, after no-  
 15 tice of and opportunity for hearing to the person subject to the order, by  
 16 written findings of fact and conclusions of law, shall vacate, modify or  
 17 make permanent the order.

18 (d) (1) Any person who violates the provisions of this act ~~shall be~~  
 19 ~~guilty of a~~, if the value of the viatical settlement contract is:

20 ~~(A) Severity level 7, nonperson felony if the value of the viatical set-~~  
 21 ~~tlement contract is \$25,000 or more;~~

22 ~~—(B) severity level 9, nonperson felony if the value of the viatical set-~~  
 23 ~~tlement contract is at least \$1,000 but less than \$25,000; or~~

24 ~~—(C) class A nonperson misdemeanor if the value of the viatical settle-~~  
 25 ~~ment contract is less than \$1,000.~~

26 (A) \$100,000 or more is guilty of a severity level 5, nonperson felony.

27 (B) At least \$75,000 but less than \$100,000 is guilty of a severity level  
 28 6, nonperson felony.

29 (C) At least \$50,000 but less than \$75,000 is guilty of a severity level  
 30 7, nonperson felony.

31 (D) At least \$25,000 but less than \$50,000 is guilty of a severity level  
 32 8, nonperson felony.

33 (E) At least \$2,000 but less than \$25,000 is guilty of a severity level  
 34 9, nonperson felony.

35 (F) At least \$1,000 but less than \$2,000 is guilty of a severity level 10,  
 36 nonperson felony.

37 (G) At least \$500 but less than \$1,000 is guilty of a class A nonperson  
 38 misdemeanor.

39 (H) Less than \$500 is guilty of a class B nonperson misdemeanor.

40 (2) If the value of the insurance premium is less than \$1,000 and such  
 41 agent or broker has, within five years immediately preceding commission  
 42 of the crime, been convicted of violating this section two or more times  
 43 shall be guilty of a severity level 9, nonperson felony.

1 (e) Restitution may be ordered in addition to, but not in lieu of, any  
2 other penalty imposed under this act.

3 Sec. ~~125~~. **123.** K.S.A. 41-405 is hereby amended to read as follows:  
4 41-405. The director is hereby authorized to measure, gauge or check  
5 such alcoholic liquor in bond in any bonded warehouse, and if the amount  
6 of liquor on hand does not correspond with the reports of the manufac-  
7 turer or distributor filed with the director, the proprietor of such ware-  
8 house shall have the proprietor's license revoked, and in addition thereto  
9 ~~shall be deemed is guilty of a severity level 10, nonperson felony, and~~  
10 ~~upon conviction thereof shall be fined in any sum not exceeding \$5,000~~  
11 ~~or be imprisoned in the custody of the secretary of corrections not ex-~~  
12 ~~ceeding 10 years.~~ Any storekeeper, inspector or other person in the em-  
13 ploy of the director having charge of such bonded liquor warehouse who  
14 removes or allows to be removed any cask or other package of such liquor,  
15 except on order or permit from the director, or which has not been  
16 marked or consigned as provided by law, or who removes or allows to be  
17 removed any part of the contents of any cask or package of liquor de-  
18 posited therein, shall be immediately dismissed from office or employ-  
19 ment, and in addition thereto ~~shall be deemed is guilty of a severity level~~  
20 ~~10, nonperson felony, and upon conviction thereof shall be fined for each~~  
21 ~~offense not exceeding \$1,000, and shall be imprisoned in the custody of~~  
22 ~~the secretary of corrections not more than three years.~~

23 Sec. ~~126~~. **124.** K.S.A. 2008 Supp. 44-5,125 is hereby amended to  
24 read as follows: 44-5,125. (a) (1) *It shall be unlawful* for any person who  
25 obtains or attempts to obtain workers compensation benefits for such  
26 person or another, or who denies or attempts to deny the obligation to  
27 make any payment of workers compensation benefits by knowingly or  
28 intentionally: (A) Making a false or misleading statement, (B) misrepres-  
29 senting or concealing a material fact, (C) fabricating, altering, concealing  
30 or destroying a document; (D) receiving temporary total disability ben-  
31 efits or permanent total disability benefits to which they are not entitled,  
32 while employed; or (E) conspiring with another person to commit any  
33 act described by *this* paragraph ~~(1) of this subsection (a), shall be guilty~~  
34 ~~of:~~

35 ~~—(i) A class A nonperson misdemeanor, if the amount received as a~~  
36 ~~benefit or other payment under the workers compensation act as a result~~  
37 ~~of such act or the amount that the person otherwise benefited monetarily~~  
38 ~~as a result of a violation of this subsection (a) is \$1,000 or less;~~

39 ~~—(ii) a severity level 9, nonperson felony, if such amount is more than~~  
40 ~~\$1,000 but less than \$25,000;~~

41 ~~—(iii) a severity level 7, nonperson felony, if the amount is more than~~  
42 ~~\$25,000, but less than \$50,000;~~

43 ~~—(iv) a severity level 6, nonperson felony if the amount is more than~~

- 1 ~~\$50,000, but less than \$100,000, or~~  
2 ~~—(v) a severity level 5, nonperson felony if the amount is more than~~  
3 ~~\$100,000.~~
- 4 (2) *Violation of this subsection, if the amount received as a benefit or*  
5 *other payment under the workers compensation act as a result of such act*  
6 *or the amount that the person otherwise benefited monetarily as a result*  
7 *of a violation of this subsection is:*
- 8 (A) *\$100,000 or more is a severity level 5, nonperson felony.*  
9 (B) *At least \$75,000 but less than \$100,000 is a severity level 6, non-*  
10 *person felony.*  
11 (C) *At least \$50,000 but less than \$75,000 is a severity level 7, non-*  
12 *person felony.*  
13 (D) *At least \$25,000 but less than \$50,000 is a severity level 8, non-*  
14 *person felony.*  
15 (E) *At least \$2,000 but less than \$25,000 is a severity level 9, non-*  
16 *person felony.*  
17 (F) *At least \$1,000 but less than \$2,000 is a severity level 10, non-*  
18 *person felony.*  
19 (G) *At least \$500 but less than \$1,000 is a class A nonperson*  
20 *misdemeanor.*  
21 (H) *Less than \$500 is a class B nonperson misdemeanor.*
- 22 (b) Any person who knowingly and intentionally presents a false cer-  
23 tificate of insurance that purports that the presenter is insured under the  
24 workers compensation act, ~~shall be~~ is guilty of a level 8, nonperson felony.
- 25 (c) A health care provider under the workers compensation act who  
26 knowingly and intentionally submits a charge for health care that was not  
27 furnished, ~~shall be~~ is guilty of a level 9, nonperson felony.
- 28 (d) Any person who obtains or attempts to obtain a more favorable  
29 workers compensation insurance premium rate than that to which the  
30 person is entitled, who prevents, reduces, avoids or attempts to prevent,  
31 reduce or avoid the payment of any compensation under the workers  
32 compensation act, or who fails to communicate a settlement offer or sim-  
33 ilar information to a claimant under the workers compensation act, by, in  
34 any such case knowingly or intentionally: (1) Making a false or misleading  
35 statement; (2) misrepresenting or concealing a material fact; (3) fabricat-  
36 ing, concealing or destroying a document; or (4) conspiring with another  
37 person or persons to commit the acts described in clause (1), (2) or (3)  
38 of this subsection ~~shall be~~ is guilty of a level 9, nonperson felony.
- 39 (e) Any person who has received any amount of money as a benefit  
40 or other payment under the workers compensation act as a result of a  
41 violation of subsection (a) or (c) and any person who has otherwise ben-  
42 efitied monetarily as a result of a violation of subsection (a) or (c) shall be  
43 liable to repay an amount equal to the amount so received by such person

1 or the amount by which such person has benefited monetarily, with in-  
2 terest thereon. Any such amount, plus any accrued interest thereon, shall  
3 bear interest at the current rate of interest prescribed by law for judg-  
4 ments under subsection (e)(1) of K.S.A. 16-204, and amendments  
5 thereto, per month or fraction of a month until repayment of such  
6 amount, plus any accrued interest thereon. The interest shall accrue from  
7 the date of overpayment or erroneous payment of any such amount or  
8 the date such person benefited monetarily.

9 (f) Any person aggrieved by a violation of subsection (a), (b), (c) or  
10 (d) shall have a cause of action against any other person to recover any  
11 amounts of money erroneously paid as benefits or any other amounts of  
12 money paid under the workers compensation act, and to seek relief for  
13 other monetary damages, for which liability has accrued under this section  
14 against such other person. Relief under this subsection is to be predicated  
15 upon exhaustion of administrative remedies available in K.S.A. 44-5,120,  
16 and amendments thereto.

17 (g) Nothing in this section shall prohibit an employer from exercising  
18 a right to reimbursement under K.S.A. 44-534a, 44-556 or 44-569a, and  
19 amendments thereto.

20 (h) Prosecution for any crime under this section shall be commenced  
21 within five years subject to the time period set forth in subsection (8) of  
22 K.S.A. 21-3106, and amendments thereto.

23 Sec. ~~127.~~ **125.** K.S.A. 2008 Supp. 44-619 is hereby amended to read  
24 as follows: 44-619. Any officer of any corporation engaged in any of the  
25 industries, employments, utilities or common carriers herein named and  
26 specified, or any officer of any labor union or association of persons en-  
27 gaged as workers in any such industry, employment, utility or common  
28 carrier, or any employer of labor, coming within the provisions of this act,  
29 who shall willfully use the power, authority or influence incident to such  
30 person's official position, or position as an employer of others, and by  
31 such means shall intentionally influence, impel, or compel any other per-  
32 son to violate any of the provisions of this act, or any valid order of the  
33 secretary of labor, ~~shall be deemed~~ is guilty of a *severity level 10, non-*  
34 *person felony* ~~and upon conviction thereof in any court of competent~~  
35 ~~jurisdiction shall be punished by a fine not to exceed \$5,000, or by im-~~  
36 ~~prisonment in the custody of the secretary of corrections for a term not~~  
37 ~~to exceed two years, or by both such fine and imprisonment.~~

38 Sec. ~~128.~~ **126.** K.S.A. 2008 Supp. 44-706 is hereby amended to read  
39 as follows: 44-706. An individual shall be disqualified for benefits:

40 (a) If the individual left work voluntarily without good cause attrib-  
41 utable to the work or the employer, subject to the other provisions of this  
42 subsection (a). Failure to return to work after expiration of approved  
43 personal or medical leave, or both, shall be considered a voluntary res-

1 ignition. After a temporary job assignment, failure of an individual to  
2 affirmatively request an additional assignment on the next succeeding  
3 workday, if required by the employment agreement, after completion of  
4 a given work assignment, shall constitute leaving work voluntarily. The  
5 disqualification shall begin the day following the separation and shall con-  
6 tinue until after the individual has become reemployed and has had earn-  
7 ings from insured work of at least three times the individual's weekly  
8 benefit amount. An individual shall not be disqualified under this sub-  
9 section (a) if:

- 10 (1) The individual was forced to leave work because of illness or injury  
11 upon the advice of a licensed and practicing health care provider and,  
12 upon learning of the necessity for absence, immediately notified the em-  
13 ployer thereof, or the employer consented to the absence, and after re-  
14 covery from the illness or injury, when recovery was certified by a prac-  
15 ticing health care provider, the individual returned to the employer and  
16 offered to perform services and the individual's regular work or compa-  
17 rable and suitable work was not available; as used in this paragraph (1)  
18 "health care provider" means any person licensed by the proper licensing  
19 authority of any state to engage in the practice of medicine and surgery,  
20 osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;
- 21 (2) the individual left temporary work to return to the regular  
22 employer;
- 23 (3) the individual left work to enlist in the armed forces of the United  
24 States, but was rejected or delayed from entry;
- 25 (4) the individual left work because of the voluntary or involuntary  
26 transfer of the individual's spouse from one job to another job, which is  
27 for the same employer or for a different employer, at a geographic loca-  
28 tion which makes it unreasonable for the individual to continue work at  
29 the individual's job;
- 30 (5) the individual left work because of hazardous working conditions;  
31 in determining whether or not working conditions are hazardous for an  
32 individual, the degree of risk involved to the individual's health, safety  
33 and morals, the individual's physical fitness and prior training and the  
34 working conditions of workers engaged in the same or similar work for  
35 the same and other employers in the locality shall be considered; as used  
36 in this paragraph (5), "hazardous working conditions" means working con-  
37 ditions that could result in a danger to the physical or mental well-being  
38 of the individual; each determination as to whether hazardous working  
39 conditions exist shall include, but shall not be limited to, a consideration  
40 of (A) the safety measures used or the lack thereof, and (B) the condition  
41 of equipment or lack of proper equipment; no work shall be considered  
42 hazardous if the working conditions surrounding the individual's work are  
43 the same or substantially the same as the working conditions generally

- 1 prevailing among individuals performing the same or similar work for  
2 other employers engaged in the same or similar type of activity;
- 3 (6) the individual left work to enter training approved under section  
4 236(a)(1) of the federal trade act of 1974, provided the work left is not  
5 of a substantially equal or higher skill level than the individual's past  
6 adversely affected employment (as defined for purposes of the federal  
7 trade act of 1974), and wages for such work are not less than 80% of the  
8 individual's average weekly wage as determined for the purposes of the  
9 federal trade act of 1974;
- 10 (7) the individual left work because of unwelcome harassment of the  
11 individual by the employer or another employee of which the employing  
12 unit had knowledge;
- 13 (8) the individual left work to accept better work; each determination  
14 as to whether or not the work accepted is better work shall include, but  
15 shall not be limited to, consideration of (A) the rate of pay, the hours of  
16 work and the probable permanency of the work left as compared to the  
17 work accepted, (B) the cost to the individual of getting to the work left  
18 in comparison to the cost of getting to the work accepted, and (C) the  
19 distance from the individual's place of residence to the work accepted in  
20 comparison to the distance from the individual's residence to the work  
21 left;
- 22 (9) the individual left work as a result of being instructed or requested  
23 by the employer, a supervisor or a fellow employee to perform a service  
24 or commit an act in the scope of official job duties which is in violation  
25 of an ordinance or statute;
- 26 (10) the individual left work because of a violation of the work agree-  
27 ment by the employing unit and, before the individual left, the individual  
28 had exhausted all remedies provided in such agreement for the settlement  
29 of disputes before terminating;
- 30 (11) after making reasonable efforts to preserve the work, the indi-  
31 vidual left work due to a personal emergency of such nature and com-  
32 pelling urgency that it would be contrary to good conscience to impose a  
33 disqualification; or
- 34 (12) (A) the individual left work due to circumstances resulting from  
35 domestic violence, including:
- 36 (i) The individual's reasonable fear of future domestic violence at or  
37 en route to or from the individual's place of employment; or
- 38 (ii) the individual's need to relocate to another geographic area in  
39 order to avoid future domestic violence; or
- 40 (iii) the individual's need to address the physical, psychological and  
41 legal impacts of domestic violence; or
- 42 (iv) the individual's need to leave employment as a condition of re-  
43 ceiving services or shelter from an agency which provides support services

- 1 or shelter to victims of domestic violence; or  
2 (v) the individual's reasonable belief that termination of employment  
3 is necessary to avoid other situations which may cause domestic violence  
4 and to provide for the future safety of the individual or the individual's  
5 family.
- 6 (B) An individual may prove the existence of domestic violence by  
7 providing one of the following:
- 8 (i) A restraining order or other documentation of equitable relief by  
9 a court of competent jurisdiction; or  
10 (ii) a police record documenting the abuse; or  
11 (iii) documentation that the abuser has been convicted of one or more  
12 of the offenses enumerated in articles 34 and 35 of chapter 21 of the  
13 Kansas Statutes Annotated, and amendments thereto, where the victim  
14 was a family or household member; or  
15 (iv) medical documentation of the abuse; or  
16 (v) a statement provided by a counselor, social worker, health care  
17 provider, clergy, shelter worker, legal advocate, domestic violence or sexual  
18 assault advocate or other professional who has assisted the individual  
19 in dealing with the effects of abuse on the individual or the individual's  
20 family; or  
21 (vi) a sworn statement from the individual attesting to the abuse.
- 22 (C) No evidence of domestic violence experienced by an individual,  
23 including the individual's statement and corroborating evidence, shall be  
24 disclosed by the department of labor unless consent for disclosure is given  
25 by the individual.
- 26 (b) If the individual has been discharged for misconduct connected  
27 with the individual's work. The disqualification shall begin the day follow-  
28 ing the separation and shall continue until after the individual becomes  
29 reemployed and has had earnings from insured work of at least three  
30 times the individual's determined weekly benefit amount, except that if  
31 an individual is discharged for gross misconduct connected with the in-  
32 dividual's work, such individual shall be disqualified for benefits until such  
33 individual again becomes employed and has had earnings from insured  
34 work of at least eight times such individual's determined weekly benefit  
35 amount. In addition, all wage credits attributable to the employment from  
36 which the individual was discharged for gross misconduct connected with  
37 the individual's work shall be canceled. No such cancellation of wage  
38 credits shall affect prior payments made as a result of a prior separation.
- 39 (1) For the purposes of this subsection (b), "misconduct" is defined  
40 as a violation of a duty or obligation reasonably owed the employer as a  
41 condition of employment. The term "gross misconduct" as used in this  
42 subsection (b) shall be construed to mean conduct evincing extreme, will-  
43 ful or wanton misconduct as defined by this subsection (b). Failure of the

1 employee to notify the employer of an absence shall be considered prima  
2 facie evidence of a violation of a duty or obligation reasonably owed the  
3 employer as a condition of employment.

4 (2) For the purposes of this subsection (b), the use of or impairment  
5 caused by alcoholic liquor, a cereal malt beverage or a nonprescribed  
6 controlled substance by an individual while working shall be conclusive  
7 evidence of misconduct and the possession of alcoholic liquor, a cereal  
8 malt beverage or a nonprescribed controlled substance by an individual  
9 while working shall be prima facie evidence of conduct which is a violation  
10 of a duty or obligation reasonably owed to the employer as a condition of  
11 employment. Alcoholic liquor shall be defined as provided in K.S.A. 41-  
12 102, and amendments thereto. Cereal malt beverage shall be defined as  
13 provided in K.S.A.41-2701, and amendments thereto. Controlled sub-  
14 stance shall be defined as provided in ~~K.S.A. 65-4101 section 1~~, and  
15 amendments thereto ~~of the uniform controlled substances act~~. As used  
16 in this subsection (b)(2), “required by law” means required by a federal  
17 or state law, a federal or state rule or regulation having the force and  
18 effect of law, a county resolution or municipal ordinance, or a policy  
19 relating to public safety adopted in open meeting by the governing body  
20 of any special district or other local governmental entity. Chemical test  
21 shall include, but is not limited to, tests of urine, blood or saliva. A positive  
22 chemical test shall mean a chemical result showing a concentration at or  
23 above the levels listed in K.S.A. 44-501, and amendments thereto, for the  
24 drugs or abuse listed therein. A positive breath test shall mean a test result  
25 showing an alcohol concentration of .04 or greater. Alcohol concentration  
26 means the number of grams of alcohol per 210 liters of breath. An indi-  
27 vidual’s refusal to submit to a chemical test or breath alcohol test shall be  
28 conclusive evidence of misconduct if the test meets the standards of the  
29 drug free workplace act, 41 U.S.C. 701 et seq.; the test was administered  
30 as part of an employee assistance program or other drug or alcohol treat-  
31 ment program in which the employee was participating voluntarily or as  
32 a condition of further employment; the test was otherwise required by  
33 law and the test constituted a required condition of employment for the  
34 individual’s job; the test was requested pursuant to a written policy of the  
35 employer of which the employee had knowledge and was a required con-  
36 dition of employment; or there was probable cause to believe that the  
37 individual used, possessed or was impaired by alcoholic liquor, a cereal  
38 malt beverage or a controlled substance while working. A positive breath  
39 alcohol test or a positive chemical test shall be conclusive evidence to  
40 prove misconduct if the following conditions are met:

41 (A) Either (i) the test was required by law and was administered pur-  
42 suant to the drug free workplace act, 41 U.S.C. 701 et seq., (ii) the test  
43 was administered as part of an employee assistance program or other drug

1 or alcohol treatment program in which the employee was participating  
2 voluntarily or as a condition of further employment, (iii) the test was  
3 requested pursuant to a written policy of the employer of which the em-  
4 ployee had knowledge and was a required condition of employment, (iv)  
5 the test was required by law and the test constituted a required condition  
6 of employment for the individual's job, or (v) there was probable cause  
7 to believe that the individual used, had possession of, or was impaired by  
8 alcoholic liquor, the cereal malt beverage or the controlled substance  
9 while working;

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

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

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

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

34 (F) the breath alcohol test was administered by an individual trained  
35 to perform breath tests, the breath testing instrument used was certified  
36 and operated strictly according to description provided by the manufac-  
37 turers and the reliability of the instrument performance was assured by  
38 testing with alcohol standards; and

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

42 (3) (A) For the purposes of this subsection (b), misconduct shall in-  
43 clude, but not be limited to repeated absence, including incarceration,

1 resulting in absence from work of three days or longer, excluding Satur-  
2 days, Sundays and legal holidays, and lateness, from scheduled work if  
3 the facts show:

- 4 (i) The individual was absent without good cause;
- 5 (ii) the absence was in violation of the employer's written absenteeism  
6 policy;
- 7 (iii) the employer gave or sent written notice to the individual, at the  
8 individual's last known address, that future absence may or will result in  
9 discharge; and
- 10 (iv) the employee had knowledge of the employer's written absen-  
11 teeism policy.

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

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

- 21 (A) The employer discharged the individual after learning the indi-  
22 vidual was seeking other work or when the individual gave notice of future  
23 intent to quit;
- 24 (B) the individual was making a good-faith effort to do the assigned  
25 work but was discharged due to: (i) Inefficiency, (ii) unsatisfactory per-  
26 formance due to inability, incapacity or lack of training or experience, (iii)  
27 isolated instances of ordinary negligence or inadvertence, (iv) good-faith  
28 errors in judgment or discretion, or (v) unsatisfactory work or conduct  
29 due to circumstances beyond the individual's control; or
- 30 (C) the individual's refusal to perform work in excess of the contract  
31 of hire.

32 (c) If the individual has failed, without good cause, to either apply  
33 for suitable work when so directed by the employment office of the sec-  
34 retary of labor, or to accept suitable work when offered to the individual  
35 by the employment office, the secretary of labor, or an employer, such  
36 disqualification shall begin with the week in which such failure occurred  
37 and shall continue until the individual becomes reemployed and has had  
38 earnings from insured work of at least three times such individual's de-  
39 termined weekly benefit amount. In determining whether or not any work  
40 is suitable for an individual, the secretary of labor, or a person or persons  
41 designated by the secretary, shall consider the degree of risk involved to  
42 health, safety and morals, physical fitness and prior training, experience  
43 and prior earnings, length of unemployment and prospects for securing

1 local work in the individual's customary occupation or work for which the  
2 individual is reasonably fitted by training or experience, and the distance  
3 of the available work from the individual's residence. Notwithstanding  
4 any other provisions of this act, an otherwise eligible individual shall not  
5 be disqualified for refusing an offer of suitable employment, or failing to  
6 apply for suitable employment when notified by an employment office,  
7 or for leaving the individual's most recent work accepted during approved  
8 training, including training approved under section 236(a)(1) of the trade  
9 act of 1974, if the acceptance of or applying for suitable employment or  
10 continuing such work would require the individual to terminate approved  
11 training and no work shall be deemed suitable and benefits shall not be  
12 denied under this act to any otherwise eligible individual for refusing to  
13 accept new work under any of the following conditions: (1) If the position  
14 offered is vacant due directly to a strike, lockout or other labor dispute;  
15 (2) if the remuneration, hours or other conditions of the work offered are  
16 substantially less favorable to the individual than those prevailing for sim-  
17 ilar work in the locality; (3) if as a condition of being employed, the  
18 individual would be required to join or to resign from or refrain from  
19 joining any labor organization; (4) if the individual left employment as a  
20 result of domestic violence, and the position offered does not reasonably  
21 accommodate the individual's physical, psychological, safety, and/or legal  
22 needs relating to such domestic violence.

23 (d) For any week with respect to which the secretary of labor, or a  
24 person or persons designated by the secretary, finds that the individual's  
25 unemployment is due to a stoppage of work which exists because of a  
26 labor dispute or there would have been a work stoppage had normal  
27 operations not been maintained with other personnel previously and cur-  
28 rently employed by the same employer at the factory, establishment or  
29 other premises at which the individual is or was last employed, except  
30 that this subsection (d) shall not apply if it is shown to the satisfaction of  
31 the secretary of labor, or a person or persons designated by the secretary,  
32 that: (1) The individual is not participating in or financing or directly  
33 interested in the labor dispute which caused the stoppage of work; and  
34 (2) the individual does not belong to a grade or class of workers of which,  
35 immediately before the commencement of the stoppage, there were  
36 members employed at the premises at which the stoppage occurs any of  
37 whom are participating in or financing or directly interested in the dis-  
38 pute. If in any case separate branches of work which are commonly con-  
39 ducted as separate businesses in separate premises are conducted in sep-  
40 arate departments of the same premises, each such department shall, for  
41 the purpose of this subsection (d) be deemed to be a separate factory,  
42 establishment or other premises. For the purposes of this subsection (d),  
43 failure or refusal to cross a picket line or refusal for any reason during

1 the continuance of such labor dispute to accept the individual's available  
2 and customary work at the factory, establishment or other premises where  
3 the individual is or was last employed shall be considered as participation  
4 and interest in the labor dispute.

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

11 (f) For any week with respect to which the individual is entitled to  
12 receive any unemployment allowance or compensation granted by the  
13 United States under an act of congress to ex-service men and women in  
14 recognition of former service with the military or naval services of the  
15 United States.

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

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

28 (i) For any week of unemployment on the basis of service in an in-  
29 structional, research or principal administrative capacity for an educa-  
30 tional institution as defined in subsection (v) of K.S.A. 44-703, and  
31 amendments thereto, if such week begins during the period between two  
32 successive academic years or terms or, when an agreement provides in-  
33 stead for a similar period between two regular but not successive terms  
34 during such period or during a period of paid sabbatical leave provided  
35 for in the individual's contract, if the individual performs such services in  
36 the first of such academic years or terms and there is a contract or a  
37 reasonable assurance that such individual will perform services in any  
38 such capacity for any educational institution in the second of such aca-  
39 demic years or terms.

40 (j) For any week of unemployment on the basis of service in any  
41 capacity other than service in an instructional, research, or administrative  
42 capacity in an educational institution, as defined in subsection (v) of  
43 K.S.A. 44-703, and amendments thereto, if such week begins during the

1 period between two successive academic years or terms if the individual  
2 performs such services in the first of such academic years or terms and  
3 there is a reasonable assurance that the individual will perform such serv-  
4 ices in the second of such academic years or terms, except that if benefits  
5 are denied to the individual under this subsection (j) and the individual  
6 was not offered an opportunity to perform such services for the educa-  
7 tional institution for the second of such academic years or terms, such  
8 individual shall be entitled to a retroactive payment of benefits for each  
9 week for which the individual filed a timely claim for benefits and for  
10 which benefits were denied solely by reason of this subsection (j).

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

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

26 (m) For any week on the basis of services performed by an alien  
27 unless such alien is an individual who was lawfully admitted for perma-  
28 nent residence at the time such services were performed, was lawfully  
29 present for purposes of performing such services, or was permanently  
30 residing in the United States under color of law at the time such services  
31 were performed, including an alien who was lawfully present in the  
32 United States as a result of the application of the provisions of section  
33 212(d)(5) of the federal immigration and nationality act. Any data or in-  
34 formation required of individuals applying for benefits to determine  
35 whether benefits are not payable to them because of their alien status  
36 shall be uniformly required from all applicants for benefits. In the case  
37 of an individual whose application for benefits would otherwise be ap-  
38 proved, no determination that benefits to such individual are not payable  
39 because of such individual's alien status shall be made except upon a  
40 preponderance of the evidence.

41 (n) For any week in which an individual is receiving a governmental  
42 or other pension, retirement or retired pay, annuity or other similar pe-  
43 riodic payment under a plan maintained by a base period employer and

1 to which the entire contributions were provided by such employer, except  
2 that: (1) If the entire contributions to such plan were provided by the  
3 base period employer but such individual's weekly benefit amount ex-  
4 ceeds such governmental or other pension, retirement or retired pay,  
5 annuity or other similar periodic payment attributable to such week, the  
6 weekly benefit amount payable to the individual shall be reduced (but  
7 not below zero) by an amount equal to the amount of such pension,  
8 retirement or retired pay, annuity or other similar periodic payment  
9 which is attributable to such week; or (2) if only a portion of contributions  
10 to such plan were provided by the base period employer, the weekly  
11 benefit amount payable to such individual for such week shall be reduced  
12 (but not below zero) by the prorated weekly amount of the pension, re-  
13 tirement or retired pay, annuity or other similar periodic payment after  
14 deduction of that portion of the pension, retirement or retired pay, an-  
15 nuity or other similar periodic payment that is directly attributable to the  
16 percentage of the contributions made to the plan by such individual; or  
17 (3) if the entire contributions to the plan were provided by such individ-  
18 ual, or by the individual and an employer (or any person or organization)  
19 who is not a base period employer, no reduction in the weekly benefit  
20 amount payable to the individual for such week shall be made under this  
21 subsection (n); or (4) whatever portion of contributions to such plan were  
22 provided by the base period employer, if the services performed for the  
23 employer by such individual during the base period, or remuneration  
24 received for the services, did not affect the individual's eligibility for, or  
25 increased the amount of, such pension, retirement or retired pay, annuity  
26 or other similar periodic payment, no reduction in the weekly benefit  
27 amount payable to the individual for such week shall be made under this  
28 subsection (n). No reduction shall be made for payments made under the  
29 social security act or railroad retirement act of 1974.

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

38 (p) For any week of unemployment on the basis of service as a school  
39 bus or other motor vehicle driver employed by a private contractor to  
40 transport pupils, students and school personnel to or from school-related  
41 functions or activities for an educational institution, as defined in subsec-  
42 tion (v) of K.S.A. 44-703, and amendments thereto, if such week begins  
43 during the period between two successive academic years or during a

1 similar period between two regular terms, whether or not successive, if  
2 the individual has a contract or contracts, or a reasonable assurance  
3 thereof, to perform services in any such capacity with a private contractor  
4 for any educational institution for both such academic years or both such  
5 terms. An individual shall not be disqualified for benefits as provided in  
6 this subsection (p) for any week of unemployment on the basis of service  
7 as a bus or other motor vehicle driver employed by a private contractor  
8 to transport persons to or from nonschool-related functions or activities.

9 (q) For any week of unemployment on the basis of services per-  
10 formed by the individual in any capacity and under any of the circum-  
11 stances described in subsection (i), (j), (k) or (o) which are provided to  
12 or on behalf of an educational institution, as defined in subsection (v) of  
13 K.S.A. 44-703, and amendments thereto, while the individual is in the  
14 employ of an employer which is a governmental entity, Indian tribe or  
15 any employer described in section 501(c)(3) of the federal internal rev-  
16 enue code of 1986 which is exempt from income under section 501(a) of  
17 the code.

18 (r) For any week in which an individual is registered at and attending  
19 an established school, training facility or other educational institution, or  
20 is on vacation during or between two successive academic years or terms.  
21 An individual shall not be disqualified for benefits as provided in this  
22 subsection (r) provided:

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

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

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

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

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

41 (2) If an employer chooses to withhold from a back pay award or  
42 settlement, amounts paid to a claimant while they claimed unemployment  
43 benefits, such employer shall pay the department the amount withheld.

1 With respect to such amount, the secretary shall have available all of the  
2 collection remedies authorized or provided in K.S.A. 44-717, and amend-  
3 ments thereto.

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

11 (u) If the individual was found not to have a disqualifying adjudication  
12 or conviction under K.S.A. 39-970, and amendments thereto, or K.S.A.  
13 65-5117, and amendments thereto, was hired and then was subsequently  
14 convicted of a disqualifying felony under K.S.A. 39-970, and amendments  
15 thereto, or K.S.A. 65-5117, and amendments thereto, and discharged pur-  
16 suant to K.S.A. 39-970, and amendments thereto, or K.S.A. 65-5117, and  
17 amendments thereto. The disqualification shall begin the day following  
18 the separation and shall continue until after the individual becomes reem-  
19 ployed and has had earnings from insured work of at least three times  
20 the individual's determined weekly benefit amount.

21 ~~Sec. 120. 127.~~ K.S.A. 2008 Supp. 44-719 is hereby amended to read  
22 as follows: 44-719. (a) Any person who makes a false statement or rep-  
23 resentation knowing it to be false or knowingly fails to disclose a material  
24 fact, to obtain or increase any benefit or other payment under this act,  
25 either for such person or for any other person, ~~shall be guilty of theft and~~  
26 ~~shall be punished in accordance with the provisions of K.S.A. 21-3701~~  
27 ~~and amendments thereto in an amount of:~~

28 (1) *\$100,000 or more is guilty of a severity level 5, nonperson felony.*  
29 (2) *At least \$75,000 but less than \$100,000 is guilty of a severity level*  
30 *6, nonperson felony.*

31 (3) *At least \$50,000 but less than \$75,000 is guilty of a severity level*  
32 *7, nonperson felony.*

33 (4) *At least \$25,000 but less than \$50,000 is guilty of a severity level*  
34 *8, nonperson felony.*

35 (5) *At least \$2,000 but less than \$25,000 is guilty of a severity level*  
36 *9, nonperson felony.*

37 (6) *At least \$1,000 but less than \$2,000 is guilty of a severity level 10,*  
38 *nonperson felony.*

39 (7) *At least \$500 but less than \$1,000 is guilty of a class A nonperson*  
40 *misdemeanor.*

41 (8) *Less than \$500 is guilty of a class B nonperson misdemeanor.*

42 (b) Any employing unit or any officer or agent for any employing unit  
43 or any other person who makes a false statement or representation know-

1 ing it to be false, or who knowingly fails to disclose a material fact, to  
2 prevent or reduce the payment of benefits to any individual entitled  
3 thereto, or to avoid becoming or remaining subject hereto or to avoid or  
4 reduce any contribution or other payment required from an employing  
5 unit under this act, or who willfully fails or refuses to make any such  
6 contributions or other payment or to furnish any reports required here-  
7 under or to produce or permit the inspection or copying of records as  
8 required hereunder, ~~shall be punished by a fine of not less than \$20 nor~~  
9 ~~more than \$200, or by imprisonment for not longer than 60 days, or both~~  
10 ~~such fine and imprisonment~~ *is guilty of a class C, nonperson misdeme-*  
11 *anor.* Each such false statement or representation or failure to disclose  
12 a material fact and each day of such failure or refusal shall constitute a  
13 separate offense.

14 (c) Any person who willfully violates any provision of this act or any  
15 rule and regulation adopted by the secretary hereunder, the violation of  
16 which is made unlawful or the observance of which is required under the  
17 terms of this act, and for which a penalty is neither prescribed herein or  
18 provided by any other applicable statute, ~~shall be punished by a fine of~~  
19 ~~not less than \$20 nor more than \$200, or by imprisonment for not longer~~  
20 ~~than 60 days, or by both such fine and imprisonment, and~~ *is guilty of a*  
21 *class C, nonperson misdemeanor.* Each day such violation continues shall  
22 be deemed to be a separate offense.

23 (d) (1) Any person who has received any amount of money as ben-  
24 efits under this act while any conditions for the receipt of benefits im-  
25 posed by this act were not fulfilled in such person's case, or while such  
26 person was disqualified from receiving benefits, shall in the discretion of  
27 the secretary, either be liable to have such amount of money deducted  
28 from any future benefits payable to such person under this act or shall  
29 be liable to repay to the secretary for the employment security fund an  
30 amount of money equal to the amount so received by such person. After  
31 a period of five years, the secretary may waive the collection of any such  
32 amount of money when the secretary has determined that the payment  
33 of such amount of money was not due to fraud, misrepresentation, or  
34 willful nondisclosure on the part of the person receiving such amount of  
35 money, and the collection thereof would be against equity or would cause  
36 extreme hardship with regard to such person. The collection of benefit  
37 overpayments which were made in the absence of fraud, misrepresenta-  
38 tion or willful nondisclosure of required information on the part of the  
39 person who received such overpayments, may be waived by the secretary  
40 at any time if such person met all eligibility requirements of the employ-  
41 ment security law during the weeks in which the overpayments were  
42 made.

43 (2) Any benefit erroneously paid which is not repaid shall bear inter-

1 est at the rate of 1.5% per month or fraction of a month. If the benefit  
2 was received as a result of fraud, misrepresentation or willful nondisclo-  
3 sure of required information, interest shall accrue from the date of the  
4 final determination of overpayment until repayment plus interest is re-  
5 ceived by the secretary. If the overpayment was without fraud, misrep-  
6 resentation or willful nondisclosure of required information, interest shall  
7 accrue upon any balance which remains unpaid two years after the final  
8 determination of overpayment is made and shall continue until payment  
9 plus accrued interest is received by the secretary. Interest collected pur-  
10 suant to this section shall be paid into the special employment security  
11 fund, except that interest collected on federal administrative programs  
12 shall be returned to the federal government. Upon written request and  
13 for good cause shown, the secretary may abate any interest or portion  
14 thereof provided for by this subsection (d)(2). Interest accrued may not  
15 be paid by money deducted from any future benefits payable to such  
16 persons liable for any overpayment.

17 (3) Unless collection is waived by the secretary, any such amount shall  
18 be collectible in the manner provided in subsection (b) of K.S.A. 44-717,  
19 and amendments thereto, for the collection of past due contributions.  
20 The courts of this state shall in like manner entertain actions to collect  
21 amounts of money erroneously paid as benefits, or unlawfully obtained,  
22 for which liability has accrued under the employment security law of any  
23 other state or of the federal government.

24 (e) Any employer or person who willfully fails or refuses to pay con-  
25 tributions, payments in lieu of contributions or benefit cost payments or  
26 attempts in any manner to evade or defeat any such contributions, pay-  
27 ments in lieu of contributions or benefit cost payments or the payment  
28 thereof, shall be liable for the payment of such contributions, payments  
29 in lieu of contributions or benefit cost payments and, in addition to any  
30 other penalties provided by law, shall be liable to pay a penalty equal to  
31 the total amount of the contributions, payments in lieu of contributions  
32 or benefit cost payments evaded or not paid.

33 (f) (1) It shall be unlawful for an employing unit to knowingly obtain  
34 or attempt to obtain a reduced liability for contributions under subsection  
35 (b)(1) of K.S.A. 44-710a, and amendments thereto, through manipulation  
36 of the employer's workforce, or for an employing unit that is not an em-  
37 ploying unit at the time it acquires the trade or business, to knowingly  
38 obtain or attempt to obtain a reduced liability for contributions under  
39 subsection (b)(5) of K.S.A. 44-710a, and amendments thereto, or any  
40 other provision of K.S.A. 44-710a, and amendments thereto, related to  
41 determining the assignment of a contribution rate, when the sole or pri-  
42 mary purpose of the business acquisition was for the purpose of obtaining  
43 a lower rate of contributions, or for a person to knowingly advise an

1 employing unit in such a way that results in such a violation, such em-  
2 ploying unit or person shall be subject to the following penalties:

3 (A) If the person is an employer, then such employer shall be as-  
4 signed the highest rate assignable under K.S.A. 44-710a, and amendments  
5 thereto, for the rate year during which such violation or attempted vio-  
6 lation occurred and the three rate years immediately following this rate  
7 year. However, if the employer's business is already at such highest rate  
8 for any year, or if the amount of increase in the employer's rate would  
9 be less than 2% for such year, then a penalty rate of contributions of 2%  
10 of taxable wages shall be imposed for such year. Any moneys resulting  
11 from the difference of the computed rate and the penalty rate shall be  
12 remitted to the state treasurer in accordance with the provisions of K.S.A.  
13 75-4215, and amendments thereto. Upon receipt of each such remittance,  
14 the state treasurer shall deposit the entire amount in the state treasury  
15 to the credit of the special employment security fund.

16 (B) If the person is not an employer, such person shall be subject to  
17 a civil money penalty of not more than \$5,000. All fines assessed and  
18 collected under this section shall be remitted to the state treasurer in  
19 accordance with the provisions of K.S.A. 75-4215, and amendments  
20 thereto. Upon receipt of each such remittance, the state treasurer shall  
21 deposit the entire amount in the state treasury to the credit of the special  
22 employment security fund.

23 (2) For purposes of this subsection, the term "knowingly" means hav-  
24 ing actual knowledge of or acting with deliberate ignorance or reckless  
25 disregard for the prohibition involved.

26 (3) For purposes of this subsection, the term "violates or attempts to  
27 violate" includes, but is not limited to, any intent to evade, misrepresen-  
28 tation or willful nondisclosure.

29 (4) (A) In addition to, or in lieu of, any civil penalty imposed by  
30 paragraph (1) if, the director of employment security or a special assistant  
31 attorney general assigned to the department of labor, has probable cause  
32 to believe that a violation of this subsection (f) should be prosecuted as  
33 a crime, a copy of any order, all investigative reports and any evidence in  
34 the possession of the division of employment security which relates to  
35 such violation, may be forwarded to the prosecuting attorney in the  
36 county in which the act or any of the acts were performed which consti-  
37 tute a violation of this subsection (f). Any case which a county or district  
38 attorney fails to prosecute within 90 days shall be returned promptly to  
39 the director of employment security. The special assistant attorney gen-  
40 eral assigned to the Kansas department of labor shall then prosecute the  
41 case, if, in the opinion of the special assistant attorney general, the acts  
42 or practices involved still warrant prosecution.

43 (B) Violation of this subsection (f) ~~shall be~~ is a level 9, nonperson

1 felony.

2 (5) The secretary shall establish procedures to identify the transfer  
3 or acquisition of a business for purposes of this section.

4 (6) For purposes of subsection (f):

5 (A) “Person” has the meaning given such term by section 7701(a)(1)  
6 of the internal revenue code of 1986;

7 (B) “trade or business” shall include the employer’s workforce; and

8 (C) the provisions of K.S.A. 21-3206 and K.S.A. 21-3207, and amend-  
9 ments thereto, shall apply.

10 (7) This subsection (f) shall be interpreted and applied in such a man-  
11 ner as to meet the minimum requirements contained in any guidance or  
12 regulation issued by the United States department of labor.

13 ~~Sec. 130. 128.~~ K.S.A. 47-421 is hereby amended to read as follows:  
14 47-421. Any person who shall willfully and knowingly brand or cause to  
15 be branded with such person’s brand, or any brand not the recorded  
16 brand of the owner, any livestock being the property of another, or who  
17 shall willfully or knowingly efface, deface or obliterate any brand upon  
18 any livestock, ~~shall be deemed~~ *is guilty of a severity level 10, nonperson*  
19 ~~felony, and upon conviction thereof shall be punished by confinement in~~  
20 ~~the custody of the secretary of corrections for a period not exceeding five~~  
21 ~~years.~~ Prosecution for violation of the provisions of this section may be  
22 had either in the county where such violation occurred or in any county  
23 in which the livestock may be located or found in the possession of the  
24 accused.

25 ~~Sec. 131. 129.~~ K.S.A. 2008 Supp. 47-1827 is hereby amended to read  
26 as follows: 47-1827. (a) No person shall, without the effective consent of  
27 the owner and with the intent to damage the enterprise conducted at the  
28 animal facility, damage or destroy an animal facility or any animal or  
29 property in or on an animal facility.

30 (b) No person shall, without the effective consent of the owner, ac-  
31 quire or otherwise exercise control over an animal facility, an animal from  
32 an animal facility or other property from an animal facility, with the intent  
33 to deprive the owner of such facility, animal or property and to damage  
34 the enterprise conducted at the animal facility.

35 (c) No person shall, without the effective consent of the owner and  
36 with the intent to damage the enterprise conducted at the animal facility:

37 (1) Enter an animal facility, not then open to the public, with intent  
38 to commit an act prohibited by this section;

39 (2) remain concealed, with intent to commit an act prohibited by this  
40 section, in an animal facility;

41 (3) enter an animal facility and commit or attempt to commit an act  
42 prohibited by this section; or

43 (4) enter an animal facility to take pictures by photograph, video cam-

1 era or by any other means.

2 (d) (1) No person shall, without the effective consent of the owner  
3 and with the intent to damage the enterprise conducted at the animal  
4 facility, enter or remain on an animal facility if the person:

5 (A) Had notice that the entry was forbidden; or

6 (B) received notice to depart but failed to do so.

7 (2) For purposes of this subsection (d), “notice” means:

8 (A) Oral or written communication by the owner or someone with  
9 apparent authority to act for the owner;

10 (B) fencing or other enclosure obviously designed to exclude intrud-  
11 ers or to contain animals; or

12 (C) a sign or signs posted on the property or at the entrance to the  
13 building, reasonably likely to come to the attention of intruders, indicating  
14 that entry is forbidden.

15 (e) No person shall, without the effective consent of the owner and  
16 with the intent to damage or destroy the field crop product, damage or  
17 destroy any field crop product that is grown in the context of a product  
18 development program in conjunction or coordination with a private re-  
19 search facility or a university or any federal, state or local governmental  
20 agency.

21 (f) No person shall, without the effective consent of the owner and  
22 with the intent to damage or destroy the field crop product, enter any  
23 property, with the intent to damage or destroy any field crop product that  
24 is grown in the context of a product development program in conjunction  
25 or coordination with a private research facility or a university or any fed-  
26 eral, state or local governmental agency.

27 (g) (1) Violation of subsection (a) or (e) ~~is a severity level 7, nonper-~~  
28 ~~son felony, if the facility, animals, field crop product or property is dam-~~  
29 ~~aged or destroyed to the extent of \$25,000 or more. Violation of subsec-~~  
30 ~~tion (a) or (e) is a severity level 9, nonperson felony if the facility, animals,~~  
31 ~~field crop product or property is damaged or destroyed to the extent of~~  
32 ~~at least \$1,000 but less than \$25,000. Violation of subsection (a) or (e) is~~  
33 ~~a class A nonperson misdemeanor if the facility, animals, field crop prod-~~  
34 ~~uct or property damaged or destroyed is of the value of less than \$1,000~~  
35 ~~or is of the value of \$1,000 or more and is damaged to the extent of less~~  
36 ~~than \$1,000.~~

37 (A) *\$100,000 or more is a severity level 5, nonperson felony.*

38 (B) *At least \$75,000 but less than \$100,000 is a severity level 6, non-*  
39 *person felony.*

40 (C) *At least \$50,000 but less than \$75,000 is a severity level 7, non-*  
41 *person felony.*

42 (D) *At least \$25,000 but less than \$50,000 is a severity level 8, non-*  
43 *person felony.*

- 1 (E) At least \$2,000 but less than \$25,000 is a severity level 9, non-  
 2 person felony.
- 3 (F) At least \$1,000 but less than \$2,000 is a severity level 10, non-  
 4 person felony.
- 5 (G) At least \$500 but less than \$1,000 is a class A nonperson  
 6 misdemeanor.
- 7 (H) Less than \$500 is a class B nonperson misdemeanor.
- 8 (2) Violation of subsection (b) is a severity level 10, nonperson felony.
- 9 (3) Violation of subsection (c) is a class A, nonperson misdemeanor.
- 10 (4) Violation of subsection (d) or (f) is a class B nonperson  
 11 misdemeanor.
- 12 (h) The provisions of this section shall not apply to lawful activities  
 13 of any governmental agency or employees or agents thereof carrying out  
 14 their duties under law.
- 15 ~~Sec. 132.~~ **130.** K.S.A. 58-3315 is hereby amended to read as follows:  
 16 58-3315. Any person who willfully violates any provision of ~~this act or of~~  
 17 ~~a rule~~ article 33 of chapter 58 of the Kansas Statutes Annotated, and  
 18 amendments thereto, or any rules and regulations adopted under it such  
 19 article or any person who willfully, in an application for registration makes  
 20 any untrue statement of a material fact or omits to state a material fact is  
 21 guilty of a severity level 10, nonperson felony and may be fined not less  
 22 than one thousand dollars (\$1,000) or double the amount of gain from  
 23 the transaction, whichever is the larger but not more than fifty thousand  
 24 dollars (\$50,000), or such person may be imprisoned for not more than  
 25 three (3) years, or both.
- 26 ~~Sec. 133.~~ **131.** K.S.A. 2008 Supp. 59-2132 is hereby amended to read  
 27 as follows: 59-2132. (a) Except as provided in subsection (h), in inde-  
 28 dependent and agency adoptions, the court shall require the petitioner to  
 29 obtain an assessment of the advisability of the adoption by a court  
 30 approved:
- 31 (1) (A) Licensed social worker, licensed specialist social worker, li-  
 32 censed specialist clinical social worker, licensed masters social worker,  
 33 licensed baccalaureate social worker or licensed associate social worker  
 34 licensed by the behavioral sciences regulatory board;
- 35 (B) licensed clinical marriage and family therapist as defined in  
 36 K.S.A. 65-6402, and amendments thereto;
- 37 (C) licensed marriage and family therapist as defined in K.S.A. 65-  
 38 6402, and amendments thereto;
- 39 (D) licensed clinical professional counselor as defined in K.S.A. 65-  
 40 5802, and amendments thereto;
- 41 (E) licensed professional counselor as defined in K.S.A. 65-5802, and  
 42 amendments thereto;
- 43 (F) licensed psychologist as defined in K.S.A. 65-6319, and amend-

1 ments thereto;

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

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

6 (I) a licensed child-placing agency.

7 (2) Any person performing an assessment pursuant to this subsection  
8 shall:

9 (A) Possess a minimum of two years experience in adoption services  
10 or be supervised by a person with such experience; or

11 (B) if licensed by the behavioral sciences regulatory board to diagnose  
12 and treat mental disorders in independent practice, possess a minimum  
13 of one year of experience in adoption services or be supervised by a  
14 person with such experience.

15 (b) The petitioner shall file with the court, not less than 10 days be-  
16 fore the hearing on the petition, a report of the assessment and, if nec-  
17 essary, confirmation or clarification of the information filed under K.S.A.  
18 59-2130, and amendments thereto.

19 (c) If there is no one authorized pursuant to this section available to  
20 make the assessment and report to the court, the court may use the  
21 department of social and rehabilitation services for that purpose.

22 (d) The costs of making the assessment and report may be assessed  
23 as court costs in the case as provided in article 20 of chapter 60 of the  
24 Kansas Statutes Annotated and amendments thereto.

25 (e) In making the assessment, the person authorized pursuant to this  
26 section or department of social and rehabilitation services is authorized  
27 to observe the child in the petitioner's home, verify financial information  
28 of the petitioner, shall clear the name of the petitioner with the child  
29 abuse and neglect registry through the department of social and rehabil-  
30 itation services and, when appropriate, with a similar registry in another  
31 state or nation, shall determine whether the petitioner has been convicted  
32 of a felony for any act described in articles 34, 35 or 36 of chapter 21 of  
33 the Kansas Statutes Annotated, and amendments thereto, or, within the  
34 last five years been convicted of a felony violation of ~~the uniform con-~~  
35 ~~trolled substances act, K.S.A. 65-4101 et seq. sections 1 through 17,~~ and  
36 amendments thereto, and, when appropriate, any similar conviction in  
37 another jurisdiction, and to contact the agency or individuals consenting  
38 to the adoption and confirm and, if necessary, clarify any genetic and  
39 medical history filed with the petition. This information shall be made a  
40 part of the report to the court. The report to the court by any person  
41 authorized pursuant to this section to perform this assessment shall in-  
42 clude the results of the investigation of the petitioner, the petitioner's  
43 home and the ability of the petitioner to care for the child.

- 1 (f) In the case of a nonresident who is filing a petition to adopt a child  
2 in Kansas, the assessment and report required by this section must be  
3 completed in the petitioner's state of residence by a person authorized in  
4 that state to conduct such assessments. Such report shall be filed with  
5 the court not less than 10 days before the hearing on the petition.
- 6 (g) The assessment and report required by this section shall comply  
7 with any applicable rules and regulations of the department of health and  
8 environment and shall have been completed not more than one year prior  
9 to the filing of the petition for adoption.
- 10 (h) The assessment and report required by this section may be waived  
11 by the court upon: (1) Review of a petition requesting such waiver by a  
12 relative of the child; or  
13 (2) the court's own motion.
- 14 ~~Sec. 134.~~ **132.** K.S.A. 2008 Supp. 59-29b46 is hereby amended to  
15 read as follows: 59-29b46. When used in the care and treatment act for  
16 persons with an alcohol or substance abuse problem:
- 17 (a) "Discharge" means the final and complete release from treat-  
18 ment, by either the head of a treatment facility acting pursuant to K.S.A.  
19 59-29b50, and amendments thereto, or by an order of a court issued  
20 pursuant to K.S.A. 59-29b73, and amendments thereto.
- 21 (b) "Head of a treatment facility" means the administrative director  
22 of a treatment facility or such person's designee.
- 23 (c) "Law enforcement officer" shall have the meaning ascribed to it  
24 in K.S.A. 22-2202, and amendments thereto.
- 25 (d) "Other facility for care or treatment" means any mental health  
26 clinic, medical care facility, nursing home, the detox units at either Osa-  
27 watomie state hospital or Larned state hospital, any physician or any other  
28 institution or individual authorized or licensed by law to give care or  
29 treatment to any person.
- 30 (e) "Patient" means a person who is a voluntary patient, a proposed  
31 patient or an involuntary patient.
- 32 (1) "Voluntary patient" means a person who is receiving treatment at  
33 a treatment facility pursuant to K.S.A. 59-29b49, and amendments  
34 thereto.
- 35 (2) "Proposed patient" means a person for whom a petition pursuant  
36 to K.S.A. 59-29b52 or 59-29b57, and amendments thereto, has been filed.
- 37 (3) "Involuntary patient" means a person who is receiving treatment  
38 under order of a court or a person admitted and detained by a treatment  
39 facility pursuant to an application filed pursuant to subsection (b) or (c)  
40 of K.S.A. 59-29b54, and amendments thereto.
- 41 (f) "Person with an alcohol or substance abuse problem" means a  
42 person who: (1) Lacks self-control as to the use of alcoholic beverages or  
43 any substance as defined in subsection (k); or

- 1 (2) uses alcoholic beverages or any substance as defined in subsection  
2 (k) to the extent that the person's health may be substantially impaired  
3 or endangered without treatment.
- 4 (g) (1) "Person with an alcohol or substance abuse problem subject  
5 to involuntary commitment for care and treatment" means a person with  
6 an alcohol or substance abuse problem, as defined in subsection (f), who  
7 also is incapacitated by alcohol or any substance and is likely to cause  
8 harm to self or others.
- 9 (2) "Incapacitated by alcohol or any substance" means that the per-  
10 son, as the result of the use of alcohol or any substance as defined in  
11 subsection (k), has impaired judgment resulting in the person: (A) Being  
12 incapable of realizing and making a rational decision with respect to the  
13 need for treatment; or
- 14 (B) lacking sufficient understanding or capability to make or com-  
15 municate responsible decisions concerning either the person's well-being  
16 or estate.
- 17 (3) "Likely to cause harm to self or others" means that the person,  
18 by reason of the person's use of alcohol or any substance: (A) Is likely, in  
19 the reasonably foreseeable future, to cause substantial physical injury or  
20 physical abuse to self or others or substantial damage to another's prop-  
21 erty, as evidenced by behavior threatening, attempting or causing such  
22 injury, abuse or damage; except that if the harm threatened, attempted  
23 or caused is only harm to the property of another, the harm must be of  
24 such a value and extent that the state's interest in protecting the property  
25 from such harm outweighs the person's interest in personal liberty; or
- 26 (B) is substantially unable, except for reason of indigency, to provide  
27 for any of the person's basic needs, such as food, clothing, shelter, health  
28 or safety, causing a substantial deterioration of the person's ability to  
29 function on the person's own.
- 30 (h) "Physician" means a person licensed to practice medicine and  
31 surgery as provided for in the Kansas healing arts act or a person who is  
32 employed by a state psychiatric hospital or by an agency of the United  
33 States and who is authorized by law to practice medicine and surgery  
34 within that hospital or agency.
- 35 (i) "Psychologist" means a licensed psychologist, as defined by K.S.A.  
36 74-5302, and amendments thereto.
- 37 (j) "State certified alcohol and drug abuse counselor" means a person  
38 approved by the secretary of social and rehabilitation services to perform  
39 assessments using the American Society of Addiction Medicine criteria  
40 and employed at a state funded and designated assessment center.
- 41 (k) "Substance" means: (1) The same as the term "controlled sub-  
42 stance" as defined in ~~K.S.A. 65-4101~~ *section 1*, and amendments thereto;  
43 or

- 1 (2) fluorocarbons, toluene or volatile hydrocarbon solvents.
- 2 (l) “Treatment” means the broad range of emergency, outpatient,  
3 intermediate and inpatient services and care, including diagnostic evalu-  
4 ation, medical, psychiatric, psychological and social service care, voca-  
5 tional rehabilitation and career counseling, which may be extended to  
6 persons with an alcohol or substance abuse problem.
- 7 (m) (1) “Treatment facility” means a treatment program, public or  
8 private treatment facility, or any facility of the United States government  
9 available to treat a person for an alcohol or other substance abuse prob-  
10 lem, but such term shall not include a licensed medical care facility, a  
11 licensed adult care home, a facility licensed under K.S.A. 75-3307b, and  
12 amendments thereto, a community-based alcohol and drug safety action  
13 program certified under K.S.A. 8-1008, and amendments thereto, and  
14 performing only those functions for which the program is certified to  
15 perform under K.S.A. 8-1008, and amendments thereto, or a professional  
16 licensed by the behavioral sciences regulatory board to diagnose and treat  
17 mental disorders at the independent level or a physician, who may treat  
18 in the usual course of the behavioral sciences regulatory board licensee’s  
19 or physician’s professional practice individuals incapacitated by alcohol or  
20 other substances, but who are not primarily engaged in the usual course  
21 of the individual’s professional practice in treating such individuals, or any  
22 state institution, even if detoxification services may have been obtained  
23 at such institution.
- 24 (2) “Private treatment facility” means a private agency providing fa-  
25 cilities for the care and treatment or lodging of persons with either an  
26 alcohol or other substance abuse problem and meeting the standards  
27 prescribed in either K.S.A. 65-4013 or 65-4603, and amendments thereto,  
28 and licensed under either K.S.A. 65-4014 or 65-4607, and amendments  
29 thereto.
- 30 (3) “Public treatment facility” means a treatment facility owned and  
31 operated by any political subdivision of the state of Kansas and licensed  
32 under either K.S.A. 65-4014 or 65-4603, and amendments thereto, as an  
33 appropriate place for the care and treatment or lodging of persons with  
34 an alcohol or other substance abuse problem.
- 35 (n) The terms defined in K.S.A. 59-3051 and amendments thereto  
36 shall have the meanings provided by that section.
- 37 ~~Sec. 135.~~ **133.** K.S.A. 60-427 is hereby amended to read as follows:  
38 60-427. (a) As used in this section:
- 39 (1) “Patient” means a person who, for the sole purpose of securing  
40 preventive, palliative, or curative treatment, or a diagnosis preliminary to  
41 such treatment, of such person’s physical or mental condition, consults a  
42 physician, or submits to an examination by a physician.
- 43 (2) “Physician” means a person licensed or reasonably believed by

1 the patient to be licensed to practice medicine or one of the healing arts  
2 as defined in K.S.A. 65-2802, and amendments thereto, in the state or  
3 jurisdiction in which the consultation or examination takes place.

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

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

14 (b) Except as provided by subsections (c), (d), (e) and (f), a person,  
15 whether or not a party, has a privilege in a civil action or in a prosecution  
16 for a misdemeanor, other than a prosecution for a violation of K.S.A. 8-  
17 1567, and amendments thereto or an ordinance which prohibits the acts  
18 prohibited by that statute, to refuse to disclose, and to prevent a witness  
19 from disclosing, a communication, if the person claims the privilege and  
20 the judge finds that: (1) The communication was a confidential commu-  
21 nication between patient and physician; (2) the patient or the physician  
22 reasonably believed the communication necessary or helpful to enable  
23 the physician to make a diagnosis of the condition of the patient or to  
24 prescribe or render treatment therefor; (3) the witness (i) is the holder  
25 of the privilege, (ii) at the time of the communication was the physician  
26 or a person to whom disclosure was made because reasonably necessary  
27 for the transmission of the communication or for the accomplishment of  
28 the purpose for which it was transmitted or (iii) is any other person who  
29 obtained knowledge or possession of the communication as the result of  
30 an intentional breach of the physician’s duty of nondisclosure by the phy-  
31 sician or the physician’s agent or servant; and (4) the claimant is the holder  
32 of the privilege or a person authorized to claim the privilege for the holder  
33 of the privilege.

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

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

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

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

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

24 (h) Providing false information to a physician for the purpose of ob-  
25 taining a prescription-only drug shall not be a confidential communication  
26 between physician and patient and no person shall have a privilege in any  
27 prosecution for *unlawfully obtaining or distributing* a prescription-only  
28 drug ~~by fraudulent means~~ under ~~K.S.A. 21-4214~~ *section 8*, and amend-  
29 ments thereto.

30 ~~Sec. 136-134.~~ **K.S.A. 2008 Supp. 60-4104** is hereby amended to read  
31 as follows: 60-4104. Conduct and offenses giving rise to forfeiture under  
32 this act, whether or not there is a prosecution or conviction related to the  
33 offense, are:

34 (a) All offenses which statutorily and specifically authorize forfeiture;

35 (b) ~~violations of the uniform controlled substances act, K.S.A. 65-~~  
36 ~~4101 et seq. sections 1 through 17,~~ and amendments thereto;

37 (c) theft which is classified as a felony violation pursuant to K.S.A.  
38 21-3701, and amendments thereto, in which the property taken was  
39 livestock;

40 (d) unlawful discharge of a firearm, K.S.A. 21-4219, and amendments  
41 thereto;

42 (e) ~~money laundering, K.S.A. 65-4142~~ *violations of section 16*, and  
43 amendments thereto;

- 1 (f) gambling, K.S.A. 21-4303, and amendments thereto, and com-  
2 mercial gambling, K.S.A. 21-4304, and amendments thereto;
- 3 (g) counterfeiting, K.S.A. ~~2006 Supp.~~ 21-3763, and amendments  
4 thereto;
- 5 (h) violations of K.S.A. ~~2006 Supp.~~ 21-4019, and amendments  
6 thereto;
- 7 (i) medicaid fraud, K.S.A. 21-3844 et seq., and amendments thereto;
- 8 (j) an act or omission occurring outside this state, which would be a  
9 violation in the place of occurrence and would be described in this section  
10 if the act occurred in this state, whether or not it is prosecuted in any  
11 state;
- 12 (k) an act or omission committed in furtherance of any act or omission  
13 described in this section including any inchoate or preparatory offense,  
14 whether or not there is a prosecution or conviction related to the act or  
15 omission;
- 16 (l) any solicitation or conspiracy to commit any act or omission de-  
17 scribed in this section, whether or not there is a prosecution or conviction  
18 related to the act or omission;
- 19 (m) furtherance of terrorism or illegal use of weapons of mass de-  
20 struction, K.S.A. ~~2006 Supp.~~ 21-3451, and amendments thereto.
- 21 ~~Sec. 137.~~ **135.** K.S.A. 2008 Supp. 65-516 is hereby amended to read  
22 as follows: 65-516. (a) No person shall knowingly maintain a child care  
23 facility or maintain a family day care home if, in the child care facility or  
24 family day care home, there resides, works or regularly volunteers any  
25 person who in this state or in other states or the federal government:
- 26 (1) (A) Has a felony conviction for a crime against persons, (B) has  
27 a felony conviction under ~~the uniform controlled substances act sections~~  
28 *1 through 17, and amendments thereto*, (C) has a conviction of any act  
29 which is described in articles 34, 35 or 36 of chapter 21 of the Kansas  
30 Statutes Annotated, and amendments thereto, or a conviction of an at-  
31 tempt under K.S.A. 21-3301, and amendments thereto, to commit any  
32 such act or a conviction of conspiracy under K.S.A. 21-3302, and amend-  
33 ments thereto, to commit such act, or similar statutes of other states or  
34 the federal government, or (D) has been convicted of any act which is  
35 described in K.S.A. 21-4301 or 21-4301a, and amendments thereto, or  
36 similar statutes of other states or the federal government;
- 37 (2) has been adjudicated a juvenile offender because of having com-  
38 mitted an act which if done by an adult would constitute the commission  
39 of a felony and which is a crime against persons, is any act described in  
40 articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and  
41 amendments thereto, or similar statutes of other states or the federal  
42 government, or is any act described in K.S.A. 21-4301 or 21-4301a, and  
43 amendments thereto, or similar statutes of other states or the federal

1 government;

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

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

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

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

27 (7) has an infectious or contagious disease.

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

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

36 (d) In accordance with the provisions of this subsection, the secretary  
37 of health and environment shall have access to any court orders or ad-  
38 judications of any court of record, any records of such orders or adjudi-  
39 cations, criminal history record information including, but not limited to,  
40 diversion agreements, in the possession of the Kansas bureau of investi-  
41 gation and any report of investigations as authorized by K.S.A. 2008 Supp.  
42 38-2226, and amendments thereto, in the possession of the department  
43 of social and rehabilitation services or court of this state concerning per-

1 sons working, regularly volunteering or residing in a child care facility or  
2 a family day care home. The secretary shall have access to these records  
3 for the purpose of determining whether or not the home meets the  
4 requirements of K.S.A. 59-2132, 65-503, 65-508, 65-516 and 65-519, and  
5 amendments thereto.

6 (e) In accordance with the provisions of this subsection, the secretary  
7 is authorized to conduct national criminal history record checks to deter-  
8 mine criminal history on persons residing, working or regularly volun-  
9 teering in a child care facility or family day care home. In order to conduct  
10 a national criminal history check the secretary shall require fingerprinting  
11 for identification and determination of criminal history. The secretary  
12 shall submit the fingerprints to the Kansas bureau of investigation and to  
13 the federal bureau of investigation and receive a reply to enable the sec-  
14 retary to verify the identity of such person and whether such person has  
15 been convicted of any crime that would prohibit such person from resid-  
16 ing, working or regularly volunteering in a child care facility or family day  
17 care home. The secretary is authorized to use information obtained from  
18 the national criminal history record check to determine such person's  
19 fitness to reside, work or regularly volunteer in a child care facility or  
20 family day care home.

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

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

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

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

40 (1) The secretary of health and environment shall provide in writing  
41 information available to the secretary to each child placement agency  
42 requesting information under this section, including the information pro-  
43 vided by the Kansas bureau of investigation pursuant to this section, for

1 the purpose of assessing the fitness of persons living, working or regularly  
2 volunteering in a family foster home under the child placement agency's  
3 sponsorship.

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

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

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

15 (5) Any staff person of a child placement agency who receives infor-  
16 mation under this subsection shall keep such information confidential,  
17 except that the staff person may disclose such information on a need-to-  
18 know basis to: (A) The person who is the subject of the request for in-  
19 formation, (B) the applicant or operator of the family foster home in  
20 which the person lives, works or regularly volunteers, (C) the department  
21 of health and environment, (D) the department of social and rehabilita-  
22 tion services, (E) the juvenile justice authority, and (F) the courts.

23 (6) A violation of the provisions of subsection (i)(5) shall be an un-  
24 classified misdemeanor punishable by a fine of \$100 for each violation.

25 ~~Sec. 138.~~ **136.** K.S.A. 65-4102 is hereby amended to read as follows:  
26 65-4102. (a) The board shall administer this act and may adopt rules and  
27 regulations relating to the registration and control of the manufacture,  
28 distribution and dispensing of controlled substances within this state. All  
29 rules and regulations of the board shall be adopted in conformance with  
30 article 4 of chapter 77 of the Kansas Statutes Annotated and the proce-  
31 dures prescribed by this act.

32 (b) Annually, the board shall submit to the speaker of the house of  
33 representatives and the president of the senate a report on substances  
34 proposed by the board for scheduling, rescheduling or deletion by the  
35 legislature with respect to any one of the schedules as set forth in this  
36 act, and reasons for the proposal shall be submitted by the board there-  
37 with. In making a determination regarding the proposal to schedule, res-  
38 chedule or delete a substance, the board shall consider the following:

- 39 (1) The actual or relative potential for abuse;
- 40 (2) the scientific evidence of its pharmacological effect, if known;
- 41 (3) the state of current scientific knowledge regarding the substance;
- 42 (4) the history and current pattern of abuse;
- 43 (5) the scope, duration and significance of abuse;

- 1 (6) the risk to the public health;  
2 (7) the potential of the substance to produce psychological or physi-  
3 ological dependence liability; and  
4 (8) whether the substance is an immediate precursor of a substance  
5 already controlled under this article.

6 (c) The board shall not include any nonnarcotic substance within a  
7 schedule if such substance may be lawfully sold over the counter without  
8 a prescription under the federal food, drug and cosmetic act.

9 (d) Authority to control under this section does not extend to distilled  
10 spirits, wine, malt beverages or tobacco.

11 (e) Upon receipt of notice under ~~K.S.A. 65-4105a~~ *section 15, and*  
12 *amendments thereto*, the board shall initiate scheduling of the controlled  
13 substance analog on an emergency basis pursuant to this subsection. The  
14 scheduling of a substance under this subsection expires one year after the  
15 adoption of the scheduling rule. With respect to the finding of an im-  
16 minent hazard to the public safety, the board shall consider whether the  
17 substance has been scheduled on a temporary basis under federal law or  
18 factors set forth in subsections (b)(4), (5) and (6), and may also consider  
19 clandestine importation, manufacture or distribution, and if available, in-  
20 formation concerning the other factors set forth in subsection (b). A rule  
21 may not be adopted under this subsection until the board initiates a ru-  
22 lemaking proceeding under subsection (a) with respect to the substance.  
23 A rule adopted under this subsection lapses upon the conclusion of the  
24 rulemaking proceeding initiated under subsection (a) with respect to the  
25 substance.

26 ~~Sec. 139.~~ **137.** K.S.A. 65-4127c is hereby amended to read as follows:  
27 65-4127c. ~~Except as otherwise provided in K.S.A. 65-4127a and 65-4127b~~  
28 ~~and K.S.A. 65-4160 through 65-4164 and amendments thereto,~~ Any per-  
29 son violating any of the provisions of the uniform controlled substances  
30 act shall be guilty of a class A nonperson misdemeanor. The criminal  
31 penalties prescribed for violations of the uniform controlled substances  
32 act shall not be applicable to violations of the rules and regulations  
33 adopted by the board pursuant thereto.

34 ~~Sec. 140.~~ **138.** K.S.A. 65-4139 is hereby amended to read as follows:  
35 65-4139. ~~This act~~ *Article 41 of chapter 65 of the Kansas Statutes Anno-*  
36 *tated, and amendments thereto, shall be known and may be cited as the*  
37 *uniform controlled substances act.*

38 ~~Sec. 141.~~ **139.** K.S.A. 65-2859 is hereby amended to read as follows:  
39 65-2859. Any person who shall file or attempt to file with the board any  
40 false or forged diploma, certificate, affidavit or identification or qualifi-  
41 cation, or any other written or printed instrument, shall be guilty of for-  
42 gery as provided by K.S.A. 21-3710, and ~~a severity level 8, nonperson~~  
43 ~~felony~~ *amendments thereto.*

1     Sec. ~~142.~~ **140.** K.S.A. 2008 Supp. 65-3235 is hereby amended to read  
2 as follows: 65-3235. (a) Except as otherwise provided in subsection (b), a  
3 person that for valuable consideration, knowingly purchases or sells a part  
4 for transplantation or therapy if removal of a part from an individual is  
5 intended to occur after the individual's death commits a severity level ~~5~~  
6 8, nonperson felony.

7     (b) A person may charge a reasonable amount for the removal, pro-  
8 cessing, preservation, quality control, storage, transportation, implantation,  
9 or disposal of a part.

10    Sec. ~~143.~~ **141.** K.S.A. 2008 Supp. 65-3236 is hereby amended to read  
11 as follows: 65-3236. A person that, in order to obtain a financial gain,  
12 intentionally falsifies, forges, conceals, defaces, or obliterates a document  
13 of gift, an amendment or revocation of a document of gift or a refusal  
14 commits a severity level ~~10~~ 8, nonperson felony.

15    Sec. ~~144.~~ **142.** K.S.A. 2008 Supp. 65-4167 is hereby amended to read  
16 as follows: 65-4167. (a) Trafficking in counterfeit drugs is intentionally  
17 manufacturing, distributing, ~~dispensing, selling or delivering~~ **or possess-**  
18 **ing with the intent to distribute** for consumption purposes, ~~or holding~~  
19 ~~or offering for sale~~, any counterfeit drug.

20    (b) Trafficking in counterfeit drugs which have a retail value of ~~less~~  
21 ~~than \$500 is a class A nonperson misdemeanor, trafficking in counterfeit~~  
22 ~~drugs which have a retail value of at least \$500 but less than \$25,000 is a~~  
23 ~~severity level 9, nonperson felony and trafficking in counterfeit drugs~~  
24 ~~which have a retail value of \$25,000 or more is a severity level 7, non-~~  
25 ~~person felony.:~~

26       (1) *\$100,000 or more is a severity level 5, nonperson felony.*

27       (2) *At least \$75,000 but less than \$100,000 is a severity level 6, non-*  
28 *person felony.*

29       (3) *At least \$50,000 but less than \$75,000 is a severity level 7, non-*  
30 *person felony.*

31       (4) *At least \$25,000 but less than \$50,000 is a severity level 8, non-*  
32 *person felony.*

33       (5) *At least \$2,000 but less than \$25,000 is a severity level 9, nonper-*  
34 *son felony.*

35       (6) *At least \$1,000 but less than \$2,000 is a severity level 10, nonper-*  
36 *son felony.*

37       (7) *At least \$500 but less than \$1,000 is a class A nonperson*  
38 *misdemeanor.*

39       (8) *Less than \$500 is a class B nonperson misdemeanor.*

40    (c) A pharmacy which is inadvertently in possession of counterfeit  
41 drugs may return those drugs to the supplier who provided the drugs to  
42 the pharmacy.

43    Sec. ~~145.~~ **143.** K.S.A. 65-5709 is hereby amended to read as follows:

1 65-5709. Violation of section 304 of the federal act, as adopted by K.S.A.  
 2 65-5707, *and amendments thereto*, is a *severity level 10, nonperson felony*  
 3 ~~punishable by a fine of not more than \$25,000 or imprisonment for not~~  
 4 ~~more than two years, or both, for the first conviction and a fine of not~~  
 5 ~~more than \$50,000 or imprisonment for not more than five years, or both,~~  
 6 ~~for the second or a subsequent conviction.~~

7 Sec. ~~146.~~ **144.** K.S.A. 65-6a40 is hereby amended to read as follows:  
 8 65-6a40. Any person who violates any of the provisions of this act or the  
 9 provisions of any rule or regulation adopted under the provisions of this  
 10 act for which no other criminal penalty is provided ~~shall be deemed is~~  
 11 guilty of a nonperson misdemeanor and upon conviction thereof shall be  
 12 punished by imprisonment for not more than one year, or by a fine of  
 13 not more than \$1000, or by both such imprisonment and fine. If such  
 14 violation involves intent to defraud, or any transportation or distribution  
 15 or attempted transportation or distribution of an article that is adulter-  
 16 ated, such person ~~shall be deemed is~~ guilty of a *severity level 10, non-*  
 17 ~~person felony and upon conviction thereof shall be punished by impris-~~  
 18 ~~onment for not more than three years or by a fine of not more than~~  
 19 ~~\$10,000, or by both such imprisonment and fine.~~ No person shall be  
 20 subject to penalties under this section for receiving for transportation or  
 21 distribution any article or animal in violation of this act if such receipt  
 22 was made in good faith.

23 Sec. ~~147.~~ **145.** K.S.A. 2008 Supp. 72-1397 is hereby amended to read  
 24 as follows: 72-1397. (a) The state board of education shall not knowingly  
 25 issue a license to or renew the license of any person who has been con-  
 26 victed of:

- 27 (1) Rape, as defined in K.S.A. 21-3502, and amendments thereto;
- 28 (2) indecent liberties with a child, as defined in K.S.A. 21-3503, and  
 29 amendments thereto;
- 30 (3) aggravated indecent liberties with a child, as defined in K.S.A. 21-  
 31 3504, and amendments thereto;
- 32 (4) criminal sodomy, as defined in subsection (a)(2) or (a)(3) of K.S.A.  
 33 21-3505, and amendments thereto;
- 34 (5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, and  
 35 amendments thereto;
- 36 (6) indecent solicitation of a child, as defined in K.S.A. 21-3510, and  
 37 amendments thereto;
- 38 (7) aggravated indecent solicitation of a child, as defined in K.S.A.  
 39 21-3511, and amendments thereto;
- 40 (8) sexual exploitation of a child, as defined in K.S.A. 21-3516, and  
 41 amendments thereto;
- 42 (9) aggravated incest, as defined in K.S.A. 21-3603, and amendments  
 43 thereto;

- 1 (10) aggravated endangering a child, as defined in K.S.A. 21-3608a,  
2 and amendments thereto;
- 3 (11) abuse of a child, as defined in K.S.A. 21-3609, and amendments  
4 thereto;
- 5 (12) capital murder, as defined in K.S.A. 21-3439, and amendments  
6 thereto;
- 7 (13) murder in the first degree, as defined in K.S.A. 21-3401, and  
8 amendments thereto;
- 9 (14) murder in the second degree, as defined in K.S.A. 21-3402, and  
10 amendments thereto;
- 11 (15) voluntary manslaughter, as defined in K.S.A. 21-3403, and  
12 amendments thereto;
- 13 (16) involuntary manslaughter, as defined in K.S.A. 21-3404, and  
14 amendments thereto;
- 15 (17) involuntary manslaughter while driving under the influence of  
16 alcohol or drugs, as defined in K.S.A. 21-3442, and amendments thereto;
- 17 (18) sexual battery, as defined in K.S.A. 21-3517, and amendments  
18 thereto, when, at the time the crime was committed, the victim was less  
19 than 18 years of age or a student of the person committing such crime;
- 20 (19) aggravated sexual battery, as defined in K.S.A. 21-3518, and  
21 amendments thereto;
- 22 (20) attempt under K.S.A. 21-3301, and amendments thereto, to  
23 commit any act specified in this subsection;
- 24 (21) conspiracy under K.S.A. 21-3302, and amendments thereto, to  
25 commit any act specified in this subsection;
- 26 (22) an act in another state or by the federal government that is com-  
27 parable to any act described in this subsection; or
- 28 (23) an offense in effect at any time prior to the effective date of this  
29 act that is comparable to an offense as provided in this subsection.
- 30 (b) Except as provided in subsection (c), the state board of education  
31 shall not knowingly issue a license to or renew the license of any person  
32 who has been convicted of, or has entered into a criminal diversion agree-  
33 ment after having been charged with:
- 34 (1) A felony under ~~the uniform controlled substances act sections 1~~  
35 *through 17, and amendments thereto;*
- 36 (2) a felony described in any section of article 34 of chapter 21 of the  
37 Kansas Statutes Annotated, other than an act specified in subsection (a),  
38 or a battery, as described in K.S.A. 21-3412, and amendments thereto,  
39 or domestic battery, as described in K.S.A. 21-3412a, and amendments  
40 thereto, if the victim is a minor or student;
- 41 (3) a felony described in any section of article 35 of chapter 21 of the  
42 Kansas Statutes Annotated, other than an act specified in subsection (a);
- 43 (4) any act described in any section of article 36 of chapter 21 of the

- 1 Kansas Statutes Annotated, other than an act specified in subsection (a);  
2 (5) a felony described in article 37 of chapter 21 of the Kansas Stat-  
3 utes Annotated;
- 4 (6) promoting obscenity, as described in K.S.A. 21-4301, and amend-  
5 ments thereto, promoting obscenity to minors, as described in K.S.A. 21-  
6 4301a, and amendments thereto, or promoting to minors obscenity harm-  
7 ful to minors, as described in K.S.A. 21-4301c, and amendments thereto;
- 8 (7) endangering a child, as defined in K.S.A. 21-3608, and amend-  
9 ments thereto;
- 10 (8) driving under the influence of alcohol or drugs in violation of  
11 K.S.A. 8-1567 or 8-2,144, and amendments thereto, when the violation  
12 is punishable as a felony;
- 13 (9) attempt under K.S.A. 21-3301, and amendments thereto, to com-  
14 mit any act specified in this subsection;
- 15 (10) conspiracy under K.S.A. 21-3302, and amendments thereto, to  
16 commit any act specified in this subsection; or
- 17 (11) an act committed in violation of a federal law or in violation of  
18 another state's law that is comparable to any act described in this  
19 subsection.
- 20 (c) The state board of education may issue a license to or renew the  
21 license of a person who has been convicted of committing an offense or  
22 act described in subsection (b) or who has entered into a criminal diver-  
23 sion agreement after having been charged with an offense or act described  
24 in subsection (b) if the state board determines, following a hearing, that  
25 the person has been rehabilitated for a period of at least five years from  
26 the date of conviction of the offense or commission of the act or, in the  
27 case of a person who has entered into a criminal diversion agreement,  
28 that the person has satisfied the terms and conditions of the agreement.  
29 The state board of education may consider factors including, but not  
30 limited to, the following in determining whether to grant a license:
- 31 (1) The nature and seriousness of the offense or act;
- 32 (2) the conduct of the person subsequent to commission of the of-  
33 fense or act;
- 34 (3) the time elapsed since the commission of the offense or act;
- 35 (4) the age of the person at the time of the offense or act;
- 36 (5) whether the offense or act was an isolated or recurring incident;
- 37 and
- 38 (6) discharge from probation, pardon or expungement.
- 39 (d) Before any license is denied by the state board of education for  
40 any of the offenses or acts specified in subsections (a) and (b), the person  
41 shall be given notice and an opportunity for a hearing in accordance with  
42 the provisions of the Kansas administrative procedure act.
- 43 (e) The county or district attorney shall file a report with the state

1 board of education indicating the name, address and social security num-  
2 ber of any person who has been determined to have committed any of-  
3 fense or act specified in subsection (a) or (b) or to have entered into a  
4 criminal diversion agreement after having been charged with any offense  
5 or act specified in subsection (b). Such report shall be filed within 30  
6 days of the date of the determination that the person has committed any  
7 such act or entered into any such diversion agreement.

8 (f) The state board of education shall not be liable for civil damages  
9 to any person refused issuance or renewal of a license by reason of the  
10 state board's compliance, in good faith, with the provisions of this section.

11 ~~Sec. 148.146.~~ **K.S.A. 2008 Supp. 75-5291** is hereby amended to read  
12 as follows: 75-5291. (a) (1) The secretary of corrections may make grants  
13 to counties for the development, implementation, operation and improve-  
14 ment of community correctional services that address the criminogenic  
15 needs of felony offenders including, but not limited to, adult intensive  
16 supervision, substance abuse and mental health services, employment and  
17 residential services, and facilities for the detention or confinement, care  
18 or treatment of offenders as provided in this section except that no com-  
19 munity corrections funds shall be expended by the secretary for the pur-  
20 pose of establishing or operating a conservation camp as provided by  
21 K.S.A. 75-52,127, and amendments thereto.

22 (2) Except as otherwise provided, placement of offenders in com-  
23 munity correctional services programs by the court shall be limited to  
24 placement of adult offenders, convicted of a felony offense:

25 (A) Whose offense is classified in grid blocks 5-H, 5-I or 6-G of the  
26 sentencing guidelines grid ~~for nondrug crimes~~ or in grid blocks 3-E, 3-F,  
27 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes *prior*  
28 *to such grid's repeal*. In addition, the court may place in a community  
29 correctional services program adult offenders, convicted of a felony of-  
30 fense, whose offense is classified in grid blocks 6-H, 6-I, 7-C, 7-D, 7-E,  
31 7-F, 7-G, 7-H or 7-I of the sentencing guidelines grid ~~for nondrug crimes~~;

32 (B) whose severity level and criminal history score designate a pre-  
33 sumptive prison sentence on either sentencing guidelines grid but receive  
34 a nonprison sentence as a result of departure;

35 (C) all offenders convicted of an offense which satisfies the definition  
36 of offender pursuant to K.S.A. 22-4902, and amendments thereto, and  
37 which is classified as a severity level 7 or higher offense and who receive  
38 a nonprison sentence, regardless of the manner in which the sentence is  
39 imposed;

40 (D) any offender for whom a violation of conditions of release or  
41 assignment or a nonprison sanction has been established as provided in  
42 K.S.A. 22-3716, and amendments thereto, prior to revocation resulting  
43 in the offender being required to serve any time for the sentence imposed

1 or which might originally have been imposed in a state facility in the  
2 custody of the secretary of corrections;

3 (E) on and after July 1, 2010, for offenders who are expected to be  
4 subject to supervision in Kansas, who are determined to be “high risk or  
5 needs, or both” by the use of a statewide, mandatory, standardized risk  
6 assessment tool or instrument which shall be specified by the Kansas  
7 sentencing commission;

8 (F) placed in community correctional services programs as a condi-  
9 tion of supervision following the successful completion of a conservation  
10 camp program; or

11 (G) who has been sentenced to community corrections supervision  
12 pursuant to K.S.A. 21-4729, and amendments thereto.

13 (3) ~~(A)~~ Notwithstanding any law to the contrary and subject to the  
14 availability of funding therefor, adult offenders sentenced to community  
15 supervision in Johnson county for felony crimes that occurred on or after  
16 July 1, 2002, but before July 1, 2010, shall be placed under court services  
17 or community corrections supervision based upon court rules issued by  
18 the chief judge of the 10th judicial district. The provisions contained in  
19 this subsection shall not apply to offenders transferred by the assigned  
20 agency to an agency located outside of Johnson county. The provisions of  
21 this paragraph shall expire on July 1, 2010.

22 ~~(B) On or before the first day of the 2009 legislative session, the~~  
23 ~~Kansas sentencing commission shall submit a written report on such of-~~  
24 ~~fender program to the senate standing committee on judiciary and the~~  
25 ~~house of representatives standing committee on judiciary.~~

26 (4) Nothing in this act shall prohibit a community correctional serv-  
27 ices program from providing services to juvenile offenders upon approval  
28 by the local community corrections advisory board. Grants from com-  
29 munity corrections funds administered by the secretary of corrections  
30 shall not be expended for such services.

31 (5) The court may require an offender for whom a violation of con-  
32 ditions of release or assignment or a nonprison sanction has been estab-  
33 lished, as provided in K.S.A. 22-3716, and amendments thereto, to serve  
34 any time for the sentence imposed or which might originally have been  
35 imposed in a state facility in the custody of the secretary of corrections  
36 without a prior assignment to a community correctional services program  
37 if the court finds and sets forth with particularity the reasons for finding  
38 that the safety of the members of the public will be jeopardized or that  
39 the welfare of the inmate will not be served by such assignment to a  
40 community correctional services program.

41 (b) (1) In order to establish a mechanism for community correctional  
42 services to participate in the department of corrections annual budget  
43 planning process, the secretary of corrections shall establish a community

1 corrections advisory committee to identify new or enhanced correctional  
2 or treatment interventions designed to divert offenders from prison.

3 (2) The secretary shall appoint one member from the southeast com-  
4 munity corrections region, one member from the northeast community  
5 corrections region, one member from the central community corrections  
6 region and one member from the western community corrections region.  
7 The deputy secretary of community and field services shall designate two  
8 members from the state at large. The secretary shall have final appoint-  
9 ment approval of the members designated by the deputy secretary. The  
10 committee shall reflect the diversity of community correctional services  
11 with respect to geographical location and average daily population of of-  
12 fenders under supervision.

13 (3) Each member shall be appointed for a term of three years and  
14 such terms shall be staggered as determined by the secretary. Members  
15 shall be eligible for reappointment.

16 (4) The committee, in collaboration with the deputy secretary of com-  
17 munity and field services or the deputy secretary's designee, shall rou-  
18 tinely examine and report to the secretary on the following issues:

19 (A) Efficiencies in the delivery of field supervision services;

20 (B) effectiveness and enhancement of existing interventions;

21 (C) identification of new interventions; and

22 (D) statewide performance indicators.

23 (5) The committee's report concerning enhanced or new interven-  
24 tions shall address:

25 (A) Goals and measurable objectives;

26 (B) projected costs;

27 (C) the impact on public safety; and

28 (D) the evaluation process.

29 (6) The committee shall submit its report to the secretary annually  
30 on or before July 15 in order for the enhanced or new interventions to  
31 be considered for inclusion within the department of corrections budget  
32 request for community correctional services or in the department's en-  
33 hanced services budget request for the subsequent fiscal year.

34 ~~Sec. 149.147.~~ K.S.A. 2008 Supp. 72-5445 is hereby amended to read  
35 as follows: 72-5445. (a) (1) Subject to the provisions of subsection (b), the  
36 provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto,  
37 apply only to: (A) Teachers who have completed not less than three con-  
38 secutive years of employment, and been offered a fourth contract, in the  
39 school district, area vocational-technical school or community college by  
40 which any such teacher is currently employed; and (B) teachers who have  
41 completed not less than two consecutive years of employment, and been  
42 offered a third contract, in the school district, area vocational-technical  
43 school or community college by which any such teacher is currently em-

1   employed if at any time prior to the current employment the teacher has  
2   completed the years of employment requirement of subpart (A) in any  
3   school district, area vocational-technical school or community college in  
4   this state.

5   (2) Any board may waive, at any time, the years of employment  
6   requirements of provision (1) for any teachers employed by it.

7   (3) The provisions of this subsection are subject to the provisions of  
8   K.S.A. 72-5446, and amendments thereto.

9   (b) The provisions of K.S.A. 72-5438 through 72-5443, and amend-  
10   ments thereto, do not apply to any teacher whose license has been non-  
11   renewed or revoked by the state board of education for the reason that  
12   the teacher: (1) Has been convicted of a felony under ~~the uniform con-~~  
13   ~~trolled substances act sections 1 through 17, and amendments thereto;~~ (2)  
14   has been convicted of a felony described in any section of article 34 of  
15   chapter 21 of the Kansas Statutes Annotated or an act described in K.S.A.  
16   21-3412 or K.S.A. 21-3412a, and amendments thereto, if the victim is a  
17   minor or student; (3) has been convicted of a felony described in any  
18   section of article 35 of chapter 21 of the Kansas Statutes Annotated, or  
19   has been convicted of an act described in K.S.A. 21-3517 and amend-  
20   ments thereto, if the victim is a minor or student; (4) has been convicted  
21   of any act described in any section of article 36 of chapter 21 of the Kansas  
22   Statutes Annotated; (5) has been convicted of a felony described in article  
23   37 of chapter 21 of the Kansas Statutes Annotated; (6) has been convicted  
24   of an attempt under K.S.A. 21-3301, and amendments thereto, to commit  
25   any act specified in this subsection; (7) has been convicted of any act  
26   which is described in K.S.A. 21-4301, 21-4301a or 21-4301c, and amend-  
27   ments thereto; (8) has been convicted in another state or by the federal  
28   government of an act similar to any act described in this subsection; or  
29   (9) has entered into a criminal diversion agreement after having been  
30   charged with any offense described in this subsection.

31   Sec. ~~150.~~ **148.** K.S.A. 2008 Supp. 72-89c01 is hereby amended to  
32   read as follows: 72-89c01. As used in K.S.A. 72-89c01 and 72-89c02, and  
33   amendments thereto:

34   (a) “Board of education” means the board of education of a unified  
35   school district or the governing authority of an accredited nonpublic  
36   school.

37   (b) “School” means a public school or an accredited nonpublic school.

38   (c) “Public school” means a school operated by a unified school dis-  
39   trict organized under the laws of this state.

40   (d) “Accredited nonpublic school” means a nonpublic school partic-  
41   ipating in the quality performance accreditation system.

42   (e) “Chief administrative officer of a school” means, in the case of a  
43   public school, the superintendent of schools or a designee of the super-

1 intentent and, in the case of an accredited nonpublic school, the person  
2 designated as chief administrative officer by the governing authority of  
3 the school.

4 (f) “Weapon” means (1) any weapon which will or is designed to or  
5 may readily be converted to expel a projectile by the action of an explo-  
6 sive; (2) the frame or receiver of any weapon described in the preceding  
7 example; (3) any firearm muffler or firearm silencer; (4) any explosive,  
8 incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a  
9 propellant charge of more than four ounces, (D) missile having an explo-  
10 sive or incendiary charge of more than  $\frac{1}{4}$  ounce, (E) mine, or (F) similar  
11 device; (5) any weapon which will, or which may be readily converted to,  
12 expel a projectile by the action of an explosive or other propellant, and  
13 which has any barrel with a bore of more than  $\frac{1}{2}$  inch in diameter; (6)  
14 any combination of parts either designed or intended for use in converting  
15 any device into any destructive device described in the two immediately  
16 preceding examples, and from which a destructive device may be readily  
17 assembled; (7) any bludgeon, sandclub, metal knuckles or throwing star;  
18 (8) any knife, commonly referred to as a switch-blade, which has a blade  
19 that opens automatically by hand pressure applied to a button, spring or  
20 other device in the handle of the knife, or any knife having a blade that  
21 opens or falls or is ejected into position by the force of gravity or by an  
22 outward, downward or centrifugal thrust or movement; (9) any electronic  
23 device designed to discharge immobilizing levels of electricity, commonly  
24 known as a stun gun. The term “weapon” does not include within its  
25 meaning (1) an antique firearm; (2) any device which is neither designed  
26 nor redesigned for use as a weapon; (3) any device, although originally  
27 designed for use as a weapon, which is redesigned for use as a signaling,  
28 pyrotechnic, line throwing, safety, or similar device; (4) surplus ordinance  
29 sold, loaned, or given by the secretary of the army pursuant to the pro-  
30 visions of section 4684(2), 4685, or 4686 of title 10 of the United States  
31 Code; (5) class C common fireworks.

32 (g) “Controlled substance” has the meaning ascribed thereto in  
33 ~~K.S.A. 65-4101~~ *section 1*, and amendments thereto.

34 (h) “Illegal drug” means a controlled substance but does not include  
35 a controlled substance that is legally possessed, used under the supervi-  
36 sion of a licensed health-care professional or used under authority of any  
37 federal or state law.

38 (i) “Possession of a weapon or illegal drug” means knowingly having  
39 direct physical control over a weapon or illegal drug or knowingly having  
40 the power and the intention at a given time to exercise dominion or  
41 control over a weapon or illegal drug.

42 (j) “Law enforcement agency” means the police department of a city  
43 if the school safety violation occurs within the corporate limits of a city

1 or the office of the county sheriff if the school safety violation occurs  
2 outside the corporate limits of a city.

3 (k) “Division” means the division of motor vehicles of the Kansas  
4 department of revenue.

5 Sec. ~~151~~ **149**. K.S.A. 2008 Supp. 74-9101 is hereby amended to read  
6 as follows: 74-9101. (a) There is hereby established the Kansas sentencing  
7 commission.

8 (b) The commission shall:

9 (1) Develop a sentencing guideline model or grid based on fairness  
10 and equity and shall provide a mechanism for linking justice and correc-  
11 tions policies. The sentencing guideline model or grid shall establish ra-  
12 tional and consistent sentencing standards which reduce sentence dis-  
13 parity, to include, but not be limited to, racial and regional biases which  
14 may exist under current sentencing practices. The guidelines shall specify  
15 the circumstances under which imprisonment of an offender is appro-  
16 priate and a presumed sentence for offenders for whom imprisonment is  
17 appropriate, based on each appropriate combination of reasonable of-  
18 fense and offender characteristics. In developing its recommended sen-  
19 tencing guidelines, the commission shall take into substantial considera-  
20 tion current sentencing and release practices and correctional resources,  
21 including but not limited to the capacities of local and state correctional  
22 facilities. In its report, the commission shall make recommendations re-  
23 garding whether there is a continued need for and what is the projected  
24 role of, if any, the Kansas parole board and whether the policy of allo-  
25 cating good time credits for the purpose of determining an inmate’s eli-  
26 gibility for parole or conditional release should be continued;

27 (2) consult with and advise the legislature with reference to the im-  
28 plementation, management, monitoring, maintenance and operations of  
29 the sentencing guidelines system;

30 (3) direct implementation of the sentencing guidelines system;

31 (4) assist in the process of training judges, county and district attor-  
32 neys, court services officers, state parole officers, correctional officers,  
33 law enforcement officials and other criminal justice groups. For these  
34 purposes, the sentencing commission shall develop an implementation  
35 policy and shall construct an implementation manual for use in its training  
36 activities;

37 (5) receive presentence reports and journal entries for all persons  
38 who are sentenced for crimes committed on or after July 1, 1993, to  
39 develop post-implementation monitoring procedures and reporting  
40 methods to evaluate guideline sentences. In developing the evaluative  
41 criteria, the commission shall take into consideration rational and consis-  
42 tent sentencing standards which reduce sentence disparity to include, but  
43 not be limited to, racial and regional biases;

- 1 (6) advise and consult with the secretary of corrections and members  
2 of the legislature in developing a mechanism to link guidelines sentence  
3 practices with correctional resources and policies, including but not lim-  
4 ited to the capacities of local and state correctional facilities. Such linkage  
5 shall include a review and determination of the impact of the sentencing  
6 guidelines on the state's prison population, review of corrections pro-  
7 grams and a study of ways to more effectively utilize correction dollars  
8 and to reduce prison population;
- 9 (7) make recommendations relating to modification to the sentencing  
10 guidelines as provided in K.S.A. 21-4725, and amendments thereto;
- 11 (8) prepare and submit fiscal impact and correctional resource state-  
12 ment as provided in K.S.A. 74-9106, and amendments thereto;
- 13 (9) make recommendations to those responsible for developing a  
14 working philosophy of sentencing guideline consistency and rationality;
- 15 (10) develop prosecuting standards and guidelines to govern the con-  
16 duct of prosecutors when charging persons with crimes and when engag-  
17 ing in plea bargaining;
- 18 (11) analyze problems in criminal justice, identify alternative solu-  
19 tions and make recommendations for improvements in criminal law, pros-  
20 ecution, community and correctional placement, programs, release pro-  
21 cedures and related matters including study and recommendations  
22 concerning the statutory definition of crimes and criminal penalties and  
23 review of proposed criminal law changes;
- 24 (12) perform such other criminal justice studies or tasks as may be  
25 assigned by the governor or specifically requested by the legislature, de-  
26 partment of corrections, the chief justice or the attorney general;
- 27 (13) develop a program plan which includes involvement of business  
28 and industry in the public or other social or fraternal organizations for  
29 admitting back into the mainstream those offenders who demonstrate  
30 both the desire and ability to reconstruct their lives during their incar-  
31 ceration or during conditional release;
- 32 (14) appoint a task force to make recommendations concerning the  
33 consolidation of probation, parole and community corrections services;
- 34 (15) produce official inmate population projections annually on or  
35 before six weeks following the date of receipt of the data from the de-  
36 partment of corrections. When the commission's projections indicate that  
37 the inmate population will exceed available prison capacity within two  
38 years of the date of the projection, the commission shall identify and  
39 analyze the impact of specific options for (A) reducing the number of  
40 prison admissions; or (B) adjusting sentence lengths for specific groups  
41 of offenders. Options for reducing the number of prison admissions shall  
42 include, but not be limited to, possible modification of ~~both the~~ sentenc-  
43 ing ~~grid~~ *grid* to include presumptive intermediate dispositions for certain

1 categories of offenders. Intermediate sanction dispositions shall include,  
2 but not be limited to: intensive supervision; short-term jail sentences;  
3 halfway houses; community-based work release; electronic monitoring  
4 and house arrest; substance abuse treatment; and pre-revocation incar-  
5 ceration. Intermediate sanction options shall include, but not be limited  
6 to, mechanisms to explicitly target offenders that would otherwise be  
7 placed in prison. Analysis of each option shall include an assessment of  
8 such options impact on the overall size of the prison population, the effect  
9 on public safety and costs. In preparing the assessment, the commission  
10 shall review the experience of other states and shall review available re-  
11 search regarding the effectiveness of such option. The commission's find-  
12 ings relative to each sentencing policy option shall be presented to the  
13 governor and the joint committee on corrections and juvenile justice over-  
14 sight no later than November 1;

15 (16) at the request of the governor or the joint committee on correc-  
16 tions and juvenile justice oversight, initiate and complete an analysis of  
17 other sentencing policy adjustments not otherwise evaluated by the  
18 commission;

19 (17) develop information relating to the number of offenders on post-  
20 release supervision and subject to electronic monitoring for the duration  
21 of the person's natural life;

22 (18) determine the effect the mandatory sentencing established in  
23 K.S.A. 21-4642 and 21-4643, and amendments thereto, would have on  
24 the number of offenders civilly committed to a treatment facility as a  
25 sexually violent predator as provided pursuant to K.S.A. 59-29a01 et seq.,  
26 and amendments thereto;

27 (19) assume the designation and functions of the state statistical anal-  
28 ysis center. All criminal justice agencies, as defined in subsection (c) of  
29 K.S.A. 22-4701, and amendments thereto, and the juvenile justice au-  
30 thority shall provide any data or information, including juvenile offender  
31 information, requested by the commission to facilitate the function of the  
32 state statistical analysis center; and

33 (20) subject to the provisions of appropriation acts and the availability  
34 of funds therefor, produce official juvenile correctional facility population  
35 projections annually on or before November 1, not more than six weeks  
36 following the receipt of the data from the juvenile justice authority and  
37 develop bed impacts regarding legislation that may affect juvenile cor-  
38 rectional facility population.

39 ~~Sec. 152.~~ **150.** K.S.A. 2008 Supp. 75-7c04 is hereby amended to read  
40 as follows: 75-7c04. (a) The attorney general shall issue a license pursuant  
41 to this act if the applicant:

42 (1) Is a resident of the county where application for licensure is made  
43 and has been a resident of the state for six months or more immediately

1 preceding the filing of the application, residency to be determined in  
2 accordance with K.S.A. 77-201, and amendments thereto;  
3 (2) is 21 years or more of age;  
4 (3) does not suffer from a physical infirmity which prevents the safe  
5 handling of a weapon;  
6 (4) (A) has been convicted or placed on diversion for an act that  
7 constitutes a felony under the laws of this state or any other jurisdiction  
8 and: (i) Such felony is expungeable pursuant to K.S.A. 21-4619, and  
9 amendments thereto, or similar provision from another jurisdiction; (ii)  
10 such felony has been expunged; and (iii) the requirements of subsection  
11 (d) are otherwise met;  
12 (B) has not been convicted or placed on diversion, in this or any other  
13 jurisdiction, for an act that constitutes a felony under the laws of this state  
14 and such felony is not subject to expungement pursuant to K.S.A. 21-  
15 4619, and amendments thereto, or adjudicated, in this or any other ju-  
16 risdiction, of committing as a juvenile an act that would be a felony under  
17 the laws of this state if committed by an adult;  
18 (5) has never been convicted, in this or any other jurisdiction, for an  
19 act that constitutes a misdemeanor crime of domestic violence, as defined  
20 by 18 U.S.C. 921(a)(33)(A) or adjudicated, in this or any other jurisdiction,  
21 of committing as a juvenile an act that would be a misdemeanor crime of  
22 domestic violence under 18 U.S.C. 921(a)(33)(A) if committed by an  
23 adult;  
24 (6) has not been, during the five years immediately preceding the  
25 date the application is submitted: (A) Convicted or placed on diversion,  
26 in this or any other jurisdiction, for an act that constitutes a misdemeanor  
27 under the provisions of ~~the uniform controlled substances act sections 1~~  
28 *through 17, and amendments thereto*, or adjudicated, in this or any other  
29 jurisdiction, of committing as a juvenile an act that would be a misde-  
30 meanor under such act if committed by an adult; (B) convicted or placed  
31 on diversion, in this or any other jurisdiction, two or more times for an  
32 act that constitutes a violation of K.S.A. 8-1567, and amendments thereto;  
33 (C) convicted or placed on diversion, in this or any other jurisdiction, for  
34 an act that constitutes a domestic violence misdemeanor under any mu-  
35 nicipal ordinance or article 34 or 35 of chapter 21 of the Kansas Statutes  
36 Annotated or adjudicated, in this or any other jurisdiction, of committing  
37 as a juvenile an act that would be a domestic violence misdemeanor under  
38 article 34 or 35 of chapter 21 of the Kansas Statutes Annotated if com-  
39 mitted by an adult; or (D) convicted or placed on diversion, in this or any  
40 other jurisdiction, for an act that constitutes a violation of K.S.A. 2008  
41 Supp. 75-7c12, and amendments thereto, or a violation of subsection  
42 (a)(4) of K.S.A. 21-4201, and amendments thereto, or adjudicated, in this  
43 or any other jurisdiction, of committing as a juvenile an act that would

1 be a violation of K.S.A. 2008 Supp. 75-7c12, and amendments thereto,  
2 or a violation of subsection (a)(4) of K.S.A. 21-4201, and amendments  
3 thereto, if committed by an adult;

4 (7) has not been charged with a crime which would render the ap-  
5 plicant, if convicted, ineligible for a license or, if so charged, final dis-  
6 position of the charge has occurred and no other charges are pending  
7 which would cause the applicant to be ineligible for a license;

8 (8) has not been ordered by a court to receive treatment for mental  
9 illness pursuant to K.S.A. 59-2966, and amendments thereto, or for an  
10 alcohol or substance abuse problem pursuant to K.S.A. 59-29b66, and  
11 amendments thereto, or, if a court has ordered such treatment, has not  
12 been issued a certificate of restoration pursuant to K.S.A. 2008 Supp. 75-  
13 7c26, and amendments thereto, not less than five years before the date  
14 of the application;

15 (9) desires a legal means to carry a concealed weapon for lawful self-  
16 defense;

17 (10) except as provided by subsection (g) of K.S.A. 2008 Supp. 75-  
18 7c05, and amendments thereto, presents evidence satisfactory to the at-  
19 torney general that the applicant has satisfactorily completed a weapons  
20 safety and training course approved by the attorney general pursuant to  
21 subsection (b);

22 (11) has not been adjudged a disabled person under the act for ob-  
23 taining a guardian or conservator, or both, or under a similar law of an-  
24 other state or the District of Columbia, unless the applicant was ordered  
25 restored to capacity three or more years before the date on which the  
26 application is submitted;

27 (12) has not been dishonorably discharged from military service;

28 (13) is a citizen of the United States;

29 (14) is not subject to a restraining order issued under the protection  
30 from abuse act, under the protection from stalking act or pursuant to  
31 K.S.A. 60-1607, K.S.A. 2008 Supp. 38-2242, 38-2243 or 38-2255, and  
32 amendments thereto, or any equivalent order entered in another state or  
33 jurisdiction which is entitled to full faith and credit in Kansas; and

34 (15) is not in contempt of court in a child support proceeding.

35 (b) (1) The attorney general shall adopt rules and regulations estab-  
36 lishing procedures and standards as authorized by this act for an eight-  
37 hour weapons safety and training course required by this section. Such  
38 standards shall include: (A) A requirement that trainees receive training  
39 in the safe storage of weapons, actual firing of weapons and instruction  
40 in the laws of this state governing the carrying of a concealed weapon and  
41 the use of deadly force; (B) general guidelines for courses which are  
42 compatible with the industry standard for basic firearms training for ci-  
43 vilians; (C) qualifications of instructors; and (D) a requirement that the

1 course be: (i) A weapons course certified or sponsored by the attorney  
2 general; or (ii) a weapons course certified or sponsored by the national  
3 rifle association or by a law enforcement agency, college, private or public  
4 institution or organization or weapons training school, if the attorney gen-  
5 eral determines that such course meets or exceeds the standards required  
6 by rules and regulations adopted by the attorney general and is taught by  
7 instructors certified by the attorney general or by the national rifle asso-  
8 ciation, if the attorney general determines that the requirements for cer-  
9 tification of instructors by such association meet or exceed the standards  
10 required by rules and regulations adopted by the attorney general. Any  
11 person wanting to be certified by the attorney general as an instructor  
12 shall submit to the attorney general an application in the form required  
13 by the attorney general and a fee not to exceed \$150.

14 (2) The cost of the weapons safety and training course required by  
15 this section shall be paid by the applicant. The following shall constitute  
16 satisfactory evidence of satisfactory completion of an approved weapons  
17 safety and training course: (A) Evidence of completion of the course, in  
18 the form provided by rules and regulations adopted by the attorney gen-  
19 eral; or (B) an affidavit from the instructor, school, club, organization or  
20 group that conducted or taught such course attesting to the completion  
21 of the course by the applicant.

22 (c) In addition to the requirements of subsection (a), a person holding  
23 a license pursuant to this act, prior to renewal of the license provided  
24 herein, shall submit evidence satisfactory to the attorney general that the  
25 licensee has requalified by completion of an approved course given by an  
26 instructor of an approved weapons safety and training course under sub-  
27 section (b).

28 (d) If an applicant has had a conviction or diversion described in  
29 subsection (a)(4)(A) or (a)(6) expunged pursuant to K.S.A. 12-4516 or 21-  
30 4619, and amendments thereto, or similar provision from another juris-  
31 diction, and the applicant has been eligible for expungement for five years  
32 or more immediately preceding the date the application for licensure is  
33 submitted, the applicant shall not be disqualified from being issued a  
34 license if the applicant is otherwise qualified for licensure pursuant to  
35 this section.

36 ~~Sec. 153.~~ **151.** K.S.A. 75-4228 is hereby amended to read as follows:  
37 75-4228. The making of profit by the treasurer or director of accounts  
38 and reports out of any moneys in the state treasury, the custody of which  
39 the treasurer or director of accounts and reports is charged with, by lend-  
40 ing, depositing, or otherwise using, or disposing of the same in any man-  
41 ner whatsoever not provided in this act, or the removal by the treasurer  
42 or director of accounts and reports or by such official's consent, of any  
43 securities deposited by any bank under the provisions of this act out of

1 the treasury, or failing to return or dispose of any securities as provided  
 2 by law, ~~shall be deemed is a severity level 10, nonperson felony, and on~~  
 3 ~~conviction thereof, the treasurer or director of accounts and reports shall~~  
 4 ~~be punished by imprisonment in the custody of the secretary of correc-~~  
 5 ~~tions for a term of not less than two nor more than five years.~~ In addition  
 6 to such criminal liability the treasurer or director of accounts and reports  
 7 and the surety thereof shall also be liable, on official bond, for all profits  
 8 realized from such unlawful use of any moneys. It shall be the duty of  
 9 the attorney general to enter and prosecute to final termination all actions  
 10 for violation of this act.

11 Sec. ~~154.~~ **152.** K.S.A. 75-4314 is hereby amended to read as follows:  
 12 75-4314. Any officer or employee having rendered service for the state  
 13 or any county, city or any municipality or for any public school district or  
 14 for any private school, college or university receiving public funds who  
 15 ~~shall knowingly receive and convert to his or her~~ *receives and converts to*  
 16 *such officer or employee's* use any payment for such services without  
 17 having subscribed and filed an oath as prescribed by this act ~~shall be~~  
 18 ~~deemed is~~ guilty of a severity level 10, nonperson felony ~~and upon con-~~  
 19 ~~viction thereof shall be punished by confinement and hard labor not ex-~~  
 20 ~~ceeding five years or in the county jail not less than six months.~~

21 Sec. ~~155.~~ **153.** K.S.A. 2008 Supp. 75-52,144 is hereby amended to  
 22 read as follows: 75-52,144. (a) Drug abuse treatment programs certified  
 23 in accordance with subsection (b) shall provide:

24 (1) Presentence drug abuse assessments of any person who is con-  
 25 victed of a felony violation of K.S.A. 65-4160 or 65-4162, *prior to such*  
 26 ~~sections~~ **section's repeal or section 6**, and amendments thereto, and  
 27 meets the requirements of K.S.A. 21-4729, and amendments thereto;

28 (2) treatment of all persons who are convicted of a felony violation  
 29 of K.S.A. 65-4160 or 65-4162, *prior to such* ~~sections~~ **section's repeal or**  
 30 *section 6*, and amendments thereto, meet the requirements of K.S.A. 21-  
 31 4729, and amendments thereto, and whose sentence requires completion  
 32 of a certified drug abuse treatment program, as provided in this section;

33 (3) one or more treatment options in the continuum of services  
 34 needed to reach recovery: Detoxification, rehabilitation, continuing care  
 35 and aftercare, and relapse prevention;

36 (4) treatment options to incorporate family and auxiliary support serv-  
 37 ices; and

38 (5) treatment options for alcohol abuse when indicated by the as-  
 39 sessment of the offender or required by the court.

40 (b) The presentence criminal risk-need assessment shall be con-  
 41 ducted by a court services officer or a community corrections officer. The  
 42 presentence drug abuse treatment program placement assessment shall  
 43 be conducted by a drug abuse treatment program certified in accordance

1 with the provisions of this subsection to provide assessment and treatment  
2 services. A drug abuse treatment program shall be certified by the sec-  
3 retary of corrections. The secretary may establish qualifications for the  
4 certification of programs, which may include requirements for supervi-  
5 sion and monitoring of clients; fee reimbursement procedures; handling  
6 of conflicts of interest; delivery of services to clients unable to pay; and  
7 other matters relating to quality and delivery of services by the program.  
8 Drug abuse treatment may include community based and faith based  
9 programs. The certification shall be for a four-year period. Recertification  
10 of a program shall be by the secretary. To be eligible for certification  
11 under this subsection, the secretary shall determine that a drug abuse  
12 treatment program: (1) Meets the qualifications established by the sec-  
13 retary; (2) is capable of providing the assessments, supervision and mon-  
14 itoring required under subsection (a); (3) has employed or contracted with  
15 certified treatment providers; and (4) meets any other functions and du-  
16 ties specified by law.

17 (c) Any treatment provider who is employed or has contracted with  
18 a certified drug abuse treatment program who provides services to of-  
19 fenders shall be certified by the secretary of corrections. The secretary  
20 shall require education and training which shall include, but not be lim-  
21 ited to, case management and cognitive behavior training. The duties of  
22 providers who prepare the presentence drug abuse assessment may also  
23 include appearing at sentencing and probation hearings in accordance  
24 with the orders of the court, monitoring offenders in the treatment pro-  
25 grams, notifying the probation department and the court of any offender  
26 failing to meet the conditions of probation or referrals to treatment, ap-  
27 pearing at revocation hearings as may be required and providing assis-  
28 tance and data reporting and program evaluation.

29 (d) The cost for all drug abuse assessments and certified drug abuse  
30 treatment programs for any person shall be paid by the Kansas sentencing  
31 commission from funds appropriated for such purpose. The Kansas sen-  
32 tencing commission shall contract for payment for such services with the  
33 supervising agency. The sentencing court shall determine the extent, if  
34 any, that such person is able to pay for such assessment and treatment.  
35 Such payments shall be used by the supervising agency to offset costs to  
36 the state. If such financial obligations are not met or cannot be met, the  
37 sentencing court shall be notified for the purpose of collection or review  
38 and further action on the offender's sentence.

39 (e) The community corrections staff shall work with the substance  
40 abuse treatment staff to ensure effective supervision and monitoring of  
41 the offender.

42 (f) The secretary of corrections is hereby authorized to adopt rules  
43 and regulations to carry out the provisions of this section.

1     Sec. ~~156.~~ **154.** K.S.A. 2008 Supp. 76-11a13 is hereby amended to  
2 read as follows: 76-11a13. (a) (1) Subject to the provisions of subsection  
3 (b), the provisions of K.S.A. 76-11a06 through 76-11a11, and amend-  
4 ments thereto, apply only to: (A) Teachers who have completed not less  
5 than three consecutive years of employment, and been offered a contract  
6 for a fourth year of employment, at the state school in which the teacher  
7 is currently employed; and (B) teachers who have completed not less than  
8 two consecutive years of employment, and been offered a contract for a  
9 third year of employment, at the state school in which the teacher is  
10 currently employed if at any time prior to the current employment the  
11 teacher has completed the years of employment requirement of subpart  
12 (A) at the other state school.

13     (2) The state board may waive, at any time, the years of employment  
14 requirements of provision (1) for any teachers employed at a state school.

15     (3) The provisions of this subsection are subject to the provisions of  
16 K.S.A. 76-11a14, and amendments thereto.

17     (b) The provisions of K.S.A. 76-11a06 through 76-11a11, and amend-  
18 ments thereto, do not apply to any teacher whose certificate has been  
19 nonrenewed or revoked by the state board for the reason that the teacher:  
20 (1) Has been convicted of a felony under ~~the uniform controlled sub-~~  
21 ~~stances act sections 1 through 17, and amendments thereto~~; (2) has been  
22 convicted of a felony described in any section of article 34 of chapter 21  
23 of the Kansas Statutes Annotated or an act described in K.S.A. 21-3412  
24 and amendments thereto, if the victim is a minor or student; (3) has been  
25 convicted of a felony described in any section of article 35 of chapter 21  
26 of the Kansas Statutes Annotated, or has been convicted of an act de-  
27 scribed in K.S.A. 21-3517 and amendments thereto, if the victim is a  
28 minor or student; (4) has been convicted of any act described in any  
29 section of article 36 of chapter 21 of the Kansas Statutes Annotated; (5)  
30 has been convicted of a felony described in article 37 of chapter 21 of  
31 the Kansas Statutes Annotated; (6) has been convicted of an attempt  
32 under K.S.A. 21-3301, and amendments thereto, to commit any act spec-  
33 ified in this subsection; (7) has been convicted of any act which is de-  
34 scribed in K.S.A. 21-4301, 21-4301a or 21-4301c, and amendments  
35 thereto; (8) has been convicted in another state or by the federal govern-  
36 ment of an act similar to any act described in this subsection; or (9) has  
37 entered into a criminal diversion agreement after having been charged  
38 with any offense described in this subsection.

39     Sec. ~~157.~~ **155.** K.S.A. 2008 Supp. 79-15,235 is hereby amended to  
40 read as follows: 79-15,235. (a) If any personal representative fails to file  
41 a return or pay the tax if one is due, at the time required by or under the  
42 provisions of this act, there shall be added to the tax an additional amount  
43 equal to 1% of the unpaid balance of the tax due for each month or

1 fraction thereof during which such failure continues, not exceeding 24%  
2 in the aggregate, plus interest at the rate prescribed by subsection (a) of  
3 K.S.A. 79-2968, and amendments thereto, from the date the tax was due  
4 until paid.

5 (b) If after review of a return the director determines that the un-  
6 derpayment of tax was due to the failure of the personal representative  
7 to make a reasonable attempt to comply with the provisions of this act, a  
8 penalty shall be imposed in the amount of 25% of the unpaid balance of  
9 tax due.

10 (c) If any personal representative has failed to file a return or has  
11 filed an incorrect or insufficient return, and after notice from the director  
12 refuses or neglects within 20 days to file a proper return, the director  
13 shall determine the value of the taxable estate according to the best avail-  
14 able information and assess the tax together with a penalty of 50% of the  
15 unpaid balance of tax due plus interest at the rate prescribed by subsec-  
16 tion (a) of K.S.A. 79-2968, and amendments thereto, from the date the  
17 tax was originally due to the date of payment.

18 (d) Any personal representative who, with fraudulent intent, fails to  
19 pay any tax or to make, render or sign any return, or to supply any infor-  
20 mation, within the time required by or under the provisions of this act,  
21 shall be assessed a penalty equal to the amount of the unpaid balance of  
22 tax due plus interest at the rate prescribed by subsection (a) of K.S.A. 79-  
23 2968, and amendments thereto, from the date the tax was originally due  
24 to the date of payment. Such person ~~shall~~ is also be guilty of ~~a~~ *an un-*  
25 *classified nonperson* misdemeanor and, upon conviction, shall be fined  
26 not more than \$1,000 or be imprisoned in the county jail not less than  
27 30 days nor more than one year, or both such fine and imprisonment.

28 (e) Any personal representative who intentionally signs a fraudulent  
29 return ~~shall be~~ is guilty of a *severity level 10, nonperson felony*, and upon  
30 conviction shall be punished by imprisonment for a term not exceeding  
31 ~~five years~~.

32 (f) (1) Whenever the director determines that the failure of the per-  
33 sonal representative to comply with the provisions of subsection (a), (b)  
34 or (c) was due to reasonable causes, the director may waive or reduce any  
35 of the penalties upon making a record of the reasons therefor.

36 (2) No penalty shall be assessed hereunder with respect to any un-  
37 derpayment of estate tax liability reported on any amended return filed  
38 by any personal representative who at the time of filing pays such un-  
39 derpayment and where the return is not being examined at the time of  
40 filing.

41 (3) No penalty assessed hereunder shall be collected if the personal  
42 representative has had the tax abated on appeal, and any penalty collected  
43 upon such tax shall be refunded.

1     Sec. ~~158.~~ **156.** K.S.A. 2008 Supp. 79-3228 is hereby amended to read  
2 as follows: 79-3228. (a) For all taxable years ending prior to January 1,  
3 2002, if any taxpayer, without intent to evade the tax imposed by this act,  
4 shall fail to file a return or pay the tax, if one is due, at the time required  
5 by or under the provisions of this act, but shall voluntarily file a correct  
6 return of income or pay the tax due within six months thereafter, there  
7 shall be added to the tax an additional amount equal to 10% of the unpaid  
8 balance of tax due plus interest at the rate prescribed by subsection (a)  
9 of K.S.A. 79-2968, and amendments thereto, from the date the tax was  
10 due until paid.

11     (b) For all taxable years ending prior to January 1, 2002, if any tax-  
12 payer fails voluntarily to file a return or pay the tax, if one is due, within  
13 six months after the time required by or under the provisions of this act,  
14 there shall be added to the tax an additional amount equal to 25% of the  
15 unpaid balance of tax due plus interest at the rate prescribed by subsec-  
16 tion (a) of K.S.A. 79-2968, and amendments thereto, from the date the  
17 tax was due until paid. Notwithstanding the foregoing, in the event an  
18 assessment is issued following a field audit for any period for which a  
19 return was filed by the taxpayer and all of the tax was paid pursuant to  
20 such return, a penalty shall be imposed for the period included in the  
21 assessment in the amount of 10% of the unpaid balance of tax due shown  
22 in the notice of assessment. If after review of a return for any period  
23 included in the assessment, the secretary or secretary's designee deter-  
24 mines that the underpayment of tax was due to the failure of the taxpayer  
25 to make a reasonable attempt to comply with the provisions of this act,  
26 such penalty shall be imposed for the period included in the assessment  
27 in the amount of 25% of the unpaid balance of tax due.

28     (c) For all taxable years ending after December 31, 2001, if any tax-  
29 payer fails to file a return or pay the tax if one is due, at the time required  
30 by or under the provisions of this act, there shall be added to the tax an  
31 additional amount equal to 1% of the unpaid balance of the tax due for  
32 each month or fraction thereof during which such failure continues, not  
33 exceeding 24% in the aggregate, plus interest at the rate prescribed by  
34 subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date  
35 the tax was due until paid. Notwithstanding the foregoing, in the event  
36 an assessment is issued following a field audit for any period for which a  
37 return was filed by the taxpayer and all of the tax was paid pursuant to  
38 such return, a penalty shall be imposed for the period included in the  
39 assessment in an amount of 1% per month not exceeding 10% of the  
40 unpaid balance of tax due shown in the notice of assessment. If after  
41 review of a return for any period included in the assessment, the secretary  
42 or secretary's designee determines that the underpayment of tax was due  
43 to the failure of the taxpayer to make a reasonable attempt to comply

1 with the provisions of this act, such penalty shall be imposed for the  
2 period included in the assessment in the amount of 25% of the unpaid  
3 balance of tax due.

4 (d) If any taxpayer who has failed to file a return or has filed an  
5 incorrect or insufficient return, and after notice from the director refuses  
6 or neglects within 20 days to file a proper return, the director shall de-  
7 termine the income of such taxpayer according to the best available in-  
8 formation and assess the tax together with a penalty of 50% of the unpaid  
9 balance of tax due plus interest at the rate prescribed by subsection (a)  
10 of K.S.A. 79-2968, and amendments thereto, from the date the tax was  
11 originally due to the date of payment.

12 (e) Any person, who with fraudulent intent, fails to pay any tax or to  
13 make, render or sign any return, or to supply any information, within the  
14 time required by or under the provisions of this act, shall be assessed a  
15 penalty equal to the amount of the unpaid balance of tax due plus interest  
16 at the rate prescribed by subsection (a) of K.S.A. 79-2968, and amend-  
17 ments thereto, from the date the tax was originally due to the date of  
18 payment. Such person ~~shall~~ *is also be guilty of a an unclassified nonperson*  
19 misdemeanor and shall, upon conviction, be fined not more than \$1,000  
20 or be imprisoned in the county jail not less than 30 days nor more than  
21 one year, or both such fine and imprisonment.

22 (f) Any person who willfully signs a fraudulent return ~~shall be is guilty~~  
23 ~~of a severity level 10, nonperson felony, and upon conviction thereof shall~~  
24 ~~be punished by imprisonment for a term not exceeding five years.~~ The  
25 term “person” as used in this section includes any agent of the taxpayer,  
26 and officer or employee of a corporation or a member or employee of a  
27 partnership, who as such officer, employee or member is under a duty to  
28 perform the act in respect of which the violation occurs.

29 (g) (1) Whenever the secretary or the secretary’s designee deter-  
30 mines that the failure of the taxpayer to comply with the provisions of  
31 subsections (a), (b), (c) and (d) of this section was due to reasonable  
32 causes, the secretary or the secretary’s designee may waive or reduce any  
33 of the penalties and may reduce the interest rate to the underpayment  
34 rate prescribed and determined for the applicable period under section  
35 6621 of the federal internal revenue code as in effect on January 1, 1994,  
36 upon making a record of the reasons therefor.

37 (2) No penalty shall be assessed hereunder with respect to any un-  
38 derpayment of income tax liability reported on any amended return filed  
39 by any taxpayer who at the time of filing pays such underpayment and  
40 whose return is not being examined at the time of filing.

41 (3) No penalty assessed hereunder shall be collected if the taxpayer  
42 has had the tax abated on appeal, and any penalty collected upon such  
43 tax shall be refunded.

1 (h) In case of a nonresident or any officer or employee of a corpo-  
2 ration, the failure to do any act required by or under the provisions of  
3 this act shall be deemed an act committed in part at the office of the  
4 director.

5 (i) In the case of a nonresident individual, partnership or corporation,  
6 the failure to do any act required by or under the provision of this act  
7 shall prohibit such nonresident from being awarded any contract for con-  
8 struction, reconstruction or maintenance or for the sale of materials and  
9 supplies to the state of Kansas or any political subdivision thereof until  
10 such time as such nonresident has fully complied with this act.

11 Sec. ~~159.~~ **157.** K.S.A. 79-5201 is hereby amended to read as follows:  
12 79-5201. As used in this act:

13 (a) “Marijuana” means any marijuana, whether real or counterfeit, as  
14 defined by ~~subsection (e) of K.S.A. 65-4101~~ *section 1*, and amendments  
15 thereto, which is held, possessed, transported, transferred, sold or offered  
16 to be sold in violation of the laws of Kansas;

17 (b) “controlled substance” means any drug or substance, whether real  
18 or counterfeit, as defined by ~~subsection (e) of K.S.A. 65-4101~~ *section 1*,  
19 and amendments thereto, which is held, possessed, transported, trans-  
20 ferred, sold or offered to be sold in violation of the laws of Kansas. Such  
21 term shall not include marijuana;

22 (c) “dealer” means any person who, in violation of Kansas law, man-  
23 ufactures, produces, ships, transports or imports into Kansas or in any  
24 manner acquires or possesses more than 28 grams of marijuana, or more  
25 than one gram of any controlled substance, or 10 or more dosage units  
26 of any controlled substance which is not sold by weight;

27 (d) “domestic marijuana plant” means any cannabis plant at any level  
28 of growth which is harvested or tended, manicured, irrigated, fertilized  
29 or where there is other evidence that it has been treated in any other way  
30 in an effort to enhance growth.

31 Sec. ~~160.~~ **158.** K.S.A. 9-2012, ~~12-4104~~, 12-4419, 12-4509, 16-305,  
32 17-12a508, 17-1311a, 19-3519, 21-2501, 21-2511, 21-3301, 21-3302, 21-  
33 3303, 21-3411, 21-3413, 21-3414, 21-3415, 21-3421, 21-3435, 21-3436,  
34 21-3437, ~~21-3447~~, 21-3451, 21-3608a, 21-3609, 21-3701, 21-3704, 21-  
35 3707, 21-3710, 21-3718, 21-3720, 21-3729, 21-3734, 21-3761, 21-3763,  
36 21-3812, 21-3826, 21-3846, 21-3902, 21-3904, 21-3905, 21-3910, 21-  
37 4018, 21-4105, 21-4111, 21-4203, 21-4204, 21-4214, 21-4215, 21-4226,  
38 21-4232, 21-4318, 21-4502, 21-4503a, 21-4603d, 21-4611, 21-4638, 21-  
39 4643, 21-4703, 21-4706, 21-4707, 21-4708, 21-4709, 21-4710, 21-4711,  
40 21-4713, 21-4717, 21-4720, 21-4722, 21-4724, 21-4729, 22-2512, 22-  
41 2515, 22-2802, 22-2908, 22-2909, 22-3303, 22-3412, 22-3604, 22-3901,  
42 22-4405, 22-4903, 22-4906, 36-601, 36-604, 39-720, 41-405, 47-421, 58-  
43 3315, 60-427, **65-6a40**, 65-2859, 65-4102, 65-4105a, 65-4127c, 65-4127d,

1 65-4139, 65-4141, 65-4142, 65-4155, 65-4158, 65-4164, 65-4165, 65-  
2 5709, ~~65-6440, 72-1397~~, 75-4228, 75-4314 and 79-5201 and K.S.A. 2008  
3 Supp. 8-2,128, 8-1567, 9-2203, **12-4104**, 21-3412a, ~~21-3419a~~, 21-3705,  
4 21-3811, 21-4310, 21-4619, **21-4619d**, 21-4704, 21-4705, 21-4714, 22-  
5 3716, 22-3717, 22-4902, 38-2255, 38-2346, 38-2347, 38-2369, 38-2374,  
6 38-2376, 38-2377, 39-717, **40-247**, 40-2,118, ~~40-247~~ 40-5013, 44-5,125,  
7 44-619, 44-706, 44-719, 47-1827, 59-2132, 59-29b46, 60-4104, 65-516,  
8 65-3235, 65-3236, 65-4150, 65-4151, 65-4152, 65-4153, 65-4159, 65-  
9 4159a, 65-4160, 65-4161, 65-4162, 65-4163, 65-4166, 65-4167, 65-4168,  
10 65-4168a, 65-7006, **72-1397**, 72-5445, 72-89c01, 74-9101, 75-7c04, **75-**  
11 **5291**, 75-52,144, ~~75-5291~~, 76-11a13, 79-15,235 and 79-3228 are hereby  
12 repealed.  
13 Sec. ~~161~~ **159**. This act shall take effect and be in force from and  
14 after July 1, 2010, and its publication in the statute book.