HOUSE BILL No. 2668

AN ACT concerning crimes, punishment and criminal procedure; recodification; amending K.S.A. 22-3427 and repealing the existing section; also repealing K.S.A. 21-3101, 21-3102, 21-3103, 21-3104, 21-3105, 21-3106, 21-3107, 21-3108, 21-3109, 21-3110a, 21-3111, 21-3112, 21-3201, 21-3202, 21-3203, 21-3204, 21-3205, 21-3206, 21-3207, 21-3208, 21-3209, 21-3210, 21-3211, 21-3212, 21-3213, 21-3214, 21-3215, 21-3216, 21-3217, 21-3218, 21-3219, 21-3301, 21-3302, 21-3303, 21-3401, 21-3402, 21-3403, 21-3404, 21-3405, 21-3406, 21-3408, 21-3409, 21-3410, 21-3411, 21-3412, 21-3413, 21-3414, 21-3415, 21-3416, 21-3418, 21-3420, 21-3421, 21-3422, 21-3422a, 21-3423, 21-3424, 21-3425, 21-3426, 21-3427, 21-3428, 21-3430, 21-3434, 21-3435, 21-3437, 21-3439, 21-3442, 21-3443, 21-3444, 21-3445, 21-3446, 21-3447, 21-3448, 21-3449, 21-3450, 21-3451, 21-3452, 21-3501, 21-3502, 21-3503, 21-3504, 21-3505, 21-3506, 21-3507, 21-3508, 21-3510, 21-3511, 21-3512, 21-3513, 21-3515, 21-3516, 21-3517, 21-3518, 21-3520, 21-3521, 21-3522, 21-3601, 21-3602, 21-3603, 21-3604, 21-3604a, 21-3605, 21-3608, 21-3609, 21-3610b, 21-3612, 21-3701, 21-3703, 21-3704, 21-3707, 21-3709, 21-3710, 21-3711, 21-3712, 21-3713, 21-3715, 21-3716, 21-3719, 21-3720, 21-3721, 21-3722, 21-3724, 21-3725, 21-3726, 21-3727, 21-3728, 21-3729, 21-3730, 21-3731, 21-3734, 21-3738, 21-3739, 21-3742, 21-3743, 21-3744, 21-3748, 21-3749, 21-3750, 21-3751, 21-3755, 21-3756, 21-3757, 21-3758, 21-3759, 21-3760, 21-3761, 21-3762, 21-3763, 21-3764, 21-3765, 21-3766, 21-3801, 21-3802, 21-3805, 21-3807, 21-3808, 21-3809, 21-3810, 21-3812, 21-3813, 21-3814, 21-3815, 21-3816, 21-3817, 21-3818, 21-3819, 21-3820, 21-3821, 21-3822, 21-3823, 21-3824, 21-3825, 21-3827, 21-3828, 21-3829, 21-3830, 21-3831, 21-3832, 21-3833, 21-3834, 21-3835, 21-3836, 21-3837, 21-3838, 21-3839, 21-3840, 21-3841, 21-3842, 21-3844, 21-3845, 21-3846, 21-3847, 21-3848, 21-3849, 21-3850, 21-3851, 21-3852, 21-3853, 21-3854, 21-3855, 21-3856, 21-3901, 21-3902, 21-3903, 21-3904, 21-3905, 21-3910, 21-3911, 21-3912, 21-4001, 21-4002, 21-4003, 21-4004, 21-4005, 21-4006, 21-4018, 21-4019, 21-4101, 21-4102, 21-4103, 21-4104, 21-4105, 21-4106, 21-4106a, 21-4107, 21-4110, 21-4111, 21-4113, 21-4202, 21-4204a, 21-4206, 21-4207, 21-4208, 21-4209, 21-4209a, 21-4209b, 21-4210, 21-4211, 21-4212, 21-4213, 21-4216, 21-4219, 21-4220, 21-4221, 21-4222, 21-4223, 21-4224, 21-4225, 21-4227, 21-4228, 21-4229, 21-4230, 21-4231, 21-4232, 21-4301, 21-4301a, 21-4301b, 21-4301c, 21-4302, 21-4303, 21-4303a, 21-4304, 21-4305, 21-4306, 21-4307, 21-4308, 21-4309, 21-4311, 21-4312, 21-4313, 21-4314, 21-4317, 21-4318, 21-4401, 21-4402, 21-4403, 21-4404, 21-4405, 21-4406, 21-4407, 21-4408, 21-4409, 21-4410, 21-4501, 21-4501a, 21-4503, 21-4503a, 21-4504, 21-4601, 21-4602, 21-4603, 21-4603b, 21-4604, 21-4605, 21-4606, 21-4606a, 21-4606b, 21-4607, 21-4609, 21-4610, 21-4610a, 21-4612, 21-4613, 21-4614, 21-4614a, 21-4615, 21-4618, 21-4620, 21-4621, 21-4622, 21-4623, 21-4624, 21-4625, 21-4626, 21-4627, 21-4629, 21-4630, 21-4631, 21-4632, 21-4633, 21-4634, 21-4635, 21-4636, 21-4637, 21-4638, 21-4639, 21-4640, 21-4641, 21-4643, 21-4644, 21-4645, 21-4701, 21-4702, 21-4703, 21-4706, 21-4707, 21-4709, 21-4710, 21-4711, 21-4716, 21-4718, 21-4720, 21-4721, 21-4722, 21-4723, 21-4724, 21-4725, 21-4726, 21-4727, 21-4728 and 21-4801 and K.S.A. 2009 Supp. 21-3110, 21-3412a, 21-3419, 21-3419a, 21-3436, 21-3438, 21-3523, 21-3525, 21-3608a, 21-3610, 21-3610c, 21-3702, 21-3705, 21-3718, 21-3736, 21-3737, 21-3811, 21-3826, 21-3843, 21-4015a, 21-4201, 21-4203, 21-4204, 21-4205, 21-4217, 21-4218, 21-4226, 21-4310, 21-4315, 21-4316, 21-4319, 21-4502, 21-4603d, 21-4608, 21-4611, 21-4619, 21-4642, 21-4704, 21-4705, 21-4708, 21-4713, 21-4714, 21-4715, 21-4717, 21-4719 and 21-4729.

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

New Section 1. This code is called and may be cited as the Kansas criminal code.

New Sec. 2. A crime is an act or omission defined by law and for which, upon conviction, a sentence of death, imprisonment or fine, or both imprisonment and fine, is authorized or, in the case of a traffic infraction or a cigarette or tobacco infraction, a fine is authorized. Crimes are classified as felonies, misdemeanors, traffic infractions and cigarette or tobacco infractions.

(a) A felony is a crime punishable by death or by imprisonment in any state correctional institution or a crime which is defined as a felony by law.

(b) A traffic infraction is a violation of any of the statutory provisions listed in subsection (c) of K.S.A. 8-2118, and amendments thereto.

(c) A cigarette or tobacco infraction is a violation of subsection (m) or (n) of K.S.A. 79-3321, and amendments thereto.

(d) All other crimes are misdemeanors.

New Sec. 3. (a) No conduct constitutes a crime against the state of Kansas unless it is made criminal in this code or in another statute of this state, but where a crime is denounced by any statute of this state, but not defined, the definition of such crime at common law shall be applied.

(b) Unless expressly stated otherwise, or the context otherwise requires, the provisions of this code apply to crimes created by statute other than in this code.

(c) This code does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

(d) This code has no application to crimes committed prior to July 1, 2011. A crime is committed prior to the effective date of the code if any

of the essential elements of the crime as then defined occurred before that date. Prosecutions for prior crimes shall be governed, prosecuted and punished under the laws existing at the time such crimes were committed.

New Sec. 4. The provisions of the Kansas criminal code are severable. If any provision of this code or any part thereof and any amendment thereto is held invalid or unconstitutional or its application to any person or circumstance is held invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of the code without such invalid or unconstitutional provision.

New Sec. 5. This code does not bar, suspend or otherwise affect any civil right or remedy, authorized by law to be enforced in a civil action, based on conduct which this code makes punishable. The civil injury caused by criminal conduct is not merged in the crime.

New Sec. 6. (a) A person is subject to prosecution and punishment under the law of this state if:

(1) The person commits a crime wholly or partly within this state;

(2) being outside the state, the person counsels, aids, abets or conspires with another to commit a crime within this state; or

(3) being outside the state, the person commits an act which constitutes an attempt to commit a crime within this state.

(b) A crime is committed partly within this state if:

(1) An act which is a constituent and material element of the offense;

(2) an act which is a substantial and integral part of an overall continuing criminal plan; or

(3) the proximate result of such act, occurs within the state.

(c) If the body of a homicide victim is found within the state, a person who is charged with committing the homicide is subject to prosecution and punishment under the laws of this state for commission of the homicide.

(d) A crime which is based on an omission to perform a duty imposed by the law of this state, is committed within the state, regardless of the location of the person omitting to perform such duty at the time of the omission.

(e) It is not a defense that the person's conduct is also a crime under the laws of another state or of the United States or of another country.

(f) This state includes the land and water and the air space above such land and water with respect to which the state has legislative jurisdiction.

(g) Jurisdiction is a question of law to be determined by the court by the preponderance of the evidence.

New Sec. 7. (a) A prosecution for murder, terrorism or illegal use of weapons of mass destruction may be commenced at any time.

(b) Except as provided in subsection (e), a prosecution for any crime shall be commenced within 10 years after its commission if the victim is the Kansas public employees retirement system.

(c) Except as provided in subsection (e), a prosecution for a sexually violent offense as defined in K.S.A. 22-3717, and amendments thereto, shall be commenced within the limitation of time provided by the law pertaining to such offense or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later.

(d) Except as provided by subsection (e), a prosecution for any crime, as defined in section 2, and amendments thereto, not governed by subsections (a), (b) or (c) shall be commenced within five years after it is committed.

(e) The period within which a prosecution shall be commenced shall not include any period in which:

(1) The accused is absent from the state;

(2) the accused is concealed within the state so that process cannot be served upon the accused;

(3) the fact of the crime is concealed;

(4) a prosecution is pending against the defendant for the same conduct, even if the indictment or information which commences the prosecution is quashed or the proceedings thereon are set aside, or are reversed on appeal;

(5) an administrative agency is restrained by court order from inves-

tigating or otherwise proceeding on a matter before it as to any criminal conduct defined as a violation of any of the provisions of article 41 of chapter 25 and article 2 of chapter 46 of the Kansas Statutes Annotated, and amendments thereto, which may be discovered as a result thereof regardless of who obtains the order of restraint; or

(6) whether the fact of the crime is concealed by the active act or conduct of the accused, there is substantially competent evidence to believe two or more of the following factors are present:

(A) The victim was a child under 15 years of age at the time of the crime;

(B) the victim was of such age or intelligence that the victim was unable to determine that the acts constituted a crime;

(C) the victim was prevented by a parent or other legal authority from making known to law enforcement authorities the fact of the crime whether or not the parent or other legal authority is the accused; and

(D) there is substantially competent expert testimony indicating the victim psychologically repressed such witness' memory of the fact of the crime, and in the expert's professional opinion the recall of such memory is accurate and free of undue manipulation, and substantial corroborating evidence can be produced in support of the allegations contained in the complaint or information but in no event may a prosecution be commenced as provided in this section later than the date the victim turns 28 years of age. Corroborating evidence may include, but is not limited to, evidence the defendant committed similar acts against other persons or evidence of contemporaneous physical manifestations of the crime.

(f) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing offense plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(g) A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution. No such prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.

(h) As used in this section, "parent or other legal authority" shall include, but not be limited to, natural and stepparents, grandparents, aunts, uncles or siblings.

New Sec. 8. (a) In all criminal proceedings, the state has the burden to prove beyond a reasonable doubt that a defendant is guilty of a crime. This standard requires the prosecution to prove beyond a reasonable doubt each required element of a crime.

(b) A defendant is presumed to be innocent until proven guilty. When there is a reasonable doubt as to which of two or more degrees of a crime the defendant is guilty, the defendant shall be convicted of the lowest degree only. When there is a reasonable doubt as to a defendant's guilt, the defendant shall be found not guilty.

(c) A defendant is entitled to an instruction on every affirmative defense that is supported by competent evidence. Competent evidence is that which could allow a rational fact finder to reasonably conclude that the defense applies. Once the defendant satisfies the burden of producing such evidence, the state has the burden of disproving the defense beyond a reasonable doubt.

(d) Issues raised under sections 6, 7 and 10, and amendments thereto, are not affirmative defenses under subsection (c).

New Sec. 9. (a) When the same conduct of a defendant may establish the commission of more than one crime under the laws of this state, the defendant may be prosecuted for each of such crimes. Each of such crimes may be alleged as a separate count in a single complaint, information or indictment.

(b) Upon prosecution for a crime, the defendant may be convicted of either the crime charged or a lesser included crime, but not both. A lesser included crime is:

(1) A lesser degree of the same crime;

(2) a crime where all elements of the lesser crime are identical to some of the elements of the crime charged;

(3) an attempt to commit the crime charged; or

(4) an attempt to commit a crime defined under paragraph (1) or (2).

(c) Whenever charges are filed against a person, accusing the person of a crime which includes another crime of which the person has been convicted, the conviction of the lesser included crime shall not bar prosecution or conviction of the crime charged if the crime charged was not consummated at the time of conviction of the lesser included crime, but the conviction of the lesser included crime shall be annulled upon the filing of such charges. Evidence of the person's plea or any admission or statement made by the person in connection therewith in any of the proceedings which resulted in the person's conviction of the lesser included crime shall not be admissible at the trial of the crime charged. If the person is convicted of the crime charged, or of a lesser included crime, the person so convicted shall receive credit against any prison sentence imposed or fine to be paid for the period of confinement actually served or the amount of any fine actually paid under the sentence imposed for the annulled conviction.

(d) Unless otherwise provided by law, when crimes differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct, the defendant:

(1) May not be convicted of the two crimes based upon the same conduct; and

(2) shall be sentenced according to the terms of the more specific crime.

New Sec. 10. (a) A prosecution is barred if the defendant was formerly prosecuted for the same crime, based upon the same facts, if such former prosecution:

(1) Resulted in either a conviction or an acquittal or in a determination that the evidence was insufficient to warrant a conviction;

(2) was terminated by a final order or judgment, even if entered before trial, which required a determination inconsistent with any fact or legal proposition necessary to a conviction in the subsequent prosecution; or

(3) was terminated without the consent of the defendant after the defendant had been placed in jeopardy, except where such termination shall have occurred by reason of:

(A) The illness or death of an indispensable party;

(B) the inability of the jury to agree; or

(C) the impossibility of the jury arriving at a verdict.

A conviction of an included crime is an acquittal of the offense charged.

(b) A prosecution is barred if the defendant was formerly prosecuted for a different crime, or for the same crime based upon different facts, if such former prosecution:

(1) Resulted in either a conviction or an acquittal and the subsequent prosecution is for a crime or crimes of which evidence has been admitted in the former prosecution and which might have been included as other counts in the complaint, indictment or information filed in such former prosecution or upon which the state then might have elected to rely; or was for a crime which involves the same conduct, unless each prosecution requires proof of a fact not required in the other prosecution, or the crime was not consummated when the former trial began;

(2) was terminated by a final order or judgment, even if entered before trial, which required a determination inconsistent with any fact necessary to a conviction in the subsequent prosecution; or

(3) was terminated without the consent of the defendant after the defendant had been placed in jeopardy, except where such termination shall have occurred by reason of:

(A) The illness or death of an indispensable party;

(B) the inability of the jury to agree; or

(C) the impossibility of the jury arriving at a verdict, and the subsequent prosecution is for an offense of which the defendant could have been convicted if the former prosecution had not been terminated improperly.

(c) A prosecution is barred if the defendant was formerly prosecuted in a district court of the United States or in a state court of general jurisdiction of another state or in the municipal court of any city of this state for a crime which is within the concurrent jurisdiction of this state, if such former prosecution:

(1) Resulted in either a conviction or an acquittal, and the subsequent

prosecution is for the same conduct, unless each prosecution requires proof of a fact not required in the other prosecution, or the offense was not consummated when the former trial began; or

(2) was terminated by a final order or judgment, even if entered before trial, which required a determination inconsistent with any fact necessary to a conviction in the prosecution in this state.

(d) A prosecution is not barred under this section:

(1) By a former prosecution before a court which lacked jurisdiction over the defendant or the offense;

(2) by a former prosecution procured by the defendant without the knowledge of a prosecuting officer authorized to commence a prosecution for the maximum offense which might have been charged on the facts known to the defendant, and with the purpose of avoiding the sentence which otherwise might be imposed; or

(3) if subsequent proceedings resulted in the invalidation, setting aside, reversal or vacating of the conviction, unless the defendant was adjudged not guilty.

(e) In no case where a conviction for a lesser included crime has been invalidated, set aside, reversed or vacated shall the defendant be subsequently prosecuted for a higher degree of the crime for which such defendant was originally convicted.

(f) A defendant is in jeopardy when such defendant is put on trial in a court of competent jurisdiction upon an indictment, information or complaint sufficient in form and substance to sustain a conviction, and in the case of trial by jury, when the jury has been impaneled and sworn, or where the case is tried to the court without a jury, when the court has begun to hear evidence.

New Sec. 11. The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

(a) "Act" includes a failure or omission to take action.

(b) "Another" means a person or persons as defined in this code other than the person whose act is claimed to be criminal.

(c) "Conduct" means an act or a series of acts, and the accompanying mental state.

(d) "Conviction" includes a judgment of guilt entered upon a plea of guilty.

(e) "Deception" means knowingly creating or reinforcing a false impression, including false impressions as to law, value, intention or other state of mind. Deception as to a person's intention to perform a promise shall not be inferred from the fact alone that such person did not subsequently perform the promise. Falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive reasonable persons, is not deception.

(f) "Deprive permanently" means to:

(1) Take from the owner the possession, use or benefit of property, without an intent to restore the same;

(2) retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(3) sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

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

(h) "DNA" means deoxyribonucleic acid.

(i) "Dwelling" means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.

(j) "Expungement" means the sealing of records such that the records are unavailable except to the petitioner and criminal justice agencies as

provided by K.S.A. 22-4701 et seq., and amendments thereto, and except as provided in this act.

(k) "Firearm" means any weapon designed or having the capacity to propel a projectile by force of an explosion or combustion.

(l) "Forcible felony" includes any treason, murder, voluntary manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery, aggravated sodomy and any other felony which involves the use or threat of physical force or violence against any person.

(m) "Intent to defraud" means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

(n) "Law enforcement officer" means:

(1) Any person who by virtue of such person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes;

(2) any officer of the Kansas department of corrections or, for the purposes of sections 47 and subsection (d) of section 48, and amendments thereto, any employee of the Kansas department of corrections; or

(3) any university police officer or campus police officer, as defined in K.S.A. 22-2401a, and amendments thereto.

(o) "Obtain" means to bring about a transfer of interest in or possession of property, whether to the offender or to another.

(p) "Obtains or exerts control" over property includes, but is not limited to, the taking, carrying away, sale, conveyance, transfer of title to, interest in, or possession of property.

(q) "Owner" means a person who has any interest in property.

(r) "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.

(s) "Personal property" means goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged, or dismissed.

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

(u) "Property" means anything of value, tangible or intangible, real or personal.

(v) "Prosecution" means all legal proceedings by which a person's liability for a crime is determined.

(w) "Prosecutor" means the same as prosecuting attorney in K.S.A. 22-2202, and amendments thereto.

(x) "Public employee" is a person employed by or acting for the state or by or for a county, municipality or other subdivision or governmental instrumentality of the state for the purpose of exercising their respective powers and performing their respective duties, and who is not a "public officer."

(y) "Public officer" includes the following, whether elected or appointed:

(1) An executive or administrative officer of the state, or a county, municipality or other subdivision or governmental instrumentality of or within the state;

(2) a member of the legislature or of a governing board of a county, municipality, or other subdivision of or within the state;

(3) a judicial officer, which shall include a judge of the district court, juror, master or any other person appointed by a judge or court to hear or determine a cause or controversy;

(4) a hearing officer, which shall include any person authorized by law or private agreement, to hear or determine a cause or controversy and who is not a judicial officer;

(5) a law enforcement officer; and

(6) any other person exercising the functions of a public officer under color of right.

(z) "Real property" or "real estate" means every estate, interest, and right in lands, tenements and hereditaments.

(aa) "Solicit" or "solicitation" means to command, authorize, urge, incite, request or advise another to commit a crime.

(bb) "State" or "this state" means the state of Kansas and all land and water in respect to which the state of Kansas has either exclusive or concurrent jurisdiction, and the air space above such land and water. "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(cc) "Stolen property" means property over which control has been obtained by theft.

(dd) "Threat" means a communicated intent to inflict physical or other harm on any person or on property.

(ee) "Written instrument" means any paper, document or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying or recording information, and any money, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

New Sec. 12. (a) A person commits a crime only if such person voluntarily engages in conduct, including an act, an omission or possession.

(b) A person who omits to perform an act does not commit a crime unless a law provides that the omission is an offense or otherwise provides that such person has a duty to perform the act.

New Sec. 13. (a) Except as otherwise provided, a culpable mental state is an essential element of every crime defined by this code. A culpable mental state may be established by proof that the conduct of the accused person was committed "intentionally," "knowingly" or "recklessly."

(b) Culpable mental states are classified according to relative degrees, from highest to lowest, as follows:

(1) Intentionally;

(2) knowingly;

(3) recklessly.

(c) Proof of a higher degree of culpability than that charged constitutes proof of the culpability charged. If recklessness suffices to establish an element, that element also is established if a person acts knowingly or intentionally. If acting knowingly suffices to establish an element, that element also is established if a person acts intentionally.

(d) If the definition of a crime does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element.

(e) If the definition of a crime does not prescribe a culpable mental state, but one is nevertheless required under subsection (d), "intent," "knowledge" or "recklessness" suffices to establish criminal responsibility.

(f) If the definition of a crime prescribes a culpable mental state that is sufficient for the commission of a crime, without distinguishing among the material elements thereof, such provision shall apply to all the material elements of the crime, unless a contrary purpose plainly appears.

(g) If the definition of a crime prescribes a culpable mental state with regard to a particular element or elements of that crime, the prescribed culpable mental state shall be required only as to specified element or elements, and a culpable mental state shall not be required as to any other element of the crime unless otherwise provided.

(h) A person acts "intentionally", or "with intent," with respect to the nature of such person's conduct or to a result of such person's conduct when it is such person's conscious objective or desire to engage in the conduct or cause the result. All crimes defined in this code in which the mental culpability requirement is expressed as "intentionally" or "with intent" are specific intent crimes. A crime may provide that any other culpability requirement is a specific intent.

(i) A person acts "knowingly", or "with knowledge," with respect to the nature of such person's conduct or to circumstances surrounding such person's conduct when such person is aware of the nature of such person's conduct or that the circumstances exist. A person acts "knowingly," or "with knowledge," with respect to a result of such person's conduct when such person is aware that such person's conduct is reasonably certain to cause the result. All crimes defined in this code in which the mental

culpability requirement is expressed as "knowingly," "known," or "with knowledge" are general intent crimes.

(j) A person acts "recklessly" or is "reckless", when such person consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

New Sec. 14. A person may be guilty of a crime without having a culpable mental state if the crime is:

(a) A misdemeanor, cigarette or tobacco infraction or traffic infraction and the statute defining the crime clearly indicates a legislative purpose to impose absolute liability for the conduct described;

(b) a felony and the statute defining the crime clearly indicates a legislative purpose to impose absolute liability for the conduct described;

(c) a violation of K.S.A. 8-1567 or 8-1567a, and amendments thereto; or

(d) a violation of K.S.A. 22-4901 et seq., and amendments thereto.

New Sec. 15. Proof of a culpable mental state does not require proof:

(a) Of knowledge of the existence or constitutionality of the statute under which the accused is prosecuted, or the scope or meaning of the terms used in that statute; or

(b) that the accused had knowledge of the age of a minor, even though age is a material element of the crime with which the accused is charged.

New Sec. 16. (a) The fact that a person charged with a crime was in an intoxicated condition at the time the alleged crime was committed is a defense only if such condition was involuntarily produced and rendered such person substantially incapable of knowing or understanding the wrongfulness of such person's conduct and of conforming such person's conduct to the requirements of law.

(b) An act committed while in a state of voluntary intoxication is not less criminal by reason thereof, but when a particular intent or other state of mind is a necessary element to constitute a particular crime, the fact of intoxication may be taken into consideration in determining such intent or state of mind.

New Sec. 17. (a) A person is not guilty of a crime other than murder or voluntary manslaughter by reason of conduct which such person performs under the compulsion or threat of the imminent infliction of death or great bodily harm, if such person reasonably believes that death or great bodily harm will be inflicted upon such person or upon such person's spouse, parent, child, brother or sister if such person does not perform such conduct.

(b) The defense provided by this section is not available to a person who intentionally or recklessly places such person's self in a situation in which such person will be subjected to compulsion or threat.

New Sec. 18. (a) A person's ignorance or mistake as to a matter of either fact or law, except as provided in section 15, and amendments thereto, is a defense if it negates the existence of the culpable mental state which the statute prescribes with respect to an element of the crime.

(b) A person's reasonable belief that such person's conduct does not constitute a crime is a defense if:

(1) The crime is defined by an administrative regulation or order which is not known to such person and has not been published in the Kansas administrative regulations or an annual supplement thereto, as provided by law; and such person could not have acquired such knowledge by the exercise of due diligence pursuant to facts known to such person;

(2) such person acts in reliance upon a statute which later is determined to be invalid;

(3) such person acts in reliance upon an order or opinion of the supreme court of Kansas or a United States appellate court later overruled or reversed; or

(4) such person acts in reliance upon an official interpretation of the statute, regulation or order defining the crime made by a public officer or agency legally authorized to interpret such statute.

(c) Although a person's ignorance or mistake of fact or law, or reasonable belief, as described in subsection (b), is a defense to the crime

charged, such person may be convicted of an included crime of which such person would be guilty if the fact or law were as such person believed it to be.

New Sec. 19. A person is not guilty of a crime if such person's criminal conduct was induced or solicited by a public officer or such officer's agent for the purposes of obtaining evidence to prosecute such person, unless:

(a) The public officer or such officer's agent merely afforded an opportunity or facility for committing the crime in furtherance of a criminal purpose originated by such person or a co-conspirator; or

(b) The crime was of a type which is likely to occur and recur in the course of such person's business, and the public officer or such officer's agent in doing the inducing or soliciting did not mislead such person into believing such person's conduct to be lawful.

New Sec. 20. It shall be a defense to a prosecution under any statute that the defendant, as a result of mental disease or defect, lacked the culpable mental state required as an element of the crime charged. Mental disease or defect is not otherwise a defense.

New Sec. 21. (a) A person is justified in the use of force against another when and to the extent it appears to such person and such person reasonably believes that such force is necessary to defend such person or a third person against such other's imminent use of unlawful force.

(b) A person is justified in the use of deadly force under circumstances described in subsection (a) if such person reasonably believes deadly force is necessary to prevent imminent death or great bodily harm to such person or a third person.

(c) Nothing in this section shall require a person to retreat if such person is using force to protect such person or a third person.

New Sec. 22. (a) A person is justified in the use of force against another when and to the extent that it appears to such person and such person reasonably believes that such force is necessary to prevent or terminate such other's unlawful entry into or attack upon such person's dwelling or occupied vehicle.

(b) A person is justified in the use of deadly force to prevent or terminate unlawful entry into or attack upon any dwelling or occupied vehicle if such person reasonably believes deadly force is necessary to prevent imminent death or great bodily harm to such person or another.

(c) Nothing in this section shall require a person to retreat if such person is using force to protect such person's dwelling or occupied vehicle.

New Sec. 23. A person who is lawfully in possession of property other than a dwelling or occupied vehicle is justified in the threat or use of force against another for the purpose of preventing or terminating an unlawful interference with such property. Only such degree of force or threat thereof as a reasonable person would deem necessary to prevent or terminate the interference may intentionally be used.

New Sec. 24. The justification described in sections 21, 22 and 23, and amendments thereto, is not available to a person who:

(a) Is attempting to commit, committing or escaping from the commission of a forcible felony;

(b) initially provokes the use of force against such person or another, with intent to use such force as an excuse to inflict bodily harm upon the assailant; or

(c) otherwise initially provokes the use of force against such person or another, unless:

(1) Such person has reasonable ground to believe that such person is in imminent danger of death or great bodily harm, and has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or

(2) in good faith, such person withdraws from physical contact with the assailant and indicates clearly to the assailant that such person desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

New Sec. 25. (a) A law enforcement officer, or any person whom such officer has summoned or directed to assist in making a lawful arrest, need not retreat or desist from efforts to make a lawful arrest because of

resistance or threatened resistance to the arrest. Such officer is justified in the use of any force which such officer reasonably believes to be necessary to effect the arrest and of any force which such officer reasonably believes to be necessary to defend the officer's self or another from bodily harm while making the arrest. However, such officer is justified in using force likely to cause death or great bodily harm only when such officer reasonably believes that such force is necessary to prevent death or great bodily harm to such officer or another person, or when such officer reasonably believes that such force is necessary to prevent the arrest from being defeated by resistance or escape and such officer has probable cause to believe that the person to be arrested has committed or attempted to commit a felony involving great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that such person will endanger human life or inflict great bodily harm unless arrested without delay.

(b) A law enforcement officer making an arrest pursuant to an invalid warrant is justified in the use of any force which such officer would be justified in using if the warrant were valid, unless such officer knows that the warrant is invalid.

New Sec. 26. (a) A private person who makes, or assists another private person in making a lawful arrest is justified in the use of any force which such person would be justified in using if such person were summoned or directed by a law enforcement officer to make such arrest, except that such person is justified in the use of force likely to cause death or great bodily harm only when such person reasonably believes that such force is necessary to prevent death or great bodily harm to such person or another.

(b) A private person who is summoned or directed by a law enforcement officer to assist in making an arrest which is unlawful, is justified in the use of any force which such person would be justified in using if the arrest were lawful.

New Sec. 27. A person is not authorized to use force to resist an arrest which such person knows is being made either by a law enforcement officer or by a private person summoned and directed by a law enforcement officer to make the arrest, even if the person arrested believes that the arrest is unlawful.

New Sec. 28. A person who is not engaged in an unlawful activity and who is attacked in a place where such person has a right to be has no duty to retreat and has the right to stand such person's ground and meet force with force.

New Sec. 29. (a) A person who uses force which, subject to the provisions of section 24, and amendments thereto, is justified pursuant to sections 21, 22 or 23, and amendments thereto, is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer who was acting in the performance of such officer's official duties and the officer identified the officer's self in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer. As used in this subsection, "criminal prosecution" includes arrest, detention in custody and charging or prosecution of the defendant.

(b) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (a), but the agency shall not arrest the person for using force unless it determines that there is probable cause for the arrest.

(c) A prosecutor may commence a criminal prosecution upon a determination of probable cause.

New Sec. 30. (a) A person is criminally responsible for a crime committed by another if such person, acting with the mental culpability required for the commission thereof, advises, hires, counsels or procures the other to commit the crime or intentionally aids the other in committing the conduct constituting the crime.

(b) A person liable under subsection (a) is also liable for any other crime committed in pursuance of the intended crime if reasonably foreseeable by such person as a probable consequence of committing or attempting to commit the crime intended.

(c) A person liable under this section may be charged with and con-

victed of the crime although the person alleged to have directly committed the act constituting the crime:

(1) Lacked criminal or legal capacity;

(2) has not been convicted;

(3) has been acquitted; or

(4) has been convicted of some other degree of the crime or of some other crime based on the same act.

New Sec. 31. (a) A corporation is criminally responsible for acts committed by its agents when acting within the scope of their authority.

(b) "Agent" means any director, officer, servant, employee or other person who is authorized to act in behalf of the corporation.

New Sec. 32. (a) An individual who performs criminal acts, or causes such acts to be performed, in the name of or on behalf of a corporation is legally responsible to the same extent as if such acts were in the person's own name or on the person's own behalf.

(b) An individual who has been convicted of a crime based on conduct performed by such individual for and on behalf of a corporation is subject to punishment as an individual upon conviction of such crime, although a lesser or different punishment is authorized for the corporation.

New Sec. 33. (a) An attempt is any overt act toward the perpetration of a crime done by a person who intends to commit such crime but fails in the perpetration thereof or is prevented or intercepted in executing such crime.

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

(c) An attempt to commit an off-grid felony shall be ranked at nondrug severity level 1. An attempt to commit any other nondrug felony shall be ranked on the nondrug scale at two severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for an attempt to commit a nondrug felony shall be a severity level 10. The provisions of this subsection shall not apply to a violation of attempting to commit the crime of terrorism pursuant to section 56, and amendments thereto, or of illegal use of weapons of mass destruction pursuant to section 57, and amendments thereto.

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

(e) An attempt to commit a class A person misdemeanor is a class B person misdemeanor. An attempt to commit a class A nonperson misdemeanor is a class B nonperson misdemeanor.

(f) An attempt to commit a class B or C misdemeanor is a class C misdemeanor.

New Sec. 34. (a) A conspiracy is an agreement with another person to commit a crime or to assist in committing a crime. No person may be convicted of a conspiracy unless an overt act in furtherance of such conspiracy is alleged and proved to have been committed by such person or by a co-conspirator.

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

(c) Conspiracy to commit an off-grid felony shall be ranked at nondrug severity level 2. Conspiracy to commit any other nondrug felony shall be ranked on the nondrug scale at two severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for conspiracy to commit a nondrug felony shall be a severity level 10. The provisions of this subsection shall not apply to a violation of conspiracy to commit the crime of terrorism pursuant to section 56, and amendments thereto, or of illegal use of weapons of mass destruction pursuant to section 57, and amendments thereto.

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

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

New Sec. 35. (a) Criminal solicitation is commanding, encouraging or requesting another person to commit a felony, attempt to commit a felony or aid and abet in the commission or attempted commission of a felony for the purpose of promoting or facilitating the felony.

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

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

(d) Criminal solicitation to commit an off-grid felony shall be ranked at nondrug severity level 3. Criminal solicitation to commit any other nondrug felony shall be ranked on the nondrug scale at three severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for criminal solicitation to commit a nondrug felony shall be a severity level 10. The provisions of this subsection shall not apply to a violation of criminal solicitation to commit the crime of terrorism pursuant to section 56, and amendments thereto, or of illegal use of weapons of mass destruction pursuant to section 57, and amendments thereto.

(e) Criminal solicitation to commit a felony which prescribes a sentence on the drug grid shall reduce the prison term prescribed in the drug grid block for an underlying or completed crime by six months.

New Sec. 36. (a) Capital murder is the:

(1) Intentional and premeditated killing of any person in the commission of kidnapping, as defined in subsection (a) of section 43, and amendments thereto, or aggravated kidnapping, as defined in subsection (b) of section 43, and amendments thereto, when the kidnapping or aggravated kidnapping was committed with the intent to hold such person for ransom;

(2) intentional and premeditated killing of any person pursuant to a contract or agreement to kill such person or being a party to the contract or agreement pursuant to which such person is killed;

(3) intentional and premeditated killing of any person by an inmate or prisoner confined in a state correctional institution, community correctional institution or jail or while in the custody of an officer or employee of a state correctional institution, community correctional institution or jail;

(4) intentional and premeditated killing of the victim of one of the following crimes in the commission of, or subsequent to, such crime: Rape, as defined in section 67, and amendments thereto, criminal sodomy, as defined in subsections (a)(3) or (a)(4) of section 68, and amendments thereto, or aggravated criminal sodomy, as defined in subsection (b) of section 68, and amendments thereto, or any attempt thereof, as defined in section 33, and amendments thereto;

(5) intentional and premeditated killing of a law enforcement officer;

(6) intentional and premeditated killing of more than one person as a part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct; or

(7) intentional and premeditated killing of a child under the age of 14 in the commission of kidnapping, as defined in subsection (a) of section 43, and amendments thereto, or aggravated kidnapping, as defined in subsection (b) of section 43, and amendments thereto, when the kidnapping or aggravated kidnapping was committed with intent to commit a sex offense upon or with the child or with intent that the child commit or submit to a sex offense.

(b) For purposes of this section, "sex offense" means rape, as defined in section 67, and amendments thereto, aggravated indecent liberties with a child, as defined in subsection (b) of section 70, and amendments thereto, aggravated criminal sodomy, as defined in subsection (b) of section 68, and amendments thereto, prostitution, as defined in section 229, and amendments thereto, promoting prostitution, as defined in section 230, and amendments thereto, or sexual exploitation of a child, as defined in section 74, and amendments thereto.

(c) Capital murder is an off-grid person felony.

New Sec. 37. (a) Murder in the first degree is the killing of a human being committed:

(1) Intentionally, and with premeditation; or

(2) in the commission of, attempt to commit, or flight from any inherently dangerous felony.

(b) Murder in the first degree is an off-grid person felony.

(c) As used in this section, an "inherently dangerous felony" means:

(1) Any of the following felonies, whether such felony is so distinct from the homicide alleged to be a violation of subsection (a)(2) as not to be an ingredient of the homicide alleged to be a violation of subsection (a)(2):

(A) Kidnapping, as defined in subsection (a) of section 43, and amendments thereto;

(B) aggravated kidnapping, as defined in subsection (b) of section 43, and amendments thereto;

(C) robbery, as defined in subsection (a) of section 55, and amendments thereto;

(D) aggravated robbery, as defined in subsection (b) of section 55, and amendments thereto;

(E) rape, as defined in section 67, and amendments thereto;

(F) aggravated criminal sodomy, as defined in subsection (b) of section 68, and amendments thereto;

(G) abuse of a child, as defined in section 79, and amendments thereto;

(H) felony theft of property as defined in subsection (a)(1) or (a)(3) of section 87, and amendments thereto;

(I) burglary, as defined in subsection (a) of section 93, and amendments thereto;

(J) aggravated burglary, as defined in subsection (b) of section 93, and amendments thereto;

(K) arson, as defined in subsection (a) of section 98, and amendments thereto;

(L) aggravated arson, as defined in subsection (b) of section 98, and amendments thereto;

(M) treason, as defined in section 126, and amendments thereto;

(N) any felony offense as provided in K.S.A. 2009 Supp. 21-36a03, 21-36a05 or 21-36a06, and amendments thereto;

(O) any felony offense as provided in subsection (a) or (b) of section 193, and amendments thereto;

(P) endangering the food supply, as defined in subsection (a) of section 202, and amendments thereto;

(Q) aggravated endangering the food supply, as defined in subsection (b) of section 202, and amendments thereto;

(R) fleeing or attempting to elude a police officer, as defined in subsection (b) of K.S.A. 8-1568, and amendments thereto; or

(S) aggravated endangering a child, as defined in subsection (b)(1) of section 78, and amendments thereto; and

(2) any of the following felonies, only when such felony is so distinct from the homicide alleged to be a violation of subsection (a)(2) as to not be an ingredient of the homicide alleged to be a violation of subsection (a)(2):

(A) Murder in the first degree, as defined in subsection (a)(1);

(B) murder in the second degree, as defined in subsection (a)(1) of section 38, and amendments thereto;

(C) voluntary manslaughter, as defined in subsection (a)(1) of section 39, and amendments thereto;

(D) aggravated assault, as defined in subsection (b) of section 47, and amendments thereto;

(E) aggravated assault of a law enforcement officer, as defined in subsection (d) of section 47, and amendments thereto;

(F) aggravated battery, as defined in subsection (b)(1) of section 48, and amendments thereto; or

(G) aggravated battery against a law enforcement officer, as defined in subsection (d) of section 48, and amendments thereto.

New Sec. 38. (a) Murder in the second degree is the killing of a human being committed:

(1) Intentionally; or

(2) unintentionally but recklessly under circumstances manifesting extreme indifference to the value of human life.

(b) Murder in the second degree as defined in:

(1) Subsection (a)(1) is a severity level 1, person felony; and

(2) subsection (a)(2) is a severity level 2, person felony.

New Sec. 39. (a) Voluntary manslaughter is knowingly killing a human being committed:

(1) Upon a sudden quarrel or in the heat of passion; or

(2) upon an unreasonable but honest belief that circumstances existed that justified deadly force under section 21, 22 or 23, and amendments thereto.

(b) Voluntary manslaughter is a severity level 3, person felony.

New Sec. 40. (a) Involuntary manslaughter is the killing of a human being committed:

(1) Recklessly;

(2) in the commission of, or attempt to commit, or flight from any felony, other than an inherently dangerous felony as defined in section 37, and amendments thereto, that is enacted for the protection of human life or safety or a misdemeanor that is enacted for the protection of human life or safety, including acts described in K.S.A. 8-1566 and subsection (a) of 8-1568, and amendments thereto, but excluding the acts described in K.S.A. 8-1567, and amendments thereto;

(3) in the commission of, or attempt to commit, or flight from an act described in K.S.A. 8-1567, and amendments thereto; or

(4) during the commission of a lawful act in an unlawful manner.

(b) Involuntary manslaughter as defined in:

(1) Subsection (a)(1), (a)(2) or (a)(4) is a severity level 5, person felony; and

(2) subsection (a)(3) is a severity level 4, person felony.

New Sec. 41. (a) Vehicular homicide is the killing of a human being committed by the operation of an automobile, airplane, motor boat or other motor vehicle in a manner which creates an unreasonable risk of injury to the person or property of another and which constitutes a material deviation from the standard of care which a reasonable person would observe under the same circumstances.

(b) Vehicular homicide is a class A person misdemeanor.

(c) As used in this section, "material deviation" means conduct amounting to more than simple or ordinary negligence but not amount to gross negligence.

New Sec. 42. (a) Assisting suicide is:

(1) Knowingly, by force or duress, causing another person to commit or attempt to commit suicide; or

(2) intentionally assisting another person to commit or to attempt to commit suicide by:

(A) Providing the physical means by which another person commits or attempts to commit suicide; or

(B) participating in a physical act by which another person commits or attempts to commit suicide.

(b) Assisting suicide as defined in:

(1) Subsection (a)(1) is a severity level 3, person felony; and

(2) subsection (a)(2) is a severity level 9, person felony.

New Sec. 43. (a) Kidnapping is the taking or confining of any person, accomplished by force, threat or deception, with the intent to hold such person:

(1) For ransom, or as a shield or hostage;

(2) to facilitate flight or the commission of any crime;

(3) to inflict bodily injury or to terrorize the victim or another; or

(4) to interfere with the performance of any governmental or political function.

(b) Aggravated kidnapping is kidnapping, as defined in subsection (a), when bodily harm is inflicted upon the person kidnapped.

(c) (1) Kidnapping is a severity level 3, person felony.

(2) Aggravated kidnapping is a severity level l, person felony.

New Sec. 44. (a) Interference with parental custody is taking or enticing away any child under the age of 16 years with the intent to detain

or conceal such child from the child's parent, guardian or other person having the lawful charge of such child.

(b) Aggravated interference with parental custody is:

(1) Hiring someone to commit the crime of interference with parental custody, as defined in subsection (a); or

(2) the commission of interference with parental custody, as defined in subsection (a), by a person who:

(A) Has previously been convicted of the crime;

(B) commits the crime for hire;

(C) takes the child outside the state without the consent of either the person having custody or the court;

(D) after lawfully taking the child outside the state while exercising visitation rights or parenting time, refuses to return the child at the expiration of that time;

(E) at the expiration of the exercise of any visitation rights or parenting time outside the state, refuses to return or impedes the return of the child; or

(F) detains or conceals the child in an unknown place, whether inside or outside the state.

(c) (1) Interference with parental custody is a:

(A) Severity level 10, person felony, except as provided in subsection (c)(1)(B); and

(B) class A person misdemeanor, if the defendant is a parent entitled to joint custody of the child either on the basis of a court order or by virtue of the absence of a court order.

(2) Aggravated interference with parental custody is a severity level 7, person felony.

(d) It is not a defense to a prosecution under subsection (a) that the defendant is a parent entitled to joint custody of the child either on the basis of a court order or by virtue of the absence of a court order.

New Sec. 45. (a) Interference with custody of a committed person is knowingly taking or enticing any committed person away from the control of such person's lawful custodian without privilege to do so.

(b) Interference with custody of a committed person is a class A nonperson misdemeanor.

(c) As used in this section, "committed person" means any person committed other than by criminal process to any institution or other custodian by a court, officer or agency authorized by law to make such commitment.

New Sec. 46. (a) Criminal restraint is knowingly and without legal authority restraining another person so as to interfere substantially with such person's liberty.

(b) Criminal restraint is a class A person misdemeanor.

(c) This section shall not apply to acts done in the performance of duty by any law enforcement officer of the state of Kansas or any political subdivision thereof.

(d) Any merchant, or a merchant's agent or employee, who has probable cause to believe that a person has actual possession of and has wrongfully taken, or is about to wrongfully take merchandise from a mercantile establishment, may detain such person on the premises or in the immediate vicinity thereof, in a reasonable manner and for a reasonable period of time for the purpose of investigating the circumstances of such possession. Such reasonable detention shall not constitute an arrest nor criminal restraint.

New Sec. 47. (a) Assault is knowingly placing another person in reasonable apprehension of immediate bodily harm;

(b) Aggravated assault is assault, as described in subsection (a), committed:

(1) With a deadly weapon;

(2) while disguised in any manner designed to conceal identity; or

(3) with intent to commit any felony.

(c) Assault of a law enforcement officer is assault, as defined in subsection (a), committed against:

(1) A uniformed or properly identified state, county or city law enforcement officer while such officer is engaged in the performance of such officer's duty; or

(2) a uniformed or properly identified university or campus police

officer while such officer is engaged in the performance of such officer's duty.

(d) Aggravated assault of a law enforcement officer is assault of a law enforcement officer, as defined in subsection (c), committed:

(1) With a deadly weapon;

(2) while disguised in any manner designed to conceal identity; or

(3) with intent to commit any felony.

(e) (1) Assault is a class C person misdemeanor.

(2) Aggravated assault is a severity level 7, person felony.

(3) Assault of a law enforcement officer is a class A person misdemeanor.

(4) Aggravated assault of a law enforcement officer is a severity level 6, person felony. A person convicted of aggravated assault of a law enforcement officer shall be subject to the provisions of subsection (g) of section 285, and amendments thereto.

New Sec. 48. (a) Battery is:

(1) Knowingly or recklessly causing bodily harm to another person; or

(2) knowingly causing physical contact with another person when done in a rude, insulting or angry manner;

(b) Aggravated battery is:

(1) (A) Knowingly causing great bodily harm to another person or disfigurement of another person;

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

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

(2) (A) recklessly causing great bodily harm to another person or disfigurement of another person; or

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

(c) Battery against a law enforcement officer is:

(1) Battery, as defined in subsection (a)(2), committed against a:

(A) Uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or

(B) uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, a juvenile correctional facility officer or employee or a juvenile detention facility office, or employee, while such officer is engaged in the performance of such officer's duty; or

(2) battery, as defined in subsection (a)(1), committed against a:

(A) Uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or

(B) uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, a juvenile correctional facility officer or employee or a juvenile detention facility office, or employee, while such officer is engaged in the performance of such officer's duty; or

(3) battery, as defined in subsection (a) committed against a:

(A) State correctional officer or employee by a person in custody of the secretary of corrections, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(B) juvenile correctional facility officer or employee by a person confined in such juvenile correctional facility, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(C) juvenile detention facility officer or employee by a person confined in such juvenile detention facility, while such officer or employee is engaged in the performance of such officer's or employee's duty; or

(D) city or county correctional officer or employee by a person con-

fined in a city holding facility or county jail facility, while such officer or employee is engaged in the performance of such officer's or employee's duty.

(d) Aggravated battery against a law enforcement officer is:

(1) An aggravated battery, as defined in subsection (b)(1)(a) committed against a:

(A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or

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

(2) an aggravated battery, as defined in subsection (b)(1)(B) or (b)(1)(C), committed against a:

(A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or

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

(3) knowingly causing, with a motor vehicle, bodily harm to a:

(A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or

(B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty.

(e) Battery against a school employee is a battery, as defined in subsection (a), committed against a school employee in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12 or at any regularly scheduled school sponsored activity or event, while such employee is engaged in the performance of such employee's duty.

(f) Battery against a mental health employee is a battery, as defined in subsection (a), committed against a mental health employee by a person in the custody of the secretary of social and rehabilitation services, while such employee is engaged in the performance of such employee's duty.

(g) (1) Battery is a class B person misdemeanor.

(2) Aggravated battery as defined in:

(A) Subsection (b)(1)(A) is a severity level 4, person felony;

(B) subsection (b)(1)(B) or (b)(1)(C) is a severity level 7, person felony;

(C) subsection (b)(2)(A) is a severity level 5, person felony; and

(D) subsection (b)(2)(B) is a severity level 8, person felony.

(3) Battery against a law enforcement officer as defined in:

(A) Subsection (c)(1) is a class A person misdemeanor;

(B) subsection (c)(2) is a severity level 7, person felony; and

(C) subsection (c)(3) is a severity level 5, person felony.

(4) Aggravated battery against a law enforcement officer as defined in:

(A) Subsection (d)(1) or (d)(3) is a severity level 3, person felony; and

(B) subsection (d)(2) is a severity level 4, person felony.

(5) Battery against a school employee is a class A person misdemeanor.

(6) Battery against a mental health employee is a severity level 7, person felony.

(h) As used in this section:

(1) "Correctional institution" means any institution or facility under the supervision and control of the secretary of corrections;

(2) "state correctional officer or employee" means any officer or employee of the Kansas department of corrections or any independent contractor, or any employee of such contractor, working at a correctional institution;

(3) "juvenile correctional facility officer or employee" means any officer or employee of the juvenile justice authority or any independent

contractor, or any employee of such contractor, working at a juvenile correctional facility, as defined in K.S.A. 2009 Supp. 38-2302, and amendments thereto;

(4) "juvenile detention facility officer or employee" means any officer or employee of a juvenile detention facility as defined in K.S.A. 2009 Supp. 38-2302, and amendments thereto;

(5) "city or county correctional officer or employee" means any correctional officer or employee of the city or county or any independent contractor, or any employee of such contractor, working at a city holding facility or county jail facility;

(6) "school employee" means any employee of a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12; and

(7) "mental health employee" means an employee of the department of social and rehabilitation services working at Larned state hospital, Osawatomie state hospital and Rainbow mental health facility, Kansas neurological institute and Parsons state hospital and training center and the treatment staff as defined in K.S.A. 59-29a02, and amendments thereto.

New Sec. 49. (a) Domestic battery is:

(1) Recklessly causing bodily harm by a family or household member against a family or household member; or

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

(b) Domestic battery is a:

(1) Class B person misdemeanor and the offender shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment and fined not less than $200, nor more than $500 or in the court's discretion the court may enter an order which requires the offender enroll in and successfully complete a domestic violence prevention program, except as provided in subsection (b)(2) or (b)(3);

(2) class A person misdemeanor, if, within five years immediately preceding commission of the crime, an offender is convicted of domestic battery a second time and the offender shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than $500 nor more than $1,000, except as provided in subsection (b)(3). The five days imprisonment mandated by this paragraph may be served in a work release program only after such offender has served 48 consecutive hours imprisonment, provided such work release program requires such offender to return to confinement at the end of each day in the work release program. The offender shall serve at least five consecutive days imprisonment before the offender is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the offender shall be required to enter into and complete a treatment program for domestic violence prevention; and

(3) person felony, if, within five years immediately preceding commission of the crime, an offender is convicted of domestic battery a third or subsequent time, and the offender shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than $1,000 nor more than $7,500. The offender convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the offender has served at least 90 days imprisonment. The court shall require as a condition of parole that such offender enter into and complete a treatment program for domestic violence. If the offender does not enter into and complete a treatment program for domestic violence, the offender shall serve not less than 180 days nor more than one year's imprisonment. The 90 days imprisonment mandated by this paragraph may be served in a work release program only after such offender has served 48 consecutive hours imprisonment, provided such work release program requires such offender to return to confinement at the end of each day in the work release program.

(c) As used in this section:

(1) "Family or household member" means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or

who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. "Family or household member" also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and

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

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

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

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

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

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

New Sec. 50. (a) A criminal threat is any threat to:

(1) Commit violence communicated with intent to place another in fear, or to cause the evacuation, lock down or disruption in regular, ongoing activities of any building, place of assembly or facility of transportation, or in reckless disregard of the risk of causing such fear or evacuation, lock down or disruption in regular, ongoing activities;

(2) adulterate or contaminate any food, raw agricultural commodity, beverage, drug, animal feed, plant or public water supply; or

(3) expose any animal in this state to any contagious or infectious disease.

(b) Aggravated criminal threat is the commission of a criminal threat, as defined in subsection (a), when a public, commercial or industrial building, place of assembly or facility of transportation is evacuated, locked down or disrupted as to regular, ongoing activities as a result of the threat.

(c) (1) A criminal threat is a severity level 9, person felony.

(2) Aggravated criminal threat is a severity level 5, person felony.

(d) As used in this section, "threat" includes any statement that one has committed any action described by subsection (a).

New Sec. 51. (a) Mistreatment of a confined person is knowingly abusing, neglecting or ill-treating any person, who is detained or confined by any law enforcement officer or by any person in charge of or employed by the owner or operator of any correctional institution.

(b) Mistreatment of a confined person is a class A person misdemeanor.

New Sec. 52. (a) Mistreatment of a dependent adult is knowingly committing one or more of the following acts:

(1) Infliction of physical injury, unreasonable confinement or cruel punishment upon a dependent adult;

(2) taking unfair advantage of a dependent adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person; or

(3) omitting or depriving treatment, goods or services by a caretaker or another person which are necessary to maintain physical or mental health of a dependent adult.

(b) Mistreatment of a dependent adult as defined in:

(1) Subsection (a)(1) is a severity level 6, person felony;

(2) subsection (a)(2) is a severity level 6, person felony if the aggregate amount of the value of the resources is $100,000 or more;

(3) subsection (a)(2) is a severity level 7, person felony if the aggregate amount of the value of the resources is at least $25,000 but less than $100,000;

(4) subsection (a)(2) is a severity level 9, person felony if the aggregate amount of the value of the resources is at least $1,000 but less than $25,000;

(5) subsection (a)(2) is a:

(A) Class A person misdemeanor if the aggregate amount of the value of the resources is less than $1,000, except as provided in subsection (b)(5)(B); and

(B) severity level 9, person felony, if, within five years immediately preceding commission of the crime, the offender has been convicted of mistreatment of a dependent adult two or more times; and

(6) subsection (a)(3) is a class A person misdemeanor.

(c) No dependent adult is considered to be mistreated for the sole reason that such dependent adult relies upon or is being furnished treatment by spiritual means through prayer in lieu of medical treatment in accordance with the tenets and practices of a recognized church or religious denomination of which such dependent adult is a member or adherent.

(d) As used in this section, "dependent adult" means an individual 18 years of age or older who is unable to protect the individual's own interest. Such term shall include, but is not limited to, any:

(1) Resident of an adult care home including, but not limited to, those facilities defined by K.S.A. 39-923, and amendments thereto;

(2) adult cared for in a private residence;

(3) individual kept, cared for, treated, boarded, confined or otherwise accommodated in a medical care facility;

(4) individual with mental retardation or a developmental disability receiving services through a community mental retardation facility or residential facility licensed under K.S.A. 75-3307b, and amendments thereto;

(5) individual with a developmental disability receiving services provided by a community service provider as provided in the developmental disability reform act; or

(6) individual kept, cared for, treated, boarded, confined or otherwise accommodated in a state psychiatric hospital or state institution for the mentally retarded.

(e) An offender who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any other offense in sections 36 through 125, and amendments thereto.

New Sec. 53. (a) Hazing is recklessly coercing, demanding or encouraging another person to perform, as a condition of membership in a social or fraternal organization, any act which could reasonably be expected to result in great bodily harm, disfigurement or death or which is done in a manner whereby great bodily harm, disfigurement or death could be inflicted.

(b) Promoting or permitting hazing is a class B nonperson misdemeanor.

New Sec. 54. (a) As used in this section:

(1) "Abortion" means an abortion as defined by K.S.A. 65-6701, and amendments thereto; and

(2) "unborn child" means a living individual organism of the species homo sapiens, in utero, at any stage of gestation from fertilization to birth.

(b) This section shall not apply to:

(1) Any act committed by the mother of the unborn child;

(2) any medical procedure, including abortion, performed by a physician or other licensed medical professional at the request of the pregnant woman or her legal guardian; or

(3) the lawful dispensation or administration of lawfully prescribed medication.

(c) As used in sections 36, 37, 38, 39, 40, 41, subsections (a) and (b) of section 48, and amendments thereto, "person" and "human being" also mean an unborn child.

(d) This section shall be known as Alexa's law.

New Sec. 55. (a) Robbery is knowingly taking property from the person or presence of another by force or by threat of bodily harm to any person.

(b) Aggravated robbery is robbery, as defined in subsection (a), when committee by a person who:

(1) Is armed with a dangerous weapon; or

(2) inflicts bodily harm upon any person in the course of such robbery.

(c) (1) Robbery is a severity level 5, person felony.

(2) Aggravated robbery is a severity level 3, person felony.

New Sec. 56. (a) Terrorism is the commission of, the attempt to commit, the conspiracy to commit, or the criminal solicitation to commit any felony with the intent to:

(1) Intimidate or coerce the civilian population;

(2) influence government policy by intimidation or coercion; or

(3) affect the operation of any unit of government.

(b) Terrorism is an off-grid person felony.

(c) The provisions of subsection (c) of section 33, and amendments thereto, shall not apply to a violation of attempting to commit the crime of terrorism pursuant to this section. The provisions of subsection (c) of section 34, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of terrorism pursuant to this section. The provisions of subsection (d) of section 35, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of terrorism pursuant to this section.

New Sec. 57. (a) The illegal use of weapons of mass destruction is:

(1) Knowingly and without lawful authority, developing, producing, stockpiling, transferring, acquiring, retaining or possessing any:

(A) Biological agent, toxin or delivery system for use as a weapon;

(B) chemical weapon; or

(C) nuclear materials or nuclear byproduct materials for use as a weapon;

(2) knowingly assisting a foreign state or any organization to do any such activities as specified in subsection (a)(1); or

(3) attempting, threatening, conspiring or criminally soliciting to do any such activities as specified in subsection (a)(1) or (a)(2).

(b) Illegal use of weapons of mass destruction is an off-grid person felony.

(c) The provisions of subsection (c) of section 33, and amendments thereto, shall not apply to a violation of attempting to commit the crime of illegal use of weapons of mass destruction pursuant to this section. The provisions of subsection (c) of section 34, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of illegal use of weapons of mass destruction pursuant to this section. The provisions of subsection (d) of section 35, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of illegal use of weapons of mass destruction pursuant to this section.

(d) The following shall not be prohibited under the provisions of this section:

(1) Any peaceful purpose related to an industrial, agricultural, research, medical or pharmaceutical activity or other activity;

(2) any purpose directly related to protection against toxic chemicals and to protection against chemical weapons;

(3) any military purpose of the United States that is not connected with the use of a chemical weapon or that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm;

(4) any law enforcement purpose, including any domestic riot control purpose and including imposition of capital punishment; or

(5) any individual self-defense device, including those using a pepper spray or chemical mace.

(e) As used in this section:

(1) "Biological agent" means any microorganism, virus, infectious substance or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, capable of causing:

(A) Death, disease or other biological malfunction in a human, an animal, a plant or another living organism;

(B) deterioration of food, water, equipment, supplies or material of any kind; or

(C) deleterious alteration of the environment;

(2) "chemical weapon" means the following together or separately:

(A) A toxic chemical and its precursors, except where intended for a purpose not prohibited under this section, as long as the type and quantity is consistent with such a purpose;

(B) a munition or device, specifically designed to cause death or other harm through toxic properties of those toxic chemicals specified in subparagraph (A), which would be released as a result of the employment of such munition or device; or

(C) any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in subparagraph (B);

(3) "key component of a binary or multicomponent chemical system" means the precursor which plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multicomponent system;

(4) "delivery system" means:

(A) Any apparatus, equipment, device or means of delivery specifically designed to deliver or disseminate a biological agent, toxin or vector; or

(B) any vector;

(5) "for use as a weapon" does not include the development, production, transfer, acquisition, retention or possession of any biological agent, toxin or delivery system for prophylactic, protective or other peaceful purposes;

(6) "nuclear material" means material containing any:

(A) Plutonium;

(B) uranium not in the form of ore or ore residue that contains the mixture of isotopes as occurring in nature;

(C) enriched uranium, defined as uranium that contains the isotope 233 or 235 or both in such amount that the abundance ratio of the sum of those isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature; or

(D) uranium 233;

(7) "nuclear byproduct material" means any material containing any radioactive isotope created through an irradiation process in the operation of a nuclear reactor or accelerator;

(8) "precursor" means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. "Precursor" includes any key component of a binary or multicomponent chemical system;

(9) "toxic chemical" means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. "Toxic chemical" includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere;

(10) "toxin" means the toxic material of plants, animals, microorganisms, viruses, fungi or infectious substances, or a recombinant molecule, whatever its origin or method of production, including:

(A) Any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or

(B) any poisonous isomer or biological product, homolog or derivative of such a substance; and

(11) "vector" means a living organism or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology, capable of carrying a biological agent or toxin to a host.

New Sec. 58. (a) It is unlawful for any person to receive or acquire property, or engage in transactions involving property, with the intent to commit or further the commission of any violation of section 56 or 57, and amendments thereto. The provisions of this subsection do not apply to any transaction between an individual and that individual's counsel

necessary to preserve that individual's right to representation, as guaranteed by section 10 of the bill of rights of the constitution of the state of Kansas and by the sixth amendment to the United States constitution. This exception does not create any presumption against or prohibition of the right of the state to seek and obtain forfeiture of any proceeds derived from a violation of section 56 or 57, and amendments thereto.

(b) It is unlawful for any person to intentionally invest, conceal, distribute, transport or maintain an interest in or otherwise make available any property which that person knows is intended to be used to commit or further the commission of any violation of section 56 or 57, and amendments thereto.

(c) It is unlawful for any person to intentionally direct, plan, organize, initiate, finance, manage, supervise or facilitate the transportation or distribution of property which that person knows is intended to be used to commit or further the commission of section 56 or 57, and amendments thereto.

(d) It is unlawful for any person to conduct a financial transaction involving property with the intent to commit or further the commission of any violation of section 56 or 57, and amendments thereto, when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the property which that person knows is intended to be used to commit or further the commission of any violation of section 56 or 57, and amendments thereto, or to avoid a transaction reporting requirement under state or federal law.

(e) Violation of this section is a severity level 1, person felony.

(f) As used in this section:

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

(2) "transaction" includes a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase, or sale of any monetary instrument, use of a safe deposit box, or any other acquisition or disposition of property whatever means effected.

New Sec. 59. (a) It is unlawful for an individual, who knows oneself to be infected with a life threatening communicable disease, to:

(1) Engage in sexual intercourse or sodomy with another individual with the intent to expose that individual to that life threatening communicable disease;

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

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

(b) Violation of this section is a severity level 7, person felony.

(c) As used in this section:

(1) "Sexual intercourse" shall not include penetration by any object other than the male sex organ; and

(2) "sodomy" shall not include the penetration of the anal opening by any object other than the male sex organ.

New Sec. 60. (a) Unlawful administration of a substance is the administration of a substance to another person without consent with the intent to impair such other person's physical or mental ability to appraise or control such person's conduct.

(b) Unlawful administration of a substance is a class A person misdemeanor.

(c) This section shall not prohibit administration of any substance described in subsection (b) for lawful medical or therapeutic treatment.

(d) As used in this section, "administration of a substance" means any method of causing the ingestion by another person of a controlled substance, including gamma hydroxybutyric acid, or any controlled substance analog, as defined in K.S.A. 65-4101, of gamma hydroxybutyric acid, including gamma butyrolactone; butyrolactone; butyrolactone gamma; 4-

butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with CAS No. 96-48-0; 1,4 butanediol; butanediol; butane-1,4-diol; 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4-diol.

New Sec. 61. (a) Trafficking is:

(1) Recruiting, harboring, transporting, providing or obtaining, by any means, another person with knowledge that force, fraud, threat or coercion will be used to cause the person to engage in forced labor or involuntary servitude; or

(2) benefitting financially or by receiving anything of value from participation in a venture that the person has reason to know has engaged in acts set forth in subsection (a)(1).

(b) Aggravated trafficking is:

(1) Trafficking, as defined in subsection (a):

(A) Involving the commission or attempted commission of kidnapping, as defined in subsection (a) of section 43, and amendments thereto;

(B) committed in whole or in part for the purpose of the sexual gratification of the defendant or another; or

(C) resulting in a death; or

(2) recruiting, harboring, transporting, providing or obtaining, by any means, a person under 18 years of age knowing that the person, with or without force, fraud, threat or coercion, will be used to engage in forced labor, involuntary servitude or sexual gratification of the defendant or another.

(c) (1) Trafficking is a severity level 2, person felony.

(2) Aggravated trafficking is a:

(A) Severity level 1, person felony, except as provided in subsection (c)(2)(B); and

(B) off-grid person felony, when the offender is 18 years of age or older and the victim is less than 14 years of age.

New Sec. 62. (a) Stalking is:

(1) Recklessly engaging in a course of conduct targeted at a specific person which would cause a reasonable person in the circumstances of the targeted person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear;

(2) engaging in a course of conduct targeted at a specific person with knowledge that the course of conduct will place the targeted person in fear for such person's safety or the safety of a member of such person's immediate family; or

(3) after being served with, or otherwise provided notice of, any protective order included in K.S.A. 21-3843, prior to its repeal or section 149, and amendments thereto, that prohibits contact with a targeted person, recklessly engaging in at least one act listed in subsection (f)(1) that violates the provisions of the order and would cause a reasonable person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear.

(b) Stalking as defined in:

(1) Subsection (a)(1) is a:

(A) Class A person misdemeanor, except as provided in subsection (b)(1)(B); and

(B) severity level 7, person felony upon a second or subsequent conviction;

(2) subsection (a)(2) is a:

(A) Class A person misdemeanor, except as provided in subsection (b)(2)(B); and

(B) severity level 5, person felony upon a second or subsequent conviction; and

(3) subsection (a)(3) is a:

(A) Severity level 9, person felony, except as provided in subsection (b)(3)(B); and

(B) severity level 5, person felony, upon a second or subsequent conviction.

(c) For the purposes of this section, a person served with a protective

order as defined by K.S.A. 21-3843, prior to its repeal and section 149, and amendments thereto, or a person who engaged in acts which would constitute stalking, after having been advised by a law enforcement officer, that such person's actions were in violation of this section, shall be presumed to have acted knowingly as to any like future act targeted at the specific person or persons named in the order or as advised by the officer.

(d) In a criminal proceeding under this section, a person claiming an exemption, exception or exclusion has the burden of going forward with evidence of the claim.

(e) The present incarceration of a person alleged to be violating this section shall not be a bar to prosecution under this section.

(f) As used in this section:

(1) "Course of conduct" means two or more acts over a period of time, however short, which evidence a continuity of purpose. A course of conduct shall not include constitutionally protected activity nor conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person. A course of conduct shall include, but not be limited to, any of the following acts or a combination thereof:

(A) Threatening the safety of the targeted person or a member of such person's immediate family;

(B) following, approaching or confronting the targeted person or a member of such person's immediate family;

(C) appearing in close proximity to, or entering the targeted person's residence, place of employment, school or other place where such person can be found, or the residence, place of employment or school of a member of such person's immediate family;

(D) causing damage to the targeted person's residence or property or that of a member of such person's immediate family;

(E) placing an object on the targeted person's property or the property of a member of such person's immediate family, either directly or through a third person;

(F) causing injury to the targeted person's pet or a pet belonging to a member of such person's immediate family;

(G) any act of communication;

(2) "communication" means to impart a message by any method of transmission, including, but not limited to: Telephoning, personally delivering, sending or having delivered, any information or material by written or printed note or letter, package, mail, courier service or electronic transmission, including electronic transmissions generated or communicated via a computer;

(3) "computer" means a programmable, electronic device capable of accepting and processing data;

(4) "conviction" includes being convicted of a violation of K.S.A. 21-3438, prior to its repeal, this section or a law of another state which prohibits the acts that this section prohibits; and

(5) "immediate family" means father, mother, stepparent, child, stepchild, sibling, spouse or grandparent of the targeted person; any person residing in the household of the targeted person; or any person involved in an intimate relationship with the targeted person.

New Sec. 63. (a) Permitting a dangerous animal to be at large is the act or omission of the owner or custodian of an animal of dangerous or vicious propensities who, knowing of such propensities, permits such animal to go at large or keeps such animal without taking ordinary care to restrain it.

(b) Permitting a dangerous animal to be at large is a class B nonperson misdemeanor.

New Sec. 64. (a) Blackmail is gaining or attempting to gain anything of value or compelling or attempting to compel another to act against such person's will, by threatening to communicate accusations or statements, about any person that would subject such person or any other person to public ridicule, contempt or degradation.

(b) Blackmail is a severity level 7, nonperson felony.

New Sec. 65. The following definitions shall apply when the words and phrases defined are used in sections 66 through 77 and sections 229,

230 and 231, and amendments thereto, except when a particular context clearly requires a different meaning:

(a) "Sexual intercourse" means any penetration of the female sex organ by a finger, the male sex organ or any object. Any penetration, however slight, is sufficient to constitute sexual intercourse. "Sexual intercourse" does not include penetration of the female sex organ by a finger or object in the course of the performance of:

(1) Generally recognized health care practices; or

(2) a body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto.

(b) "Sodomy" means oral contact or oral penetration of the female genitalia or oral contact of the male genitalia; anal penetration, however slight, of a male or female by any body part or object; or oral or anal copulation or sexual intercourse between a person and an animal. "Sodomy" does not include penetration of the anal opening by a finger or object in the course of the performance of:

(1) Generally recognized health care practices; or

(2) a body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto.

(c) "Spouse" means a lawful husband or wife, unless the couple is living apart in separate residences or either spouse has filed an action for annulment, separate maintenance or divorce or for relief under the protection from abuse act.

(d) "Unlawful sexual act" means any rape, indecent liberties with a child, aggravated indecent liberties with a child, criminal sodomy, aggravated criminal sodomy, lewd and lascivious behavior, sexual battery or aggravated sexual battery, as defined in this code.

New Sec. 66. (a) The provisions of this section shall apply only in a prosecution for:

(1) Rape, as defined by section 67, and amendments thereto;

(2) indecent liberties with a child, as defined in subsection (a) of section 70, and amendments thereto;

(3) aggravated indecent liberties with a child, as defined in subsection (b) of section 70, and amendments thereto;

(4) criminal sodomy, as defined in subsections (a)(3) and (a)(4) of section 68, and amendments thereto;

(5) aggravated criminal sodomy as defined in subsection (b) of section 68, and amendments thereto;

(6) aggravated indecent solicitation of a child, as defined in subsection (b) of section 72, and amendments thereto;

(7) sexual exploitation of a child as defined in section 74, and amendments thereto;

(8) aggravated sexual battery, as defined in subsection (b) of section 69, and amendments thereto;

(9) incest, as defined in subsection (a) of section 81, and amendments thereto;

(10) aggravated incest, as defined in subsection (b) of section 81, and amendments thereto;

(11) indecent solicitation of a child, as defined in subsection (a) of section 72, and amendments thereto;

(12) aggravated assault, as defined in subsection (b) of section 47, and amendments thereto, with intent to commit any crime specified above;

(13) sexual battery, as defined in subsection (a) of section 69, and amendments thereto;

(14) unlawful voluntary sexual relations, as defined in section 71, and amendments thereto;

(15) aggravated trafficking, as defined in subsections (b)(1)(B) and (b)(2) of section 61, and amendments thereto;

(16) electronic solicitation, as defined in section 73, and amendments thereto; or

(17) attempt, as defined in section 33, and amendments thereto, or conspiracy, as defined in section 34, and amendments thereto, to commit any crime specified above.

(b) Except as provided in subsection (c), in any prosecution to which this section applies, evidence of the complaining witness' previous sexual conduct with any person including the defendant shall not be admissible, and no reference shall be made thereto in any proceeding before the

court, except under the following conditions: The defendant shall make a written motion to the court to admit evidence or testimony concerning the previous sexual conduct of the complaining witness. The motion shall be made at least seven days before the commencement of the proceeding unless that requirement is waived by the court. The motion shall state the nature of such evidence or testimony and its relevancy and shall be accompanied by an affidavit in which an offer of proof of the previous sexual conduct of the complaining witness is stated. The motion, affidavits and any supporting or responding documents of the motion shall not be made available for examination without a written order of the court except that such motion, affidavits and supporting and responding documents or testimony when requested shall be made available to the defendant or the defendant's counsel and to the prosecutor. The defendant, defendant's counsel and prosecutor shall be prohibited from disclosing any matters relating to the motion, affidavits and any supporting or responding documents of the motion. The court shall conduct a hearing on the motion in camera. At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the previous sexual conduct of the complaining witness is relevant and is not otherwise inadmissible as evidence, the court may make an order stating what evidence may be introduced by the defendant and the nature of the questions to be permitted. The defendant may then offer evidence and question witnesses in accordance with the order of the court.

(c) In any prosecution for a crime designated in subsection (a), the prosecutor may introduce evidence concerning any previous sexual conduct of the complaining witness, and the complaining witness may testify as to any such previous sexual conduct. If such evidence or testimony is introduced, the defendant may cross-examine the witness who gives such testimony and offer relevant evidence limited specifically to the rebuttal of such evidence or testimony introduced by the prosecutor or given by the complaining witness.

(d) As used in this section, "complaining witness" means the alleged victim of any crime designated in subsection (a), the prosecution of which is subject to this section.

New Sec. 67. (a) Rape is:

(1) Knowingly engaging in sexual intercourse with a victim who does not consent to the sexual intercourse under any of the following circumstances:

(A) When the victim is overcome by force or fear; or

(B) when the victim is unconscious or physically powerless.

(2) Knowingly engaging in sexual intercourse with a victim when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender;

(3) sexual intercourse with a child who is under 14 years of age;

(4) sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a medically or therapeutically necessary procedure; or

(5) sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a legally required procedure within the scope of the offender's authority.

(b) Rape as defined in:

(1) Subsection (a)(1) or (a)(2) is a severity level 1, person felony;

(2) subsection (a)(3) is a:

(A) Severity level 1, person felony, except as provided in subsection (b)(2)(B); and

(B) off-grid person felony, when the offender is 18 years of age or older; and

(3) subsection (a)(4) or (a)(5) is a severity level 2, person felony.

(c) It shall be a defense to a prosecution of rape under subsection (a)(3) that the child was married to the accused at the time of the offense.

(d) Except as provided in subsection (a)(2), it shall not be a defense that the offender did not know or have reason to know that the victim

did not consent to the sexual intercourse, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.

New Sec. 68. (a) Criminal sodomy is:

(1) Sodomy between persons who are 16 or more years of age and members of the same sex;

(2) sodomy between a person and an animal;

(3) sodomy with a child who is 14 or more years of age but less than 16 years of age; or

(4) causing a child 14 or more years of age but less than 16 years of age to engage in sodomy with any person or animal.

(b) Aggravated criminal sodomy is:

(1) Sodomy with a child who is under 14 years of age;

(2) causing a child under 14 years of age to engage in sodomy with any person or an animal; or

(3) sodomy with a victim who does not consent to the sodomy or causing a victim, without the victim's consent, to engage in sodomy with any person or an animal under any of the following circumstances:

(A) When the victim is overcome by force or fear;

(B) when the victim is unconscious or physically powerless; or

(C) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by, or was reasonably apparent to, the offender.

(c) (1) Criminal sodomy as defined in:

(A) Subsection (a)(1) or (a)(2) is a class B nonperson misdemeanor; and

(B) subsection (a)(3) or (a)(4) is a severity level 3, person felony.

(c) (2) Aggravated criminal sodomy as defined in:

(A) subsection (b)(3) is a severity level 1, person felony; and

(B) subsection (b)(1) or (b)(2) is a:

(i) Severity level 1, person felony, except as provided in subsection (c)(2)(B)(ii); and

(ii) off-grid person felony, when the offender is 18 years of age or older.

(d) It shall be a defense to a prosecution of criminal sodomy, as defined in subsection (a)(3), and aggravated criminal sodomy, as defined in subsection (b)(1), that the child was married to the accused at the time of the offense.

(e) Except as provided in subsection (b)(3)(C), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the sodomy, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.

New Sec. 69. (a) Sexual battery is the touching of a victim who is not the spouse of the offender, who is 16 or more years of age and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another.

(b) Aggravated sexual battery is the touching of a victim who is 16 or more years of age and who does not consent thereto with the intent to arouse or satisfy the sexual desires of the offender or another and under any of the following circumstances:

(1) When the victim is overcome by force or fear;

(2) when the victim is unconscious or physically powerless; or

(3) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by, or was reasonably apparent to, the offender.

(c) (1) Sexual battery is a class A person misdemeanor.

(2) Aggravated sexual battery is a severity level 5, person felony.

(d) Except as provided in subsection (b)(3), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the battery, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.

New Sec. 70. (a) Indecent liberties with a child is engaging in any of the following acts with a child who is 14 years of age but less than 16 years of age:

(1) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(2) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(b) Aggravated indecent liberties with a child is:

(1) Sexual intercourse with a child who is 14 or more years of age but less than 16 years of age;

(2) engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age and who does not consent thereto:

(A) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(B) causing the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another; or

(3) engaging in any of the following acts with a child who is under 14 years of age:

(A) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(B) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(c) (1) Indecent liberties with a child is a severity level 5, person felony.

(2) Aggravated indecent liberties with a child as defined in:

(A) Subsection (b)(1) is a severity level 3, person felony;

(B) subsection (b)(2) is a severity level 4, person felony; and

(C) subsection (b)(3) is a:

(i) Severity level 3, person felony, except as provided in subsection (c)(2)(C)(ii); and

(ii) off-grid person felony, when the offender is 18 years of age or older.

(d) It shall be a defense to a prosecution of indecent liberties with a child, as defined in subsection (a)(1), and aggravated indecent liberties with a child, as defined in subsections (b)(1), (b)(2)(A) and (b)(3)(A) that the child was married to the accused at the time of the offense.

New Sec. 71. (a) Unlawful voluntary sexual relations is:

(1) Engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age:

(A) Voluntary sexual intercourse;

(B) voluntary sodomy; or

(C) voluntary lewd fondling or touching;

(2) when the offender is less than 19 years of age;

(3) when the offender is less than four years of age older than the child;

(4) when the child and the offender are the only parties involved; and

(5) when the child and the offender are members of the opposite sex.

(b) Unlawful voluntary sexual relations as defined in:

(1) Subsection (a)(1)(A) is a severity level 8, person felony;

(2) subsection (a)(1)(B) is a severity level 9, person felony; and

(3) subsection (a)(1)(C) is a severity level 10, person felony.

New Sec. 72. (a) Indecent solicitation of a child is enticing, commanding, inviting, persuading or attempting to persuade a child 14 or more years of age but less than 16 years of age to:

(1) Commit or to submit to an unlawful sexual act; or

(2) enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the child.

(b) Aggravated indecent solicitation of a child is enticing, commanding, inviting, persuading or attempting to persuade a child under the age of 14 years to:

(1) Commit or submit to an unlawful sexual act; or

(2) enter any vehicle, building, room or secluded place with the intent to commit an unlawful sexual act upon or with the child.

(c) (1) Indecent solicitation of a child is a severity level 6, person felony.

(2) Aggravated indecent solicitation of a child is a severity level 5, person felony.

(d) It shall not be a defense that the offender did not know or have reason to know that the sexual act was unlawful.

New Sec. 73. (a) Electronic solicitation is, by means of communication conducted through the telephone, internet or by other electronic means, enticing or soliciting a person, whom the offender believes to be a child, to commit or submit to an unlawful sexual act.

(b) Electronic solicitation is a:

(1) Severity level 3, person felony if the offender believes the person to be a child 14 or more years of age but less than 16 years of age; and

(2) severity level 1, person felony if the offender believes the person to be a child under 14 years of age.

(c) As used in this section, "communication conducted through the internet or by other electronic means" includes, but is not limited to, e-mail, chatroom chats and text messaging.

New Sec. 74. (a) Sexual exploitation of a child is:

(1) Employing, using, persuading, inducing, enticing or coercing a child under 18 years of age to engage in sexually explicit conduct with the intent to promote any performance;

(2) possessing any visual depiction of a child under 18 years of age shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person;

(3) being a parent, guardian or other person having custody or control of a child under l8 years of age and knowingly permitting such child to engage in, or assist another to engage in, sexually explicit conduct for any purpose described in subsection (a)(1) or (2); or

(4) promoting any performance that includes sexually explicit conduct by a child under 18 years of age, knowing the character and content of the performance.

(b) Sexual exploitation of a child as defined in:

(1) Subsection (a)(2) or (a)(3) is a severity level 5, person felony; and

(2) subsection (a)(1) or (a)(4) is a:

(A) Severity level 5, person felony, except as provided in subsection (b)(2)(B); and

(B) off-grid person felony, when the offender is 18 years of age or older and the child is under 14 years of age.

(c) As used in this section:

(1) "Sexually explicit conduct" means actual or simulated: Exhibition in the nude; sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex; masturbation; sado-masochistic abuse with the intent of sexual stimulation; or lewd exhibition of the genitals, female breasts or pubic area of any person;

(2) "promoting" means procuring, transmitting, distributing, circulating, presenting, producing, directing, manufacturing, issuing, publishing, displaying, exhibiting or advertising:

(A) For pecuniary profit; or

(B) with intent to arouse or gratify the sexual desire or appeal to the prurient interest of the offender or any other person;

(3) "performance" means any film, photograph, negative, slide, book, magazine or other printed or visual medium, any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer generated image that contains or incorporates in any manner any film, photograph, negative, photocopy, video tape or video laser disk or any play or other live presentation;

(4) "nude" means any state of undress in which the human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered;

(5) "visual depiction" means any photograph, film, video picture, dig-

ital or computer-generated image or picture, whether made or produced by electronic, mechanical or other means.

New Sec. 75. (a) Adultery is engaging in sexual intercourse or sodomy with a person who is not married to the offender if:

(1) The offender is married; or

(2) the offender is not married and knows that the other person involved in the act is married.

(b) Adultery is a class C misdemeanor.

New Sec. 76. (a) Unlawful sexual relations is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy with a person who is not married to the offender if:

(1) The offender is an employee or volunteer of the department of corrections, or the employee or volunteer of a contractor who is under contract to provide services for a correctional institution, and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate;

(2) the offender is a parole officer, volunteer for the department of corrections or the employee or volunteer of a contractor who is under contract to provide supervision services for persons on parole, conditional release or postrelease supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate who has been released on parole or conditional release or postrelease supervision under the direct supervision and control of the offender;

(3) the offender is a law enforcement officer, an employee of a jail, or the employee of a contractor who is under contract to provide services in a jail and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such jail;

(4) the offender is a law enforcement officer, an employee of a juvenile detention facility or sanctions house, or the employee of a contractor who is under contract to provide services in such facility or sanctions house and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such facility or sanctions house;

(5) the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide services in a juvenile correctional facility and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such facility;

(6) the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide direct supervision and offender control services to the juvenile justice authority and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is l6 years of age or older and:

(A) Released on conditional release from a juvenile correctional facility under the supervision and control of the juvenile justice authority or juvenile community supervision agency; or

(B) placed in the custody of the juvenile justice authority under the supervision and control of the juvenile justice authority or juvenile community supervision agency and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under supervision;

(7) the offender is an employee of the department of social and rehabilitation services or the employee of a contractor who is under contract to provide services in a social and rehabilitation services institution and the person with whom the offender is engaging in consensual sexual intercourse, not otherwise subject to subsection (a)(2) of section 67, and amendments thereto, lewd fondling or touching, or sodomy, not otherwise subject to subsection (3)(b)(C) of section 68, and amendments thereto, is a person 16 years of age or older who is a patient in such institution;

(8) the offender is a teacher or a person in a position of authority and the person with whom the offender is engaging in consensual sexual in-

tercourse, not otherwise subject to subsection (a)(3) of section 67 or subsection (b)(1) of section 70, and amendments thereto, lewd fondling or touching, not otherwise subject to subsection (a) of section 70 or subsection (b)(2) or (b)(3) of section 70, and amendments thereto, or sodomy, not otherwise subject to subsection (a) of section 68 or subsection (b)(1) or (b)(2) of section 68, and amendments thereto, is a student enrolled at the school where the offender is employed. If the offender is the parent of the student, the provisions of subsection (b) of section 81, and amendments thereto, shall apply, not this subsection;

(9) the offender is a court services officer or the employee of a contractor who is under contract to provide supervision services for persons under court services supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been placed on probation under the supervision and control of court services and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under the supervision of court services; or

(10) the offender is a community correctional services officer or the employee of a contractor who is under contract to provide supervision services for persons under community corrections supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been assigned to a community correctional services program under the supervision and control of community corrections and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under supervision of community corrections.

(b) Unlawful sexual relations is a severity level 10, person felony.

(c) As used in this section:

(1) "Correctional institution" means the same as in K.S.A. 75-5202, and amendments thereto;

(2) "inmate" means the same as in K.S.A. 75-5202, and amendments thereto;

(3) "parole officer" means the same as in K.S.A. 75-5202, and amendments thereto;

(4) "postrelease supervision" means the same as in section 284 and amendments thereto;

(5) "juvenile detention facility" means the same as in K.S.A. 2009 Supp. 38-2302, and amendments thereto;

(6) "juvenile correctional facility" means the same as in K.S.A. 2009 Supp. 38-2302, and amendments thereto;

(7) "sanctions house" means the same as in K.S.A. 2009 Supp. 38-2302, and amendments thereto;

(8) "institution" means the same as in K.S.A. 76-12a01, and amendments thereto;

(9) "teacher" means and includes teachers, supervisors, principals, superintendents and any other professional employee in any public or private school offering any of grades kindergarten through 12;

(10) "community corrections" means the entity responsible for supervising adults and juvenile offenders for confinement, detention, care or treatment, subject to conditions imposed by the court pursuant to the community corrections act, K.S.A. 75-5290, and amendments thereto, and the revised Kansas juvenile justice code, K.S.A. 2009 Supp. 38-2301 et seq., and amendments thereto;

(11) "court services" means the entity appointed by the district court that is responsible for supervising adults and juveniles placed on probation and misdemeanants placed on parole by district courts of this state; and

(12) "juvenile community supervision agency" means an entity that receives grants for the purpose of providing direct supervision to juveniles in the custody of the juvenile justice authority.

New Sec. 77. (a) Lewd and lascivious behavior is:

(1) Publicly engaging in otherwise lawful sexual intercourse or sodomy with knowledge or reasonable anticipation that the participants are being viewed by others; or

(2) publicly exposing a sex organ or exposing a sex organ in the presence of a person who is not the spouse of the offender and who has not

consented thereto, with intent to arouse or gratify the sexual desires of the offender or another.

(b) Lewd and lascivious behavior is a:

(1) Class B nonperson misdemeanor, if committed in the presence of a person 16 or more years of age; and

(2) severity level 9, person felony, if committed in the presence of a person under 16 years of age.

New Sec. 78. (a) Endangering a child is knowingly and unreasonably causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health may be endangered.

(b) Aggravated endangering a child is:

(1) Recklessly causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health is endangered;

(2) causing or permitting such child to be in an environment where the person knows or reasonably should know that any person is distributing, possessing with intent to distribute, manufacturing or attempting to manufacture any methamphetamine, or analog thereof, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto; or

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

(c) (1) Endangering a child is a class A person misdemeanor.

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

(d) Nothing in subsection (a) shall be construed to mean a child is endangered for the sole reason the child's parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

(e) As used in this section:

(1) "Manufacture" means the same as in K.S.A. 2009 Supp. 21-36a01, and amendments thereto; and

(2) "drug paraphernalia" means the same as in K.S.A. 2009 Supp. 21-36a01, and amendments thereto.

New Sec. 79. (a) Abuse of a child is knowingly:

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

(2) inflicting cruel and inhuman corporal punishment upon any child under the age of 18 years.

(b) Abuse of a child is a severity level 5, person felony.

(c) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any form of battery or homicide.

New Sec. 80. (a) Contributing to a child's misconduct or deprivation is:

(1) Knowingly causing or encouraging a child under 18 years of age to become or remain a child in need of care as defined by the revised Kansas code for care of children;

(2) knowingly causing or encouraging a child under 18 years of age to commit a traffic infraction or an act which, if committed by an adult, would be a misdemeanor or to violate the provisions of K.S.A. 41-727 or subsection (j) of K.S.A. 74-8810, and amendments thereto;

(3) failure to reveal, upon inquiry by a uniformed or properly identified law enforcement officer engaged in the performance of such officer's duty, any information one has regarding a runaway, with intent to aid the runaway in avoiding detection or apprehension;

(4) sheltering or concealing a runaway with intent to aid the runaway in avoiding detection or apprehension by law enforcement officers;

(5) Knowingly causing or encouraging a child under 18 years of age to commit an act which, if committed by an adult, would be a felony; or

(6) knowingly causing or encouraging a child to violate the terms or

conditions of the child's probation or conditional release pursuant to subsection (a)(1) of K.S.A. 2009 Supp. 38-2361, and amendments thereto.

(b) Contributing to a child's misconduct or deprivation as defined in:

(1) Subsection (a)(5) is a severity level 7, person felony;

(2) subsection (a)(4) is a severity level 8, person felony;

(3) subsection (a)(1), (a)(2), (a)(3) or (a)(6) is a class A nonperson misdemeanor.

(c) A person may be found guilty of contributing to a child's misconduct or deprivation even though no prosecution of the child whose misconduct or deprivation the defendant caused or encouraged has been commenced pursuant to the revised Kansas code for care of children, revised Kansas juvenile justice code or Kansas criminal code.

(d) As used in this section, "runaway" means a child under 18 years of age who is voluntarily absent from:

(1) The child's home without the consent of the child's parent or other custodian; or

(2) a court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the child is placed or, if the child is placed in a facility, without the consent of the person in charge of such facility or such person's designee.

New Sec. 81. (a) Incest is marriage to or engaging in otherwise lawful sexual intercourse or sodomy, as defined in section 65, and amendments thereto, with a person who is 18 or more years of age and who is known to the offender to be related to the offender as any of the following biological relatives: Parent, child, grandparent of any degree, grandchild of any degree, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

(b) Aggravated incest is:

(1) Marriage to a person who is under 18 years of age and who is known to the offender to be related to the offender as any of the following biological, step or adoptive relatives: Child, grandchild of any degree, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece; or

(2) engaging in the following acts with a person who is 16 or more years of age but under 18 years of age and who is known to the offender to be related to the offender as any of the following biological, step or adoptive relatives: Child, grandchild of any degree, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece:

(A) Otherwise lawful sexual intercourse or sodomy as defined by section 65, and amendments thereto; or

(B) any lewd fondling, as described in subsection (a)(1) of section 70, and amendments thereto.

(c) (1) Incest is a severity level l0, person felony.

(2) Aggravated incest as defined in:

(A) Subsection (b)(2)(A) is a severity level 5, person felony; and

(B) subsection (b)(1) or (b)(2)(B) is a severity level 7, person felony.

New Sec. 82. (a) Abandonment of a child is leaving a child under the age of 16 years, in a place where such child may suffer because of neglect by the parent, guardian or other person to whom the care and custody of such child shall have been entrusted, when done with intent to abandon such child.

(b) Aggravated abandonment of a child is abandonment of a child, as defined in subsection (a), which results in great bodily harm.

(c) (1) Abandonment of a child is a severity level 8, person felony.

(2) Aggravated abandonment of a child is a severity level 5, person felony.

(d) No parent or other person having lawful custody of an infant shall be prosecuted for a violation of subsection (a), if such parent or person surrenders custody of an infant in the manner provided by K.S.A. 2009 Supp. 38-2282, and amendments thereto, and if such infant has not suffered bodily harm.

(e) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any form of battery or homicide.

New Sec. 83. (a) Criminal nonsupport is:

(1) A parent's failure, neglect or refusal without lawful excuse to pro-

vide for the support and maintenance of the parent's child in necessitous circumstances; or

(2) a person's failure, without just cause, to provide for the support of such person's spouse in necessitous circumstances.

(b) Criminal nonsupport is a severity level 10, nonperson felony.

(c) As used in this section, "child" means a child under the age of 18 years and includes an adopted child or a child born out of wedlock whose parentage has been judicially determined or has been acknowledged in writing by the person to be charged with the support of such child.

(d) (1) At any time before the trial, upon petition and notice, the court may enter such temporary order as may seem just providing for support of such child or spouse, and may punish for violation of such order as for contempt.

(2) At any stage of the proceeding, instead of or in addition to imposing the penalty provided, the court, in its discretion and having regard for the circumstances and the financial ability or earning capacity of the defendant, may enter an order which shall be subject to change by the court, as circumstances may require, directing the defendant to pay a certain sum periodically, for a term not exceeding the period during which the obligation to support shall continue, to the spouse, if applicable, the guardian, conservator or custodian of such child or spouse or to an organization or individual approved by the court as trustee. The court shall also have the power to release the defendant on probation for the period so fixed, upon the defendant's entering into a recognizance, with or without surety, in such sum as the court may order and approve. The condition of the recognizance shall be such that if the defendant makes a personal appearance in court whenever ordered to do so and further complies with the terms of such order of support, or of any subsequent modification thereof, then such recognizance shall be void; otherwise the recognizance shall be of full force and effect.

(3) If the court is satisfied by due proof that, at any time during the period while the obligation to support continues, the defendant has violated the terms of such order, the court may forthwith proceed with the trial of the defendant under the original charge, or sentence the defendant under the original conviction, or enforce the suspended sentence as the case may be.

(4) In no prosecution under this section shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife shall be competent witnesses to testify against each other to any and all relevant matters, including the parentage of such child.

(e) Failure by a spouse to use resources or income, or both, allowed to the spouse under section 303 of the federal medicare catastrophic coverage act of 1988 or under K.S.A. 39-785 through 39-790, and amendments thereto, as applicable, to provide medical support for the other spouse shall not constitute a violation of subsection (a)(2) so long as the other spouse is receiving medical assistance as defined by K.S.A. 39-702, and amendments thereto.

New Sec. 84. (a) Furnishing alcoholic liquor or cereal malt beverage to a minor is recklessly, directly or indirectly, buying for or distributing any alcoholic liquor or cereal malt beverage to any minor.

(b) Furnishing alcoholic beverages to a minor for illicit purposes is, directly or indirectly, buying for or distributing alcoholic liquor or cereal malt beverage to a child under 18 years of age with the intent to commit against such child, or to encourage or induce such child to commit or participate in, any act defined as a crime in sections 65 through 77, and amendments thereto, or in section 81, and amendments thereto.

(c) (1) Furnishing alcoholic liquor or cereal malt beverage to a minor is a class B person misdemeanor, for which the minimum fine is $200.

(2) Furnishing alcoholic beverages to a minor for illicit purposes is a severity level 9, person felony.

(d) As used in this section, terms mean the same as in K.S.A. 41-102, 41-2601 and 41-2701, and amendments thereto.

(e) This section shall not apply to wine intended for use and used by any church or religious organization for sacramental purposes.

(f) It shall be a defense to a prosecution under subsection (a) if:

(1) The defendant is a licensed retailer, club, drinking establishment or caterer or holds a temporary permit, or an employee thereof;

(2) the defendant sold the alcoholic liquor or cereal malt beverage to the minor with reasonable cause to believe that the minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage; and

(3) to purchase the alcoholic liquor or cereal malt beverage, the person exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document, that reasonably appears to contain a photograph of the minor and purporting to establish that such minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage.

(g) Subsection (a) shall not apply to the furnishing of cereal malt beverage by a parent or legal guardian to such parent's child or such guardian's ward when such furnishing is permitted and supervised by the child or ward's parent or legal guardian.

New Sec. 85. (a) Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is recklessly permitting a person's residence or any land, building, structure or room owned, occupied or procured by such person to be used by an invitee of such person or an invitee of such person's child or ward, in a manner that results in the unlawful possession or consumption therein of alcoholic liquor or cereal malt beverages by a minor.

(b) Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is a class A person misdemeanor, for which the minimum fine is $1,000. If the court sentences the offender to perform community or public service work as a condition of probation, as described in subsection (b)(10) of section 247, and amendments thereto, the court shall consider ordering the offender to serve the community or public service at an alcohol treatment facility.

(c) As used in this section, terms mean the same as in K.S.A. 41-102, and amendments thereto.

(d) The provisions of this section shall not be deemed to create any civil liability for any lodging establishment, as defined in K.S.A. 36-501, and amendments thereto.

New Sec. 86. (a) Bigamy is any of the following:

(1) Marriage within this state by any person who has another spouse living at the time of such marriage;

(2) marriage within this state by an unmarried person to a person known to such unmarried person to be the spouse of some other person; or;

(3) cohabitation within this state after marriage in another state or country under circumstances described in subsection (a)(1) or (a)(2).

(b) Bigamy is a severity level 10, nonperson felony.

(c) It shall be a defense to a charge of bigamy that the accused reasonably believed the prior marriage had been dissolved by death, divorce or annulment.

New Sec. 87. (a) Theft is any of the following acts done with intent to permanently deprive the owner of the possession, use or benefit of the owner's property or services:

(1) Obtaining or exerting unauthorized control over property or services;

(2) obtaining control over property or services, by deception;

(3) obtaining control over property or services, by threat;

(4) obtaining control over stolen property or services knowing the property or services to have been stolen by another; or

(5) knowingly dispensing motor fuel into a storage container or the fuel tank of a motor vehicle at an establishment in which motor fuel is offered for retail sale and leaving the premises of the establishment without making payment for the motor fuel.

(b) Theft of:

(1) Property or services of the value of $100,000 or more is a severity level 5, nonperson felony;

(2) property or services of the value of at least $25,000 but less than $100,000 is a severity level 7, nonperson felony;

(3) property or services of the value of at least $1,000 but less than $25,000 is a severity level 9, nonperson felony;

(4) property or services of the value of less than $1,000 is a class A nonperson misdemeanor, except as provided in subsection (b)(5) or (b)(6);

(5) property regardless of the value from three separate mercantile establishments within a period of 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct is a severity level 9, nonperson felony; and

(6) property of the value of less than $1,000 is a severity level 9, nonperson felony if committed by a person who has been convicted of theft two or more times.

(c) As used in this section, "conviction" or "convicted" includes being convicted of a violation of K.S.A. 21-3701, prior to its repeal, this section or a municipal ordinance which prohibits the acts that this section prohibits.

New Sec. 88. (a) Theft of property lost, mislaid or delivered by mistake is obtaining control of property of another by a person who:

(1) Knows or learns the identity of the owner thereof;

(2) fails to take reasonable measures to restore to the owner lost property, mislaid property or property delivered by a mistake; and

(3) intends to permanently deprive the owner of the possession, use or benefit of the property.

(b) Theft of lost or mislaid property of the value of:

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

(2) at least $25,000 but less than $100,000 is a severity level 7, nonperson felony;

(3) at least $1,000 but less than $25,000 is a severity level 9, nonperson felony; and

(4) less than $1,000 is a class A nonperson misdemeanor.

(c) As used in this section, "property delivered by mistake" includes, but is not limited to, a mistake as to the:

(1) Nature or amount of the property; or

(2) identity of the recipient of the property.

New Sec. 89. (a) Criminal deprivation of property is obtaining or exerting unauthorized control over property, with intent to temporarily deprive the owner of the use thereof, without the owner's consent but not with the intent of permanently depriving the owner of the possession, use or benefit of such owner's property.

(b) (1) (A) Criminal deprivation of property that is a motor vehicle is a:

(i) Class A nonperson misdemeanor, except as provided in subsection (b)(1)(A)(ii); and

(ii) severity level 9, nonperson felony upon a third or subsequent conviction.

(B) Upon a first conviction of subsection (b)(1)(A), a person shall be sentenced to not less than 30 days nor more than one year's imprisonment and fined not less than $100. Upon a second conviction of subsection (b)(1)(A), a person shall be sentenced to not less than 60 days nor more than one year's imprisonment and fined not less than $200. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the minimum mandatory sentence as provided herein.

(2) Criminal deprivation of property other than a motor vehicle is a class A nonperson misdemeanor. Upon a second or subsequent conviction of this paragraph, a person shall be sentenced to not less than 30 days imprisonment and fined not less than $100.

(3) The mandatory provisions of this subsection shall not apply to any person where such application would result in a manifest injustice.

(c) As used in this section, "motor vehicle" means the same as in K.S.A. 8-1437, and amendments thereto.

New Sec. 90. (a) In any prosecution under sections 87 through 125, and amendments thereto, the following shall be prima facie evidence of intent to permanently deprive the owner or lessor of property of the possession, use or benefit thereof:

(1) The giving of a false identification or fictitious name, address or place of employment at the time of obtaining control over the property;

(2) the failure of a person who leases or rents personal property to

return the same within 10 days after the date set forth in the lease or rental agreement for the return of the property, if notice is given to the person renting or leasing the property to return the property within seven days after receipt of the notice, in which case the subsequent return of the property within the seven-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section;

(3) destroying, breaking or opening a lock, chain, key switch, enclosure or other device used to secure the property in order to obtain control over the property;

(4) destruction of or substantially damaging or altering the property so as to make the property unusable or unrecognizable in order to obtain control over the property;

(5) the failure of a person who leases or rents from a commercial renter a motor vehicle under a written agreement that provides for the return of the motor vehicle to a particular place at a particular time, if notice has been given to the person renting or leasing the motor vehicle to return such vehicle within three calendar days from the date of the receipt or refusal of the demand. In addition, if such vehicle has not been returned after demand, the lessor may notify the local law enforcement agency of the failure of the lessee to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles;

(6) the failure of a person who is provided with a use of a vehicle by the owner of the vehicle to return it to the owner pursuant to a written instruction specifying: (A) The time and place to return the vehicle; and (B) that failure to comply may be prosecuted as theft, and such instructions are delivered to the person by the owner at the time the person is provided with possession of the vehicle. In addition, if such vehicle has not been returned pursuant to the specifications in such instructions, the owner may notify the local law enforcement agency of the failure of the person to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles;

(7) removing a theft detection device, without authority, from merchandise or disabling such device prior to purchase; or

(8) under the provisions of subsection (a)(5) of section 87, and amendments thereto, the failure to replace or reattach the nozzle and hose of the pump used for the dispensing of motor fuels or placing such nozzle and hose on the ground or pavement.

(b) In any prosecution for a misdemeanor under section 87, and amendments thereto, in which the object of the alleged theft is a book or other material borrowed from a library, it shall be prima facie evidence of intent to permanently deprive the owner of the possession, use or benefit thereof if the defendant failed to return such book or material within 30 days after receiving notice from the library requesting its return, in which case the subsequent return of the book or material within the 30-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section.

(c) In a prosecution for theft as defined in section 87, and amendments thereto, and such theft is of services, the existence of any of the connections of meters, alterations or use of unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service, caused by tampering, shall be prima facie evidence of intent to commit theft of services by the person or persons using or receiving the direct benefits from the use of the electricity, natural gas, water, telephone service or cable television service passing through such connections or meters, or using the electricity, natural gas, water, telephone service or cable television service which has not been authorized or measured.

(d) As used in this section:

(1) "Notice" means notice in writing and such notice in writing will be presumed to have been given three days following deposit of the notice as registered or certified matter in the United States mail, addressed to such person who has leased or rented the personal property or borrowed the library material at the address as it appears in the information supplied by such person at the time of such leasing, renting or borrowing, or to such person's last known address; and

(2) "tampering" includes, but is not limited to:

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

(B) defacing, puncturing, removing, reversing or altering any meter or any connections, for the purpose of securing unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service;

(C) preventing any such meters from properly measuring or registering;

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

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

New Sec. 91. It shall be unlawful to:

(a) Manufacture or distribute in any way a laminated or coated bag or device particular to and intentionally marketed for shielding and intended to shield merchandise from detection by electronic or magnetic theft alarm sensor;

(b) possess any laminated or coated bag or device particular to and designed for shielding and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor, with the intent to commit theft;

(c) possess any tool or device designed to allow the removal of any theft detection device from any merchandise with the intent to use such tool to remove any theft detection device from any merchandise without the permission of the merchant or person owning or holding such merchandise; or

(d) possess one or more fraudulent retail sales receipts or universal product code labels or possessing the device which manufactures fraudulent retail sales receipts or universal product code labels with the intent to cheat or defraud a retailer. A person having possession, custody or control of 15 or more such receipts or labels or such device shall be presumed to possess such items with the intent to cheat or defraud a retailer.

(e) Violation of this section is a severity level 9, nonperson felony.

New Sec. 92. (a) Unlawful use of recordings is:

(1) Knowingly, and without the consent of the owner, duplicating or causing to be duplicated any sounds recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, or recording or causing to be recorded any live performance, with the intent to sell, rent or cause to be sold or rented, any such duplicated sounds or any such recorded performance, or to give away such duplicated sounds or recorded performance as part of a promotion for any product or service;

(2) distributing or possessing with the intent to distribute, any article produced in violation of subsection (a)(1) knowing or having reasonable grounds to know that such article was produced in violation of law; or

(3) knowingly selling, renting, offering for sale or rental, or possessing, transporting or manufacturing with intent to sell or rent, any phonograph record, audio or video disc, wire, audio or video tape, film or other article now known or later developed on which sounds, images, or both sounds and images are recorded or otherwise stored, unless the outside cover, box or jacket clearly and conspicuously discloses the name and address of the manufacturer of such recorded article.

(b) Unlawful use of recordings:

(1) Is a severity level 9, nonperson felony, except as provided in (b)(2); and

(2) as defined in subsection (a)(2) or (a)(3), is a class A nonperson misdemeanor if the offense involves fewer than seven audio visual recordings, or fewer than 100 sound recordings during a 180-day period.

(c) The provisions of subsection (a)(1) shall not apply to:

(1) Any broadcaster who, in connection with or as part of a radio or television broadcast or cable transmission, or for the purpose of archival preservation, duplicates any such sounds recorded on a sound recording;

(2) any person who duplicates such sounds or such performance for personal use, and without compensation for such duplication; or

(3) any sounds initially fixed in a tangible medium of expression after February 15, 1972.

(d) The provisions of subsections (a)(1) and (a)(3) shall not apply to any computer program or any audio or visual recording that is part of any computer program or to any article or device on which is exclusively recorded any such computer program.

(e) As used in this section:

(1) "Owner" means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master wire, master tape, master film or other device used for reproducing sounds on phonograph records, discs, wires, tapes, films or other articles now known or later developed upon which sound is recorded or otherwise stored, and from which the duplicated recorded sounds are directly or indirectly derived, or the person who owns the right to record such live performance; and

(2) "computer program" means a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.

(f) It shall be the duty of all law enforcement officers, upon discovery, to confiscate all recorded devices that do not conform to the provisions of this section and that are possessed for the purpose of selling or renting such recorded devices, and all equipment and components used or intended to be used to knowingly manufacture recorded devices that do not conform to the provisions of such section for the purpose of selling or renting such recorded devices. The nonconforming recorded devices that are possessed for the purpose of selling or renting such recorded devices are contraband and shall be delivered to the district attorney for the county in which the confiscation was made, by court order, and shall be destroyed or otherwise disposed of, if the court finds that the person claiming title to such recorded devices possessed such recorded devices for the purpose of selling or renting such recorded devices. The equipment and components confiscated shall be delivered to the district attorney for the county in which the confiscation was made, by court order upon conviction, and may be given to a charitable or educational organization.

New Sec. 93. (a) Burglary is, without authority, entering into or remaining within any:

(1) Dwelling, with intent to commit a felony, theft or sexual battery therein;

(2) building, manufactured home, mobile home, tent or other structure which is not a dwelling, with intent to commit a felony, theft or sexual battery therein; or

(3) vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property, with intent to commit a felony, theft or sexual battery therein.

(b) Aggravated burglary is, without authority, entering into or remaining within any building, manufactured home, mobile home, tent or other structure, or any vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property in which there is a human being with intent to commit a felony, theft or sexual battery therein.

(c) (1) Burglary as defined in:

(A) Subsection (a)(1) is a severity level 7, person felony;

(B) subsection (a)(2) is a severity level 7, nonperson felony; and

(C) subsection (a)(3) is a severity level 9, nonperson felony.

(2) Aggravated burglary is a severity level 5, person felony.

New Sec. 94. (a) Criminal trespass is entering or remaining upon or in any:

(1) Land, nonnavigable body of water, structure, vehicle, aircraft or watercraft by a person who knows such person is not authorized or privileged to do so, and:

(A) Such person enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to such person by the owner thereof or other authorized person;

(B) such premises or property are posted in a manner reasonably

likely to come to the attention of intruders, or are locked or fenced or otherwise enclosed, or shut or secured against passage or entry; or

(C) such person enters or remains therein in defiance of a restraining order issued pursuant to K.S.A. 60-1607, 60-3105, 60-3106, 60-3107, 60-31a05 or 60-31a06 or K.S.A. 2009 Supp. 38-2243, 38-2244 or 38-2255, and amendments thereto, and the restraining order has been personally served upon the person so restrained; or

(2) public or private land or structure in a manner that interferes with access to or from any health care facility by a person who knows such person is not authorized or privileged to do so and such person enters or remains thereon or therein in defiance of an order not to enter or to leave such land or structure personally communicated to such person by the owner of the health care facility or other authorized person.

(b) Criminal trespass is a class B nonperson misdemeanor. Upon a conviction of a violation of subsection (a)(1)(C), a person shall be sentenced to not less than 48 consecutive hours of imprisonment which shall be served either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

(c) As used in this section:

(1) "Health care facility" means any licensed medical care facility, certificated health maintenance organization, licensed mental health center or mental health clinic, licensed psychiatric hospital or other facility or office where services of a health care provider are provided directly to patients; and

(2) "health care provider" means any person:

(A) Licensed to practice a branch of the healing arts;

(B) licensed to practice psychology;

(C) licensed to practice professional or practical nursing;

(D) licensed to practice dentistry;

(E) licensed to practice optometry;

(F) licensed to practice pharmacy;

(G) registered to practice podiatry;

(H) licensed as a social worker; or

(I) registered to practice physical therapy.

(d) This section shall not apply to:

(1) A land surveyor, licensed pursuant to article 70 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, and such surveyor's authorized agents and employees who enter upon lands, waters and other premises in the making of a survey; or

(2) railroad property as defined in section 95, and amendments thereto, or nuclear generating facility as defined in K.S.A. 2009 Supp. 66-2302, and amendments thereto.

New Sec. 95. (a) Trespassing on railroad property is:

(1) Entering or remaining on railroad property, without consent of the owner or the owner's agent, knowing that it is railroad property; or

(2) recklessly causing in any manner the derailment of a train, railroad car or rail-mounted work equipment.

(b) Trespassing on railroad property is a:

(1) Class A nonperson misdemeanor, except as provided in subsection (b)(2);

(2) severity level 8, nonperson felony if such trespassing results in a demonstrable monetary loss, damage or destruction of railroad property valued at more than $1,500.

(c) Subsection (a) shall not be construed to interfere with the lawful use of a public or private crossing.

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

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

New Sec. 96. Criminal hunting is knowingly hunting, shooting, fur harvesting, pursuing any bird or animal, or fishing:

(1) Upon any land or nonnavigable body of water of another, without having first obtained permission of the owner or person in possession of such premises;

(2) upon or from any public road, public road right-of-way or railroad right-of-way that adjoins occupied or improved premises, without having first obtained permission of the owner or person in possession of such premises; or

(3) upon any land or nonnavigable body of water of another by a person who knows such person is not authorized or privileged to do so, and:

(A) Such person remains therein and continues to hunt, shoot, fur harvest, pursue any bird or animal or fish in defiance of an order not to enter or to leave such premises or property personally communicated to such person by the owner thereof or other authorized person; or

(B) such premises or property are posted in a manner consistent with K.S.A. 32-1013, and amendments thereto.

(b) Criminal hunting as defined in:

(1) Subsection (a)(1) or (a)(2) is a class C misdemeanor. Upon the first conviction of subsection (a)(1) or (a)(2), in addition to any authorized sentence imposed by the court, such court may require the forfeiture of the convicted person's hunting, fishing or fur harvesting license, or all, or, in any case where such person has a combination license, the court may require forfeiture of a part or all of such license and the court may order such person to refrain from hunting, fishing or fur harvesting, or all, for up to one year from the date of such conviction. Upon a second or subsequent conviction of subsection (a)(1) or (a)(2), in addition to any authorized sentence imposed by the court, such court shall require the forfeiture of the convicted person's hunting, fishing or fur harvesting license, or all, or, in any case where such person has a combination license, the court shall require the forfeiture of a part or all of such license and the court shall order such person to refrain from hunting, fishing or fur harvesting, or all, for one year from the date of such conviction. A person licensed to hunt and following or pursuing a wounded game bird or animal upon any land of another without permission of the landowner or person in lawful possession thereof shall not be deemed to be in violation of this provision while in such pursuit, except that this provision shall not authorize a person to remain on such land if instructed to leave by the owner thereof or other authorized person; and

(2) subsection (a)(3) is a class B misdemeanor. Upon the first conviction or a diversion agreement of subsection (a)(3), in addition to any authorized sentence imposed by the court, the court shall require forfeiture of such person's hunting, fishing or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for six months. Upon the second conviction of subsection (a)(3), addition to any authorized sentence imposed by the court, such court shall require the forfeiture of the convicted person's hunting, fishing or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for one year. Upon the third or subsequent conviction of subsection (a)(3), in addition to any authorized sentence imposed by the court, such court shall require forfeiture of the convicted person's hunting, fishing or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for five years.

(c) The court shall notify the department of wildlife and parks of any conviction or diversion for a violation of this section.

New Sec. 97. (a) It is unlawful for any commercial fossil hunter to:

(1) Go upon the land of another in search of fossils unless the commercial fossil hunter has obtained the written authorization of the landowner to go upon such land for such purpose and when requesting such written authorization has identified oneself to the landowner as a commercial fossil hunter who intends to explore the land and sell any fossils of value found on the land. The written authorization shall state that the landowner has been informed of such intended activities by the commercial fossil hunter; or

(2) remove a fossil from the land of another upon which the fossil is located unless the landowner is first provided with a description of the fossil and the landowner authorizes in writing the removal of the fossil.

(b) (1) Violation of subsection (a)(1) is a class B nonperson misdemeanor.

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

(c) As used in this section:

(1) "Commercial fossil hunter" means an individual who goes upon the land of another in search of fossils with the intent to sell fossils of value found upon such land;

(2) "fossil" means any impression or trace of an animal or plant of a past geological age preserved in the earth's crust;

(3) "landowner" means the record owner of the fee in real estate or the tenant of such owner who occupies such real estate, if so authorized by the owner; and

(4) "land of another" means all real estate other than that owned or leased by any governmental entity or the commercial fossil hunter.

(d) This section is supplemental to and not in lieu of any other law of this state relating to entering or remaining upon the land of another and relating to the removal of items of value from the property of another.

(e) It shall not be a defense that the person did not know or have reason to know that such person was on the landowner's property.

New Sec. 98. (a) Arson is:

(1) Knowingly, by means of fire or explosive damaging any building or property which:

(A) Is a dwelling in which another person has any interest without the consent of such other person;

(B) is a dwelling with intent to injure or defraud an insurer or lienholder;

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

(D) is not a dwelling with intent to injure or defraud an insurer or lienholder;

(2) accidentally, by means of fire or explosive, as a result of manufacturing or attempting to manufacture a controlled substance or controlled substance analog in violation of K.S.A. 2009 Supp. 21-36a03, and amendments thereto, damaging any building or property which is a dwelling; or

(3) accidentally, by means of fire or explosive as a result of manufacturing or attempting to manufacture a controlled substance or controlled substance analog in violation of K.S.A.2009 Supp. 21-36a03, and amendments thereto, damaging any building or property which is not a dwelling.

(b) Aggravated arson is arson, as described in subsection (a):

(1) Committed upon a building or property in which there is a human being; or

(2) which results in great bodily harm or disfigurement to a firefighter or law enforcement officer in the course of fighting or investigating the fire.

(c) (1) Arson as defined in:

(A) Subsection (a)(1)(A) or (a)(1)(B) is a severity level 6, person felony;

(B) subsection (a)(1)(C) or (a)(1)(D) or (a)(3) is a severity level 7, nonperson felony; and

(C) subsection (a)(2) is a severity level 7, person felony.

(2) Aggravated arson as defined in:

(A) Subsection (b)(1) is a:

(i) Severity level 3, person felony, if such crime results in a substantial risk of bodily harm; and

(ii) severity level 6, person felony, if such crime results in no substantial risk of bodily harm; and

(B) subsection (b)(2) is a severity level 3, person felony.

New Sec. 99. (a) Criminal damage to property is by means other than by fire or explosive:

(1) Knowingly damaging, destroying, defacing or substantially impairing the use of any property in which another has an interest without the consent of such other person; or

(2) damaging, destroying, defacing or substantially impairing the use of any property with intent to injure or defraud an insurer or lienholder.

(b) Criminal damage to property if the property:

(1) Is damaged to the extent of $25,000 or more is a severity level 7, nonperson felony;

(2) is damaged to the extent of at least $1,000 but less than $25,000 is a severity level 9, nonperson felony; and

(3) damaged is of the value of less than $1,000 or is of the value of $1,000 or more and is damaged to the extent of less than $1,000 is a class B nonperson misdemeanor.

New Sec. 100. (a) Criminal use of an explosive is:

(1) Possessing, manufacturing or transporting a commercial explosive, whether or not a person knows or has reason to know it is a commercial explosive; or

(2) possessing, creating or constructing a simulated explosive, destructive device, incendiary, radiological, biological or poison gas, bomb, rocket, missile, mine, grenade, dispersal device or similar simulated device, with intent to intimidate or cause alarm to another person.

(b) Criminal use of an explosive as defined in:

(1) Subsection (a)(1) is a:

(A) Severity level 6, person felony, except as provided in (b)(1)(B);

(B) severity level 5, person felony if:

(i) The possession, manufacture or transportation is intended to be used to commit a crime or is distributed to another with knowledge that such other intends to use such substance to commit a crime;

(ii) a public safety officer is placed at risk to defuse such explosive; or

(iii) the explosive is introduced into a building in which there is another human being; and

(2) subsection (a)(2) is a severity level 8, person felony.

(c) As used in:

(1) Subsection (a)(1), an "explosive" shall not include any legally obtained and transferred commercial explosive by licensed individuals and ammunition and commercially available loading powders and products used as ammunition, and consumer fireworks, as defined in 27 C.F.R. 555.11, in effect on May 17, 2007, unless such consumer fireworks are modified or assembled as a device that deflagrates or explodes when used for a purpose not intended by the manufacturer; and

(2) this section, "commercial explosive" includes chemical compounds that form an explosive; a combination of chemicals, compounds or materials, including, but not limited to, the presence of an acid, a base, dry ice or aluminum foil, that are placed in a container for the purpose of generating a gas or gases to cause a mechanical failure, rupture or bursting of the container; incendiary or explosive material, liquid or solid; detonator; blasting cap; military explosive fuse assembly; squib; electric match or functional improvised fuse assembly; or any completed explosive device commonly known as a pipe bomb or a molotov cocktail.

(d) The provisions of subsection (a)(1) shall not prohibit law enforcement officials, the United States military, public safety officials, accredited educational institutions or licensed or registered businesses, and associated personnel, from engaging in legitimate public safety training, demonstrations or exhibitions requiring the authorized construction or use of such simulated devices or materials.

New Sec. 101. (a) Criminal littering is recklessly depositing or causing to be deposited any object or substance into, upon or about:

(1) Any public street, highway, alley, road, right-of-way, park or other public place, or any lake, stream, watercourse, or other body of water, except by direction of some public officer or employee authorized by law to direct or permit such acts; or

(2) any private property without the consent of the owner or occupant of such property.

(b) Criminal littering is an unclassified misdemeanor punishable:

(1) Upon a first conviction by a fine of not less than $250 nor more than $1,000;

(2) upon a second conviction by a fine of not less than $1,000 nor more than $2,000; and

(3) upon a third or subsequent conviction by a fine of not less than $2,000 nor more than $4,000.

(c) The provisions of K.S.A. 8-15,102, and amendments thereto, are excepted from the application of this section.

(d) In addition to the fines in subsection (b), a person convicted of littering shall be required to pick up litter for a time prescribed by and at a place within the jurisdiction of the court.

New Sec. 102. (a) Tampering with a landmark is doing any of the following acts with the intent to fraudulently alter a boundary:

(1) Removing any monument of stone or other durable material, established or created for the purpose of designating the corner of or any other point upon the boundary of any lot or tract of land, or of the state, or any legal subdivision thereof;

(2) defacing or altering marks upon any tree, post or other monument, made for the purpose of designating any point on such boundary;

(3) cutting down or removing any tree, post or other monument upon which any such marks have been made for such purpose, with intent to destroy such marks;

(4) defacing or altering any inscription on any such marker or monument; or

(5) altering, removing, damaging or destroying any public land survey corner or accessory without complying with the provisions of K.S.A. 58-2011, and amendments thereto.

(b) Tampering with a landmark is a class C misdemeanor.

New Sec. 103. (a) Tampering with a traffic signal is knowingly manipulating, altering, destroying or removing any light, sign, marker, railroad switching device or other signal device erected or installed for the purpose of controlling or directing the movement of motor vehicles, railroad trains, aircraft or watercraft.

(b) Aggravated tampering with a traffic signal is tampering with a traffic signal as defined in subsection (a) which creates an unreasonable risk of an accident causing the death or great bodily injury of any person.

(c) (1) Tampering with a traffic signal is a class C misdemeanor.

(2) Aggravated tampering with a traffic signal is a severity level 7, nonperson felony.

(d) It shall not be necessary that an accident occurs for a person to be charged and convicted pursuant to subsection (b).

(e) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for violating section 87 or 88, and amendments thereto.

New Sec. 104. (a) Tampering with a pipeline is the knowing and unauthorized alteration of or interference with any part of a pipeline.

(b) Tampering with a pipeline is a severity level 6, nonperson felony.

(c) As used in this section:

(1) "Alteration of or interference with any part of a pipeline" includes, but is not limited to, any adjustment, opening, removal, change or destruction of any part of any pipeline; and

(2) "pipeline" means any pipeline, and any related facility, building, structure or equipment, used in gathering, transmission or transportation of natural gas, crude oil, petroleum products or anhydrous ammonia. "Pipeline" does not include distribution lines that convey natural gas from a gas main to the ultimate consumer.

New Sec. 105. (a) It is unlawful for any person to:

(1) Recklessly throw, push, pitch or otherwise cast any rock, stone or other object, matter or thing onto a street, road, highway, railroad right-of-way, or upon any vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock thereon;

(2) violate subsection (a) and damage any vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock lawfully on the street, highway or railroad right-of-way by the thrown or cast rock, stone or other object;

(3) violate subsection (a) and injure another person on the street, road, highway or railroad right-of-way; or

(4) violate subsection (a), damage a vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock and a person is injured as a result of the cast or thrown object or

from injuries incurred as a result of damage to the vehicle in which a person was a passenger when struck by such object.

(b) (1) Violation of subsection (a)(1) is a class B nonperson misdemeanor.

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

(3) Violation of subsection (a)(3) is a severity level 7, person felony.

(4) Violation of subsection (a)(4) is a severity level 6, person felony.

(e) In any case where a vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock is damaged as a result of a violation of subsection (a), the provisions of this section shall not bar conviction of the accused under any other offense in sections 87 through 125, and amendments thereto. An accused may be convicted for a violation of any other offense in sections 87 through 125, and amendments thereto, or this section, but not under both.

(f) In any case where a person dies or sustains bodily injury as a result of a violation of subsection (a), the provisions of this section shall not bar conviction of the accused under any other offense in sections 36 through 64, and amendments thereto. An accused may be convicted for a violation of any other offense in sections 36 through 64, and amendments thereto, or this section, but not under both.

New Sec. 106. (a) Unlawful posting of political pictures and political advertisements is knowingly putting up, affixing or fastening of either or both a political picture or a political advertisement to a telegraph, telephone, electric light or power pole.

(b) Unlawful posting of political pictures and political advertisements is a class C misdemeanor.

New Sec. 107. (a) Giving a worthless check is the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check on any financial institution for the payment of money or its equivalent with intent to defraud and knowing, at the time of the making, drawing, issuing or delivering of such check that the maker or drawer has no deposit in or credits with the financial institution or has not sufficient funds in, or credits with, the financial institution for the payment of such check in full upon its presentation.

(b) Giving a worthless check is a:

(1) Severity level 7, nonperson felony if:

(A) The check is drawn for $25,000 or more; or

(B) more than one worthless check is given within a seven-day period and the combined total of the checks is $25,000 or more;

(2) severity level 9, nonperson felony if:

(A) The check is drawn for at least $1,000 but less than $25,000;

(B) more than one worthless check is given within a seven-day period and the combined total of the checks is at least $1,000 but less than $25,000; or

(C) the person giving the worthless check has, within five years immediately preceding commission of the crime, been convicted of giving a worthless check two or more times; and

(3) class A nonperson misdemeanor if the check is drawn for less than $1,000.

(c) As used in this section and section 108, and amendments thereto:

(1) "Check" is any check, order or draft on a financial institution;

(2) "financial institution" means any bank, credit union, savings and loan association or depository; and

(3) "notice" includes oral or written notice to the person entitled thereto.

(d) In any prosecution against the maker or drawer of a check, payment of which has been refused by the financial institution on account of insufficient funds, the making, drawing, issuing or delivering of such check shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in, or on deposit with, the financial institution:

(1) Unless the maker or drawer pays the holder thereof the amount due thereon and a service charge not exceeding $30 for each check, within seven days after notice has been given to the maker or drawer that such check has not been paid by the financial institution. Written notice shall be presumed to have been given when deposited as restricted matter in the United States mail, addressed to the person to be given notice at such person's address as it appears on such check; or

(2) if a postdated date is placed on the check without the knowledge or consent of the payee.

(e) It shall not be a defense to a prosecution under this section that the check upon which such prosecution is based was:

(1) Postdated, unless such check was presented for payment prior to the postdated date; or

(2) given to a payee who had knowledge or had been informed, when the payee accepted such check that the maker did not have sufficient funds in the hands of the financial institution to pay such check upon presentation, unless such check was presented for payment prior to the date the maker informed the payee there would be sufficient funds.

(f) In addition to all other costs and fees allowed by law, each prosecutor who takes any action under the provisions of this section may collect from the issuer in such action an administrative handling cost, except in cases filed in a court of appropriate jurisdiction. The cost shall not exceed $10 for each check. If the issuer of the check is convicted in a district court, the administrative handling costs may be assessed as part of the court costs in the matter. The moneys collected pursuant to this subsection shall be deposited into a trust fund which shall be administered by the board of county commissioners. The funds shall be expended only with the approval of the board of county commissioners, but may be used to help fund the normal operating expenses of the county or district attorney's office.

New Sec. 108. (a) Causing an unlawful prosecution for giving a worthless check is filing a complaint before a magistrate or supplying information upon which a prosecution for giving a worthless check is commenced with knowledge that the check upon which such prosecution is based was postdated and such check was presented for payment prior to the postdated date or when the payee had knowledge, when such payee accepted such check, that there were no funds or insufficient funds in the hands of the financial institution to pay such check upon presentation and such check was presented for payment prior to the date the maker informed the payee there would be sufficient funds.

(b) Causing an unlawful prosecution for giving a worthless check is a class A nonperson misdemeanor.

(c) Any person convicted of violating this section shall pay the taxable costs of the prosecution initiated by such person or upon information supplied by such person.

New Sec. 109. (a) Forgery is, with intent to defraud:

(1) Making, altering or endorsing any written instrument in such manner that it purports to have been made, altered or endorsed by another person, either real or fictitious, and if a real person without the authority of such person; or altering any written instrument in such manner that it purports to have been made at another time or with different provisions without the authority of the maker thereof; or making, altering or endorsing any written instrument in such manner that it purports to have been made, altered or endorsed with the authority of one who did not give such authority;

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

(3) possessing, with intent to issue or distribute, any such written instrument knowing it to have been thus made, altered or endorsed.

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

(2) On a first conviction of forgery, in addition to any other sentence imposed, a person shall be fined the lesser of the amount of the forged instrument or $500.

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

(4) On a third or subsequent conviction of forgery, a person shall be required to serve at least 45 days' imprisonment as a condition of probation, and fined the lesser of the amount of the forged instrument or $2,500.

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

(c) In any prosecution under this section, it may be alleged in the

complaint or information that it is not known whether a purported person is real or fictitious, and in such case there shall be a rebuttable presumption that such purported person is fictitious.

New Sec. 110. (a) Making false information is making, generating, distributing or drawing, or causing to be made, generated, distributed or drawn, any written instrument, electronic data or entry in a book of account with knowledge that such information falsely states or represents some material matter or is not what it purports to be, and with intent to defraud, obstruct the detection of a theft or felony offense or induce official action.

(b) Making false information is a severity level 8, nonperson felony.

New Sec. 111. (a) Counterfeiting is manufacturing, using, displaying, advertising, distributing or possessing with intent to distribute any item or services knowing such item or services bear or are identified by a counterfeit mark.

(b) Counterfeiting is a:

(1) Severity level 7, nonperson felony if:

(A) The retail value of such item or service is $25,000 or more;

(B) such counterfeiting involves 1,000 or more items bearing a counterfeit mark; or

(C) a third or subsequent violation of this section;

(2) severity level 9, nonperson felony if:

(A) The retail value of such item or service is at least $1,000 but less than $25,000;

(B) such counterfeiting involves more than 100 but less than 1,000 items bearing a counterfeit mark; or

(C) a second violation of this section; and

(3) class A nonperson misdemeanor, if the retail value of such item or service is less than $1,000.

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

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

(e) As used in this section:

(1) "Counterfeit mark" means:

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

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

(2) "intellectual property" means any trademark, service mark or trade name as such terms are defined in K.S.A. 2009 Supp. 81-202, and amendments thereto; and

(3) "retail value" means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized.

(f) The quantity or retail value of items or services shall include the aggregate quantity or retail value of all items bearing, or services identified by, every counterfeit mark the defendant manufactures, uses, displays, advertises, distributes or possesses.

New Sec. 112. (a) Destroying a written instrument is tearing, cutting, burning, erasing, obliterating or destroying a written instrument, in whole or in part, with intent to defraud.

(b) Destroying a written instrument is a severity level 9, nonperson felony.

New Sec. 113. (a) Altering a legislative document is knowingly mutilating, altering or changing, otherwise than in the regular course of legislation, any act, bill or resolution introduced into or acted upon by either or both houses of the legislature of this state either before or after such act, bill or resolution has been signed by the governor.

(b) Altering a legislative document is a severity level 9, nonperson felony.

New Sec. 114. (a) Criminal use of a financial card is any of the following acts done with intent to defraud and to obtain money, goods, property or services:

(1) Using a financial card without the consent of the cardholder;

(2) using a financial card, or the number or description thereof, which has been revoked or canceled; or

(3) using a falsified, mutilated, altered or nonexistent financial card or a number or description thereof.

(b) Criminal use of a financial card is a:

(1) Severity level 7, nonperson felony if the money, goods, property or services obtained within any seven-day period are of the value of $25,000 or more;

(2) Severity level 9, nonperson felony if the money, goods, property or services obtained within any seven-day period are of the value of at least $1,000 but less than $25,000; and

(3) class A nonperson misdemeanor if the money, goods, property or services obtained within a seven-day period are of the value of less than $1,000.

(c) As used in this section:

(1) "Financial card" means an identification card, plate, instrument, device or number issued by a business organization authorizing the cardholder to purchase, lease or otherwise obtain money, goods, property or services or to conduct other financial transactions; and

(2) "cardholder" means the person or entity to whom or for whose benefit a financial card is issued.

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

New Sec. 115. (a) Unlawful manufacture or disposal of false tokens is manufacturing for sale, offering for sale or giving away any false token, slug, substance, false or spurious coin or other device intended or calculated to be placed or deposited in any automatic vending machine, coin-operated telephone, parking meter or other such receptacle with intent to cheat or defraud the owner, lessee, licensee or other person entitled to the contents of such automatic vending machine, coin-operated telephone, parking meter or other receptacle designed to receive coins or currency of the United States of America in connection with the sale, use or enjoyment of property or service.

(b) Unlawful manufacture or disposal of false tokens is a class B nonperson misdemeanor.

(c) The manufacture for sale, advertising, offering for sale or distribution of any such false token, slug, substance, false or spurious coin or other device shall be prima facie evidence of an intent to cheat or defraud within the meaning of this section.

New Sec. 116. (a) Impairing a security interest is, with intent to defraud the secured party:

(1) Damaging, destroying or concealing any personal property subject to a security interest;

(2) selling, exchanging or otherwise disposing of any personal property subject to a security interest without the written consent of the secured party, where such sale, exchange or other disposition is not authorized by the secured party under the terms of the security agreement; or

(3) failing to account to the secured party for the proceeds of the sale, exchange or other disposition of any personal property subject to a security interest, where such sale, exchange or other disposition is authorized and such accounting for proceeds is required by the secured party under the terms of the security agreement or otherwise.

(b) Impairing a security interest, when the personal property subject to the security interest is of the value of:

(1) $25,000 or more and is subject to a security interest of $25,000 or more is a severity level 7, nonperson felony;

(2) at least $1,000 and is subject to a security interest of at least $1,000 and either the value of the property or the security interest is less than $25,000 is a severity level 9, nonperson felony; and

(3) less than $1,000, or of the value of $1,000 or more but subject to a security interest of less than $1,000 is a class A nonperson misdemeanor.

New Sec. 117. (a) Warehouse receipt fraud is making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering by a warehouseman, or any officer, agent or employee of a warehouseman, of:

(1) A negotiable receipt for goods with knowledge that the goods for which the receipt is issued have not actually been received by the warehouseman, or are not under the warehouseman's actual control at the time of issuing the receipt;

(2) a negotiable receipt for goods with knowledge that the receipt contains a false statement; or

(3) a duplicate or additional negotiable receipt for goods with knowledge that a former negotiable receipt for the same goods or any part thereof is outstanding and uncanceled, without plainly placing on the face thereof the word "duplicate," except in the case of a lost, stolen or destroyed receipt after proceedings as provided in K.S.A. 34-257 or subsection (a) of K.S.A. 2009 Supp. 84-7-601, and amendments thereto.

(b) Warehouse receipt fraud is a severity level 10, nonperson felony.

New Sec. 118. (a) Unauthorized delivery of stored goods is delivery of goods out of the possession of a warehouseman by such warehouseman, or any officer, agent or employee of such warehouseman, with knowledge that a negotiable receipt, the negotiation of which would transfer the right to the possession of such goods, is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery except:

(1) In the case of a lost, stolen or destroyed receipt, after proceedings as provided in subsection (a) of K.S.A. 2009 Supp. 84-7-601, and amendments thereto;

(2) in the case of delivery in good faith as provided in subsection (b) of K.S.A. 2009 Supp. 84-7-206, and amendments thereto;

(3) in the case of optional termination of storage as provided in K.S.A. 2009 Supp. 84-7-206, and amendments thereto;

(4) in the case of a lost or destroyed receipt, after proceedings as provided in K.S.A. 34-257, and amendments thereto; or

(5) in the case of sale as provided in K.S.A. 34-276, and amendments thereto.

(b) Unauthorized delivery of stored goods is a class A nonperson misdemeanor.

New Sec. 119. (a) Automobile master key violation is:

(1) Selling or offering to sell a motor vehicle master key knowing it to be designed to fit the ignition switch of more than one motor vehicle; or

(2) possession of a motor vehicle master key designed to fit the ignition switch of more than one motor vehicle by a person knowing it to be such a key.

(b) Automobile master key violation is a class C misdemeanor.

(c) The provisions of this section shall not apply to a:

(1) Law enforcement officer;

(2) person who is regularly carrying on the business of garage proprietor or locksmith;

(3) owner of two or more vehicles who possess such motor vehicle master key for any or all of the motor vehicles so owned; or

(4) person who sells a motor vehicle master key to a person described in subsection (c)(3).

New Sec. 120. (a) Sale of recut or regrooved tires is the sale, offer to sell or exposure for sale of any passenger vehicle tire which the person knows to have been recut or regrooved, or the sale, offer to sell or exposure for sale of any passenger vehicle equipped with any tire which is known to have been recut or regrooved.

(b) Sale of recut or regrooved tires is a class B nonperson misdemeanor.

(c) As used in this section:

(1) "Recut or regrooved tire" means an unretreated or unrecapped tire into which new grooves have been cut or burned; and

(2) "passenger vehicle" means the same as in K.S.A. 8-126, and amendments thereto.

New Sec. 121. (a) It is unlawful for any person:

(1) To knowingly tamper with, adjust, alter, change, set back, disconnect or fail to connect the odometer of any motor vehicle, or cause any of the foregoing to occur to an odometer of a motor vehicle, so as to reflect a lower mileage than the true mileage traveled by the motor vehicle;

(2) with the intent to defraud, to operate a motor vehicle on any street or highway knowing that the odometer of the motor vehicle is disconnected or nonfunctional;

(3) to advertise for sale, sell, use or install on any part of a motor vehicle or on any odometer in a motor vehicle any device which the person knows can cause the odometer to register any mileage other than the true mileage; or

(4) to sell or offer to sell, with the intent to defraud, a motor vehicle knowing that the odometer of such motor vehicle was tampered with, adjusted, altered, changed, set back, disconnected or failed to be connected so as to reflect a lower mileage than the true mileage of such motor vehicle.

(b) Nothing in this section shall prevent the service, repair or replacement of an odometer, provided the mileage indicated thereon remains the same as before the service, repair or replacement. If the odometer is incapable of registering the same mileage as before such service, repair or replacement, the odometer shall be adjusted to read zero and a notice shall be attached permanently to the left door frame of the vehicle by the owner or owner's agent specifying the mileage prior to repair or replacement of the odometer, the date on which it was repaired or replaced and the vehicle identification number except that it shall be unlawful for any person to:

(1) Fail to adjust an odometer or affix a notice regarding such adjustment, as required under this subsection; or

(2) remove or alter any notice affixed to a vehicle pursuant to the provisions of this subsection.

(c) Violation of this section is a severity level 9, nonperson felony.

(d) The provisions of this section shall not apply to antique motor vehicles which could be registered under the provisions of K.S.A. 8-166 et seq., and amendments thereto, or to special interest vehicles which could be registered under the provisions of K.S.A. 8-194 et seq., and amendments thereto.

(e) As used in this section:

(1) "Motor vehicle" means any vehicle other than a motorized bicycle which is self-propelled and is required to be registered under the provisions of article 1 of chapter 8 of Kansas Statutes Annotated, and amendments thereto;

(2) "vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, and is required to be registered under the provisions of article 1 of chapter 8 of Kansas Statutes Annotated, and amendments thereto, except that such term shall not include motorized bicycles or mobile homes;

(3) "true mileage" means the actual mileage the motor vehicle has been driven;

(4) "person" means an individual, partnership, corporation or association; and

(5) "odometer" means an instrument for measuring and recording the actual distance a motor vehicle travels while in operation, but shall not include any auxiliary odometer designed to be reset by the operator of the motor vehicle for the purpose of recording mileage on trips.

(f) Every action pursuant to this section shall be brought in the district court of any county in which there occurred any act or practice declared to be a violation of this section, or in which the defendant resides or has such person's principal place of business.

New Sec. 122. (a) It shall be unlawful to transfer ownership to any vehicle, manufactured home or mobile home and knowingly fail to show oneself on the transferred certificate of title.

(b) Violation of this section is a class C misdemeanor.

New Sec. 123. (a) Adding dockage or foreign material to grain is knowingly:

(1) Adding dockage or foreign material to any grain to be marketed; or

(2) recombining any dockage or foreign material once removed from grain with any grain which is to be marketed.

(b) Adding dockage or foreign material to grain is a severity level 9, nonperson felony.

(c) Nothing in this section shall be construed to prohibit:

(1) The treatment of grain to control insects, dust or fungi injurious to stored grain;

(2) the blending of grain with similar grain of a different quality to adjust the quality of a resulting mixture;

(3) the marketing of dockage or foreign materials removed from grain if such dockage or foreign material is marketed separately;

(4) the recombination of broken corn or broken kernels as defined by the administrator of the federal grain inspection service under the federal grain quality improvement act of 1986 with grain of the type from which the broken corn or broken kernels were derived; or

(5) other practices as may be authorized by the United States secretary of agriculture, as of July 1, 1987, under the federal grain quality improvement act of 1986.

(d) As used in this section:

(1) "Foreign material" means dirt, rock, sand, sticks or manure, or any combination of such material defined as foreign material by the United States secretary of agriculture, as of July 1, 1987, under the federal grain quality improvement act of 1986; and

(2) "dockage" means the same as provided by the United States secretary of agriculture, as of July 1, 1987, under the federal grain quality improvement act of 1986.

New Sec. 124. (a) Conducting a pyramid promotional scheme is knowingly establishing, operating, advertising or promoting any pyramid promotional scheme.

(b) Conducting a pyramid promotional scheme is a severity level 9, nonperson felony.

(c) A limitation as to the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the plan or operation does not change the identity of the scheme as a pyramid promotional scheme.

(d) It is not a defense under this section that a participant, on giving consideration, obtains any goods, services or intangible property in addition to the right to receive compensation.

(e) The attorney general, or county attorney or district attorney, or both, may institute criminal action to prosecute this offense.

(f) As used in this section, "pyramid promotional scheme" means a plan or operation by which a participant gives consideration for the opportunity to receive compensation which is derived primarily from any person's introduction of other persons into participation in the plan or operation rather than from the sale of goods, services or intangible property by the participant or other persons introduced into the plan or operation.

New Sec. 125. (a) It is unlawful for any person to:

(1) Knowingly and without authorization access and damage, modify, alter, destroy, copy, disclose or take possession of a computer, computer system, computer network or any other property;

(2) use a computer, computer system, computer network or any other property for the purpose of devising or executing a scheme or artifice with the intent to defraud or to obtain money, property, services or any other thing of value by means of false or fraudulent pretense or representation;

(3) knowingly exceed the limits of authorization and damage, modify, alter, destroy, copy, disclose or take possession of a computer, computer system, computer network or any other property;

(4) knowingly and without authorization, disclose a number, code, password or other means of access to a computer or computer network; or

(5) knowingly and without authorization, access or attempt to access any computer, computer system, computer network or computer soft-

ware, program, documentation, data or property contained in any computer, computer system or computer network.

(b) (1) Violation of subsections (a)(1), (a)(2) or (a)(3) is a severity level 8, nonperson felony.

(2) Violation of subsections (a)(4) or (a)(5) is a class A nonperson misdemeanor.

(c) In any prosecution for a violation of subsections (a)(1), (a)(2) or (a)(3), it shall be a defense that the property or services were appropriated openly and avowedly under a claim of title made in good faith.

(d) As used in this section:

(1) "Access" means to instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system or computer network;

(2) "computer" means an electronic device which performs work using programmed instruction and which has one or more of the capabilities of storage, logic, arithmetic or communication and includes all input, output, processing, storage, software or communication facilities which are connected or related to such a device in a system or network;

(3) "computer network" means the interconnection of communication lines, including microwave or other means of electronic communication, with a computer through remote terminals, or a complex consisting of two or more interconnected computers;

(4) "computer program" means a series of instructions or statements in a form acceptable to a computer which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system;

(5) "computer software" means computer programs, procedures and associated documentation concerned with the operation of a computer system;

(6) "computer system" means a set of related computer equipment or devices and computer software which may be connected or unconnected;

(7) "financial instrument" means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card, debit card or marketable security;

(8) "property" includes, but is not limited to, financial instruments, information, electronically produced or stored data, supporting documentation and computer software in either machine or human readable form;

(9) "services" includes, but is not limited to, computer time, data processing and storage functions and other uses of a computer, computer system or computer network to perform useful work; and

(10) "supporting documentation" includes, but is not limited to, all documentation used in the construction, classification, implementation, use or modification of computer software, computer programs or data.

New Sec. 126. (a) Treason is intentionally levying war against the state, adhering to its enemies, or giving them aid and comfort.

(b) Treason is an off-grid person felony.

(c) No person shall be convicted of treason unless on the evidence of two witnesses to the overt act or confession in open court.

New Sec. 127. (a) Sedition is advocating, or with knowledge of its contents knowingly publishing or distributing any document which advocates, or, with knowledge of its purpose, knowingly becoming a member of any organization which advocates the overthrow or reformation of the existing form of government of this state by violence or unlawful means.

(b) Sedition is a severity level 7, nonperson felony.

New Sec. 128. (a) Perjury is intentionally and falsely:

(1) Swearing, testifying, affirming, declaring or subscribing to any material fact upon any oath or affirmation legally administered in any cause, matter or proceeding before any court, tribunal, public body, notary public or other officer authorized to administer oaths;

(2) subscribing as true and correct under penalty of perjury any material matter in any declaration, verification, certificate or statement as permitted by K.S.A. 53-601, and amendments thereto; or

(3) subscribing as true and correct under penalty of perjury any statement as required by K.S.A. 75-5743, and amendments thereto.

(b) Perjury is a:

(1) Severity level 9, nonperson felony, except as provided in subsection (b)(2); and

(2) severity level 7, nonperson felony if the false statement is made upon the trial of a felony charge.

New Sec. 129. (a) Interference with law enforcement is:

(1) Falsely reporting to a law enforcement officer or state investigative agency that a crime has been committed, knowing that such information is false and intending that the officer or agency shall act in reliance upon such information; or

(2) knowingly obstructing, resisting or opposing any person authorized by law to serve process in the service or execution or in the attempt to serve or execute any writ, warrant, process or order of a court, or in the discharge of any official duty.

(b) (1) Interference with law enforcement as defined in subsection (a)(1) is a class A misdemeanor.

(2) Interference with law enforcement as defined in subsection (a)(2) is a:

(A) Severity level 9, nonperson felony in the case of a felony, or resulting from parole or any authorized disposition for a felony; and

(B) class A nonperson misdemeanor in the case of a misdemeanor, or resulting from any authorized disposition for a misdemeanor, or a civil case.

New Sec. 130. (a) Interference with the judicial process is:

(1) Communicating with any judicial officer in relation to any matter which is or may be brought before such judge, magistrate, master or juror with intent improperly to influence such officer;

(2) committing any of the following acts, with intent to influence, impede or obstruct the finding, decision, ruling, order, judgment or decree of such judicial officer or prosecutor on any matter then pending before the officer or prosecutor:

(A) Communicating in any manner a threat of violence to any judicial officer or any prosecutor;

(B) harassing a judicial officer or a prosecutor by repeated vituperative communication; or

(C) picketing, parading or demonstrating near such officer's or prosecutor's residence or place of abode;

(3) picketing, parading or demonstrating in or near a building housing a judicial officer or a prosecutor with intent to impede or obstruct the finding, decision, ruling, order, judgment or decree of such judicial officer or prosecutor on any matter then pending before the officer or prosecutor;

(4) knowingly accepting or agreeing to accept anything of value as consideration for a promise:

(A) Not to initiate or aid in the prosecution of a person who has committed a crime; or

(B) to conceal or destroy evidence of a crime; or

(5) when performed by a person summoned or sworn as a juror in any case:

(A) Intentionally soliciting, accepting or agreeing to accept from another any benefit as consideration to wrongfully give a verdict for or against any party in any proceeding, civil or criminal;

(B) intentionally promising or agreeing to wrongfully give a verdict for or against any party in any proceeding, civil or criminal; or

(C) knowingly receiving any evidence or information from anyone in relation to any matter or cause for the trial of which such juror has been or will be sworn, without the authority of the court or officer before whom such juror has been summoned, and without immediately disclosing the same to such court or officer.

(b) Interference with the judicial process as defined in:

(1) Subsection (a)(1) is a severity level 9, nonperson felony;

(2) subsection (a)(2) and (a)(3) is a class A nonperson misdemeanor;

(3) subsection (a)(4) is a:

(A) Severity level 8, nonperson felony if the crime is a felony; or

(B) class A nonperson misdemeanor if the crime is a misdemeanor;

(4) subsection (a)(5)(A) is a severity level 7, nonperson felony; and

(5) subsection (a)(5)(B) or (a)(5)(C) is a severity level 9, nonperson felony.

(c) Nothing in this section shall limit or prevent the exercise by any court of this state of its power to punish for contempt.

New Sec. 131. (a) Criminal disclosure of a warrant is recklessly making public in any way, prior to the execution of such warrant the:

(1) Fact that a search warrant or warrant for arrest has been applied for or issued; or

(2) contents of the affidavit or testimony on which such warrant is based.

(b) Criminal disclosure of a warrant is a class B nonperson misdemeanor.

(c) Criminal disclosure of a warrant shall not apply:

(1) When disclosure of the warrant is made at the request of a law enforcement officer for the purpose of assisting in the execution of such warrant;

(2) to personnel of a law enforcement agency disclosing a warrant:

(A) For the purpose of encouraging the person named in the warrant to voluntarily surrender; or

(B) issued in a case involving the abduction of a child unless such disclosure is specifically prohibited by the court issuing such warrant.

New Sec. 132. (a) Simulating legal process is:

(1) Distributing to another any document which simulates or purports to be, or is designed to cause others to believe it to be, a summons, petition, complaint or other judicial process, with intent thereby to induce payment of a claim; or

(2) printing or distributing any such document, knowing that it shall be so used.

(b) Simulating legal process is a class A nonperson misdemeanor.

(c) This section shall not apply to the printing or distribution of blank forms of legal documents intended for actual use in judicial proceedings.

New Sec. 133. As used in sections 134 and 135, and amendments thereto:

(a) "Civil injury or loss" means any injury or loss for which a civil remedy is provided under the laws of this state, any other state or the United States;

(b) "victim" means any individual:

(1) Against whom any crime under the laws of this state, any other state or the United States is being, has been or is attempted to be committed; or

(2) who suffers a civil injury or loss; and

(c) "witness" means any individual:

(1) Who has knowledge of the existence or nonexistence of facts relating to any civil or criminal trial, proceeding or inquiry authorized by law;

(2) whose declaration under oath is received or has been received as evidence for any purpose;

(3) who has reported any crime or any civil injury or loss to any law enforcement officer, prosecutor, probation officer, parole officer, correctional officer, community correctional services officer or judicial officer;

(4) who has been served with a subpoena issued under the authority of a municipal court or any court or agency of this state, any other state or the United States; or

(5) who is believed by the offender to be an individual described in this subsection.

New Sec. 134. (a) Intimidation of a witness or victim is preventing or dissuading, or attempting to prevent or dissuade, with an intent to vex, annoy, harm or injure in any way another person or an intent to thwart or interfere in any manner with the orderly administration of justice:

(1) Any witness or victim from attending or giving testimony at any civil or criminal trial, proceeding or inquiry authorized by law; or

(2) any witness, victim or person acting on behalf of a victim from:

(A) Making any report of the victimization of a victim to any law enforcement officer, prosecutor, probation officer, parole officer, correctional officer, community correctional services officer or judicial officer;

(B) causing a complaint, indictment or information to be sought and prosecuted, or causing a violation of probation, parole or assignment to

a community correctional services program to be reported and prosecuted, and assisting in its prosecution;

(C) causing a civil action to be filed and prosecuted and assisting in its prosecution; or

(D) arresting or causing or seeking the arrest of any person in connection with the victimization of a victim.

(b) Aggravated intimidation of a witness or victim is intimidation of a witness or victim, as defined in subsection (a), when the:

(1) Act is accompanied by an expressed or implied threat of force or violence against a witness, victim or other person or the property of any witness, victim or other person;

(2) act is in furtherance of a conspiracy;

(3) the act is committed by a person who has been previously convicted of corruptly influencing a witness or has been convicted of a violation of this section or any federal or other state's statute which, if the act prosecuted was committed in this state, would be a violation of this section;

(4) witness or victim is under 18 years of age; or

(5) act is committed for pecuniary gain or for any other consideration by a person acting upon the request of another person.

(c) (1) Intimidation of a witness or victim is a class B person misdemeanor.

(2) Aggravated intimidation of a witness or victim is a severity level 6, person felony.

New Sec. 135. (a) In its discretion and upon good cause, which may include, but is not limited to, the declaration of a party's attorney, to believe that intimidation or dissuasion of any victim or witness has occurred or is reasonably likely to occur, any court having jurisdiction over any civil or criminal matter may issue any reasonable order necessary to remedy or prevent the intimidation or dissuasion, including, but not limited to, an order that:

(1) Any person before the court, including but not limited to a party, subpoenaed witness or other person entering the courtroom of the court, not violate any provision of this section or section 134, and amendments thereto;

(2) any person described in this section maintain a prescribed geographic distance from any specified witness or victim;

(3) any person described in this section have no communication whatsoever with any specified witness or victim, except through an attorney under such reasonable restrictions as the court imposes;

(4) calls for a hearing to determine if an order described in subsection (a)(1), (a)(2) or (a)(3) should be issued; or

(5) a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or witness.

(b) Actions by a law enforcement agency pursuant to an order issued under subsection (a)(5) shall be considered to be police protection within the exemption from liability under the Kansas tort claims act for damages resulting from the failure to provide, or the method of providing, police protection.

(c) Violation of an order entered pursuant to subsection (a) may be punished in any of the following ways:

(1) In the manner provided by section 134, and amendments thereto, when applicable;

(2) as a contempt of the court making the order. No finding of contempt shall be a bar to prosecution for a violation of section 134, and amendments thereto, but:

(A) Any person held in contempt shall be entitled to have any punishment imposed for contempt to be credited against any sentence imposed upon conviction of a violation of section 134, and amendments thereto; and

(B) any conviction or acquittal of a violation of subsection (a) or section l34, and amendments thereto, shall be a bar to subsequent punishment for contempt arising out of the same act; or

(3) by revocation of any form of pretrial release of a criminal defendant or by the forfeiture of bail and the issuance of a bench warrant for the defendant's arrest or remanding the defendant into custody. After a hearing and upon a showing by clear and convincing evidence, the court,

in its sound discretion, may order the revocation whether the violation was committed by the defendant personally or in any way caused or encouraged it to be committed.

(d) (1) Any pretrial release of any criminal defendant, whether on bail or under another form of recognizance, shall be considered as a matter of law to include a condition that the defendant will not commit, cause to be committed or knowingly permit to be committed, on the defendant's behalf, any violation of this section or section 134, and amendments thereto. Knowing violation of that condition is subject to the sanction provided by subsection (c)(3) whether or not the defendant was the subject of an order under subjection (a).

(2) Any receipt for any bail or bond given by any court, or by any surety or bondsman and any written promise to appear on one's own recognizance shall contain notice of the provisions of subsection (d)(1) in a conspicuous location.

(3) Any pretrial release of any criminal defendant whether on bail or under another form of recognizance who requests and is entitled to the assistance of counsel under the provisions of K.S.A. 22-4503, and amendments thereto, shall be considered as a matter of law to include a condition that the defendant shall pay the application fee prescribed by K.S.A. 22-4529, and amendments thereto, and the failure to pay such fee shall constitute a violation of this section. Knowing violation of such condition is subject to the sanction provided by subsection (c)(3) whether or not the defendant was the subject of an order under subsection (a).

New Sec. 136. (a) Escape from custody is escaping while held in custody on a: (1) Charge or conviction of a misdemeanor;

(2) charge or adjudication as a juvenile offender where the act, if committed by an adult, would constitute a misdemeanor; or

(3) commitment to the state security hospital as provided in K.S.A. 22-3428, and amendments thereto, based on a finding that the person committed an act constituting a misdemeanor or by a person 18 years of age or over who is being held in custody on a adjudication of a misdemeanor.

(b) Aggravated escape from custody is:

(1) Escaping while held in custody:

(A) Upon a charge or conviction of a felony;

(B) upon a charge or adjudication as a juvenile offender where the act, if committed by an adult, would constitute a felony;

(C) prior to or upon a finding of probable cause for evaluation as a sexually violent predator as provided in K.S.A. 59-29a05, and amendments thereto;

(D) upon commitment to a treatment facility as a sexually violent predator as provided in K.S.A. 59-29a01 et seq., and amendments thereto;

(E) upon a commitment to the state security hospital as provided in K.S.A. 22-3428, and amendments thereto, based on a finding that the person committed an act constituting a felony;

(F) by a person 18 years of age or over who is being held on an adjudication of a felony; or

(G) upon incarceration at a state correctional institution while in the custody of the secretary of corrections.

(2) Escaping effected or facilitated by the use of violence or the threat of violence against any person while held in custody:

(A) On a charge or conviction of any crime;

(B) on a charge or adjudication as a juvenile offender where the act, if committed by an adult, would constitute a felony;

(C) prior to or upon a finding of probable cause for evaluation as a sexually violent predator as provided in K.S.A. 59-29a05, and amendments thereto;

(D) upon commitment to a treatment facility as a sexually violent predator as provided in K.S.A. 59-29a01 et seq., and amendments thereto;

(E) upon a commitment to the state security hospital as provided in K.S.A. 22-3428, and amendments thereto, based on a finding that the person committed an act constituting any crime;

(F) by a person 18 years of age or over who is being held on a charge or adjudication of a misdemeanor of felony; or

(G) upon incarceration at a state correctional institution while in the custody of the secretary of corrections.

(c) (1) Escape from custody is a class A nonperson misdemeanor.

(2) Aggravated escape from custody as defined in:

(A) Subsection (b)(1)(A), (b)(1)(C), (b)(1)(D), (b)(1)(E) or (b)(1)(F) is a severity level 8, nonperson felony;

(B) subsection (b)(1)(B), (b)(1)(G), (b)(2)(B) or (b)(2)(G) is a severity level 5, nonperson felony;

(C) subsection (b)(2)(A), (b)(2)(C), (b)(2)(D), (b)(2)(E) or (b)(2)(F) is a severity level 6, nonperson felony.

(d) As used in this section and section 137, and amendments thereto:

(1) "Custody" means arrest; detention in a facility for holding persons charged with or convicted of crimes or charged or adjudicated as a juvenile offender; detention for extradition or deportation; detention in a hospital or other facility pursuant to court order, imposed as a specific condition of probation or parole or imposed as a specific condition of assignment to a community correctional services program; commitment to the state security hospital as provided in K.S.A. 22-3428, and amendments thereto; or any other detention for law enforcement purposes. "Custody" does not include general supervision of a person on probation or parole or constraint incidental to release on bail;

(2) "escape" means departure from custody without lawful authority or failure to return to custody following temporary leave lawfully granted pursuant to express authorization of law or order of a court;

(3) "juvenile offender" means the same as in K.S.A. 2009 Supp. 38-2302, and amendments thereto; and

(4) "state correctional institution" means the same as in K.S.A. 75-5202, and amendments thereto.

New Sec. 137. (a) Aiding escape is:

(1) Assisting another who is in custody to escape from such custody; or

(2) supplying to another who is in custody any object or thing adapted or designed for use in making an escape; or

(3) introducing into an institution in which a person is confined any object or thing adapted or designed for use in making any escape.

(b) Aiding escape is a:

(1) Severity level 8, nonperson felony, except as provided in subsection (b)(2); and

(2) severity level 4, nonperson felony if such aiding escape is by an employee or volunteer of the department of corrections, or the employee or volunteer of a contractor who is under contract to provide services to the department of corrections.

(c) As used in this section "custody" includes custody on a charge or conviction of crime, on a charge or adjudication of a misdemeanor or felony, or on a commitment to the state security hospital as provided in K.S.A. 22-3428, and amendments thereto, based on a finding that the person committed an act constituting any crime.

New Sec. 138. (a) Obstructing apprehension or prosecution is knowingly harboring, concealing or aiding any person who:

(1) Has committed or who has been charged with committing a felony or misdemeanor under the laws of this state, other than a violation of K.S.A. 22-4903, and amendments thereto, or another state or the United States with intent that such person shall avoid or escape from arrest, trial, conviction or punishment for such felony or misdemeanor; or

(2) is required to register under the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, and who is not in compliance with the requirements of such act with intent that such person shall avoid or escape from registration, arrest, trial, conviction, punishment or any criminal charges arising from the person's failure to comply with the requirements of such act.

(b) Obstructing apprehension or prosecution as defined in:

(1) Subsection (a)(1)is a:

(A) Severity level 8, nonperson felony if the person who is harbored, concealed or aided has committed or has been charged with committing a felony; and

(B) class C misdemeanor if the person who is aided has committed or has been charged with committing a misdemeanor; and

(2) subsection (a)(2) is a severity level 5, person felony.

New Sec. 139. (a) Traffic in contraband in a correctional institution or care and treatment facility is, without the consent of the administrator of the correctional institution or care and treatment facility:

(1) Introducing or attempting to introduce any item into or upon the grounds of any correctional institution or care and treatment facility;

(2) taking, sending, attempting to take or attempting to send any item from any correctional institution or care and treatment facility;

(3) any unauthorized possession of any item while in any correctional institution or care and treatment facility;

(4) distributing any item within any correctional institution or care and treatment facility;

(5) supplying to another who is in lawful custody any object or thing adapted or designed for use in making an escape; or

(6) introducing into an institution in which a person is confined any object or thing adapted or designed for use in making any escape.

(b) (1) Traffic in contraband in a correctional institution or care and treatment facility of firearms, ammunition, explosives or a controlled substance as defined in K.S.A. 2009 Supp. 21-36a01, and amendments thereto, is a severity level 5, nonperson felony.

(2) Traffic in any contraband, as defined by rules and regulations adopted by the secretary, in a correctional institution by an employee of a correctional institution is a severity level 5, nonperson felony, except a violation of subsection (a)(5) or (a)(6) by an employee or volunteer of the department of corrections, or the employee or volunteer of a contractor who is under contract to provide services to the department of corrections, is a severity level 4, nonperson felony.

(3) Traffic in any contraband, as defined by rules and regulations adopted by the secretary of social and rehabilitation services, in a care and treatment facility by an employee of a care and treatment facility is a severity level 5, nonperson felony.

(4) Except as provided in subsections (b)(1) and (b)(2), traffic in contraband in a correctional institution or care and treatment facility is a severity level 6, nonperson felony.

(c) As used in this section:

(1) "Correctional institution" means any state correctional institution or facility, conservation camp, state security hospital, juvenile correctional facility, community correction center or facility for detention or confinement, juvenile detention facility or jail;

(2) "care and treatment facility" means the state security hospital provided for under K.S.A. 76-1305 et seq., and amendments thereto, and a facility operated by the department of social and rehabilitation services for the purposes provided for under K.S.A. 59-29a02 et seq., and amendments thereto; and

(3) "lawful custody" means the same as in section 137, and amendments thereto.

New Sec. 140. (a) Failure to appear is knowingly incurring a forfeiture of an appearance bond and failing to surrender oneself within 30 days following the date of such forfeiture by one who is charged with a misdemeanor and has been released on bond for appearance before any court of this state, other than the municipal court of a city, for trial or other proceeding prior to conviction, or knowingly incurring a forfeiture of an appearance bond and failing to surrender oneself within 30 days after such person's conviction of a misdemeanor has become final by one who has been released on an appearance bond by any court of this state.

(b) Aggravated failure to appear is knowingly incurring a forfeiture of an appearance bond and failing to surrender oneself within 30 days following the date of such forfeiture by one who is charged with a felony and has been released on bond for appearance before any court of this state, or knowingly incurring a forfeiture of an appearance bond and failing to surrender oneself within 30 days after oneself's conviction of a felony has become final by one who has been released on an appearance bond by any court of this state.

(c) (1) Failure to appear is a class B nonperson misdemeanor.

(2) Aggravated failure to appear is a severity level 10, nonperson felony.

(d) The provisions of subsection (a) shall not apply to any person who

forfeits a cash bond supplied pursuant to law upon an arrest for a traffic infraction or cigarette or tobacco infraction.

(e) Any person who is released upon the person's own recognizance, without surety, or who fails to appear in response to a summons or traffic citation, shall be deemed a person released on bond for appearance within the meaning of subsection (a).

New Sec. 141. (a) False signing of a petition is knowingly affixing any fictitious or unauthorized signature to any petition, memorial or remonstrance, intended to be presented to the legislature, or either house thereof, or to any agency or officer of the state of Kansas or any of its political subdivisions.

(b) False signing of an official petition is a class C misdemeanor.

New Sec. 142. (a) False impersonation is representing oneself to be a public officer, public employee or a person licensed to practice or engage in any profession or vocation for which a license is required by the laws of the state of Kansas, with knowledge that such representation is false.

(b) Aggravated false impersonation is falsely representing or impersonating another and in such falsely assumed character:

(1) Becoming bail or security, or acknowledging any recognizance, or executing any bond or other instrument as bail or security, for any party in any proceeding, civil or criminal, before any court or officer authorized to take such bail or security;

(2) confessing any judgment;

(3) acknowledging the execution of any conveyance of property, or any other instrument which by law may be recorded; or

(4) doing any other act in the course of a suit, proceeding or prosecution whereby the person who is represented or impersonated may be made liable to the payment of any debt, damages, costs or sum of money, or such person's rights or interests may be in any manner affected.

(c) (1) False impersonation is a class B nonperson misdemeanor.

(2) Aggravated false impersonation is a severity level 9, nonperson felony.

New Sec. 143. (a) Dealing in false identification documents is knowingly reproducing, manufacturing, selling or offering for sale any identification document which:

(1) Simulates, purports to be or is designed so as to cause others reasonably to believe it to be an identification document; and

(2) bears a fictitious name or other false information.

(b) Vital records identity fraud related to birth, death, marriage and divorce certificates is:

(1) Supplying false information intending that the information be used to obtain a certified copy of a vital record;

(2) making, counterfeiting, altering, amending or mutilating any certified copy of a vital record without lawful authority and with the intent to deceive; or

(3) obtaining, possessing, using, selling or furnishing or attempting to obtain, possess or furnish to another a certified copy of a vital record, with the intent to deceive.

(c) (1) Vital records identity fraud is a severity level 8, nonperson felony.

(2) Dealing in false identification documents is a severity level 8, nonperson felony.

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

(1) A person less than 21 years of age who uses the identification document of another person to acquire an alcoholic beverage, as defined in K.S.A. 8-1599, and amendments thereto; or

(2) a person less than 18 years of age who uses the identification documents of another person to acquire:

(A) Cigarettes or tobacco products, as defined in K.S.A. 79-3301, and amendments thereto;

(B) a periodical, videotape or other communication medium that contains or depicts nudity;

(C) admittance to a performance, live or film, that prohibits the attendance of the person based on age; or

(D) an item that is prohibited by law for use or consumption by such person.

(e) As used in this section, "identification document" means any card, certificate or document or banking instrument including, but not limited to, credit or debit card, which identifies or purports to identify the bearer of such document, whether or not intended for use as identification, and includes, but is not limited to, documents purporting to be drivers' licenses, nondrivers' identification cards, certified copies of birth, death, marriage and divorce certificates, social security cards and employee identification cards.

New Sec. 144. (a) Performance of an unauthorized official act is knowingly and without lawful authority:

(1) Conducting a marriage ceremony; or

(2) certifying an acknowledgment of the execution of any document which by law may be recorded.

(b) Performance of an unauthorized official act is a class B nonperson misdemeanor.

New Sec. 145. (a) Tampering with a public record is knowingly and without lawful authority altering, destroying, defacing, removing or concealing any public record.

(b) Tampering with a public record is a class A nonperson misdemeanor.

New Sec. 146. (a) Tampering with public notice is knowingly and without lawful authority altering, defacing, destroying, removing or concealing any public notice posted according to law, during the time such notice is required or authorized to remain posted.

(b) Tampering with public notice is a class C misdemeanor.

New Sec. 147. (a) Interference with the conduct of public business in public buildings is:

(1) Conduct at or in any public building owned, operated or controlled by the state or any of its political subdivisions so as to knowingly deny to any public official, public employee or any invitee on such premises, the lawful rights of such official, employee or invitee to enter, to use the facilities or to leave any such public building;

(2) knowingly impeding any public official or employee in the lawful performance of duties or activities through the use of restraint, abduction, coercion or intimidation or by force and violence or threat thereof;

(3) knowingly refusing or failing to leave any such public building upon being requested to do so by the chief administrative officer, or such officer's designee, charged with maintaining order in such public building, if such person is committing, threatens to commit or incites others to commit, any act which did or would if completed, disrupt, impair, interfere with or obstruct the lawful missions, processes, procedures or functions being carried on in such public building;

(4) knowingly impeding, disrupting or hindering the normal proceedings of any meeting or session conducted by any judicial or legislative body or official at any public building by any act of intrusion into the chamber or other areas designated for the use of the body or official conducting such meeting or session, or by any act designed to intimidate, coerce or hinder any member of such body or any official engaged in the performance of duties at such meeting or session; or

(5) knowingly impeding, disrupting or hindering, by any act of intrusion into the chamber or other areas designed for the use of any executive body or official, the normal proceedings of such body or official.

(b) Aggravated interference with the conduct of public business is interference with the conduct of public business, as defined in subsection (a), when in possession of any firearm or weapon as described in section 186 or 187, and amendments thereto.

(c) (1) Interference with the conduct of public business in public buildings is a class A nonperson misdemeanor:

(2) Aggravated interference with the conduct of public business is a level 6, person felony.

New Sec. 148. (a) Unlawful disclosure of authorized interception of wire, oral or electronic communications is, with the intent to obstruct, impede or prevent such authorized interception, communicating to any person or making public in any way, other than as provided by law:

(1) The existence of an application or order for such interception issued pursuant to K.S.A. 22-2516, and amendments thereto; or

(2) the resulting investigation.

(b) Unlawful disclosure of authorized interception of wire, oral or electronic communications is a severity level 10, nonperson felony.

New Sec. 149. (a) Violation of a protective order is knowingly violating:

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

(2) a protective order issued by a court or tribunal of any state or Indian tribe that is consistent with the provisions of 18 U.S.C. 2265, and amendments thereto;

(3) a restraining order issued pursuant to K.S.A. 2009 Supp. 38-2243, 38-2244 and 38-2255 and K.S.A. 60-1607, and amendments thereto;

(4) an order issued in this or any other state as a condition of pretrial release, diversion, probation, suspended sentence, postrelease supervision or at any other time during the criminal case that orders the person to refrain from having any direct or indirect contact with another person;

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

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

(b) Violation of a protective order is a class A person misdemeanor.

(c) No protective order, as set forth in this section, shall be construed to prohibit an attorney, or any person acting on such attorney's behalf, who is representing the defendant in any civil or criminal proceeding, from contacting the protected party for a legitimate purpose within the scope of the civil or criminal proceeding. The attorney, or person acting on such attorney's behalf, shall be identified in any such contact.

(d) As used in this section, "order" includes any order issued by a municipal or district court.

New Sec. 150. Sections 150 through 161, and amendments thereto, shall be known and may be cited as the Kansas medicaid fraud control act.

New Sec. 151. As used in sections 150 through 161, and amendments thereto:

(a) "Attorney general" means the attorney general, employees of the attorney general or authorized representatives of the attorney general;

(b) "benefit" means the receipt of money, goods, items, facilities, accommodations or anything of pecuniary value;

(c) "claim" means an electronic, electronic impulse, facsimile, magnetic, oral, telephonic or written communication that is utilized to identify any goods, service, item, facility or accommodation as reimbursable to the Kansas medicaid program, or its fiscal agents, or which states income or expense and is or may be used to determine a rate of payment by the Kansas medicaid program, or its fiscal agent;

(d) "fiscal agent" means any corporation, firm, individual, organization, partnership, professional association or other legal entity which, through a contractual relationship with the department of social and rehabilitation services and thereby, the state of Kansas, receives, processes and pays claims under the Kansas medicaid program;

(e) "family member" means spouse, child, grandchild of any degree, parent, mother-in-law, father-in-law, grandparent of any degree, brother, brother-in-law, sister, sister-in-law, half-brother, half-sister, uncle, aunt, nephew or niece, whether biological, step or adoptive;

(f) "medicaid program" means the Kansas program of medical assistance for which federal or state moneys, or any combination thereof, are expended as administered by the department of social and rehabilitation services, or its fiscal agent, or any successor federal or state, or both, health insurance program or waiver granted thereunder;

(g) "medically necessary" means for the purposes of sections 150 through 161, and amendments thereto, only, any goods, service, item, facility, or accommodation, that a reasonable and prudent provider under similar circumstances would believe is appropriate for diagnosing or treating a recipient's condition, illness or injury;

(h) "person" means any agency, association, corporation, firm, limited liability company, limited liability partnership, natural person, organization, partnership or other legal entity, the agents, employees, independent

contractors, and subcontractors, thereof, and the legal successors thereto, and any official, employee or agent of a state or federal agency having regulatory or administrative authority over the medicaid program;

(i) "provider" means a person who has applied to participate in, who currently participates in, who has previously participated in, who attempts or has attempted to participate in the medicaid program, by providing or claiming to have provided goods, services, items, facilities or accommodations;

(j) "recipient" means an individual, either real or fictitious, in whose behalf any person claimed or received any payment or payments from the medicaid program, or its fiscal agent, whether or not any such individual was eligible for benefits under the medicaid program;

(k) "records" mean all written documents and electronic or magnetic data, including, but not limited to, medical records, X-rays, professional, financial or business records relating to the treatment or care of any recipient; goods, services, items, facilities or accommodations provided to any such recipient; rates paid for such goods, services, items, facilities or accommodations; and goods, services, items, facilities, or accommodations provided to nonmedicaid recipients to verify rates or amounts of goods, services, items, facilities or accommodations provided to medicaid recipients, as well as any records that the medicaid program, or its fiscal agents require providers to maintain;

(l) "sign" means to affix a signature, directly or indirectly, by means of handwriting, typewriter, stamp, computer impulse or other means; and

(m) "statement or representation" means an electronic, electronic impulse, facsimile, magnetic, oral, telephonic, or written communication that is utilized to identify any goods, service, item, facility or accommodation as reimbursable to the medicaid program, or its fiscal agent, or that states income or expense and is or may be used to determine a rate of payment by the medicaid program, or its fiscal agent.

New Sec. 152. (a) Making a false claim, statement or representation to the medicaid program is, with intent to defraud, making, presenting, submitting, offering or causing to be made, presented, submitted or offered:

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

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

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

(4) any false or fraudulent statement or representation made in connection with any report or filing which is or may be used in computing or determining a rate of payment for any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

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

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

(7) any wholly or partially false or fraudulent book, record, document, data or instrument, which is required to be kept or which is kept as documentation for any goods, service, item, facility or accommodation or of any cost or expense claimed for reimbursement for any goods, service, item, facility or accommodation for which payment is, has been, or can

be sought, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(8) any wholly or partially false or fraudulent book, record, document, data or instrument to any properly identified law enforcement officer, any properly identified employee or authorized representative of the attorney general, or to any properly identified employee or agent of the department of social and rehabilitation services, or its fiscal agent, in connection with any audit or investigation involving any claim for payment or rate of payment for any goods, service, item, facility or accommodation payable, in whole or in part, under the medicaid program; or

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

(b) Making a false claim, statement or representation to the medicaid programs defined in:

(1) Subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6) or (a)(7), where the aggregate amount of payments illegally claimed is:

(A) $25,000 or more is a severity level 7, nonperson felony;

(B) at least $1,000 but less than $25,000 is a severity level 9, nonperson felony; and

(C) less than $1,000 is a class A misdemeanor; and

(2) subsection (a)(8) or (a)(9) is a severity level 9, nonperson felony.

(c) In determining what is medically necessary pursuant to subsection (a)(6) the attorney general may contract with or consult with qualified health care providers and other qualified individuals to identify professionally recognized parameters for the diagnosis or treatment of the recipient's condition, illness or injury.

New Sec. 153. (a) No recipient of medicaid benefits, family member of such recipient, or provider of medicaid services shall intentionally:

(1) Solicit or receive any remuneration, including but not limited to any kickback, bribe or rebate, directly or indirectly, overtly or covertly, in cash or in kind:

(A) In return for referring or refraining from referring an individual to a person for the furnishing or arranging for the furnishing of any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program; or

(B) in return for purchasing, leasing, ordering or arranging for or recommending purchasing, leasing or ordering any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program;

(2) offer or pay any remuneration, including, but not limited to, any kickback, bribe or rebate, directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person:

(A) To refer or refrain from referring an individual to a person for the furnishing or arranging for the furnishing of any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program; or

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program; or

(3) divide or share any funds illegally obtained from the medicaid program.

(b) No medicaid recipient shall intentionally trade a medicaid number for money or other remuneration, sign for services that are not received by the medicaid recipient or sell or exchange for value goods purchased or provided under the medicaid program.

(c) A violation of this section is a severity level 7, nonperson felony.

(d) This section shall not apply to a refund, discount, copayment, deductible, incentive or other reduction obtained by a provider in the ordinary course of business, and appropriately reflected in the claims or reports submitted to the medicaid program, or its fiscal agent, nor shall it be construed to prohibit deductibles, copayments or any other cost or risk sharing arrangements which are a part of any program operated by or pursuant to contracts with the medicaid program.

New Sec. 154. (a) Failure to maintain adequate records is negligently failing to maintain such records as are necessary to disclose fully:

(1) The nature of the goods, services, items, facilities or accommodations for which a claim was submitted or payment was received under the medicaid program; or

(2) all income and expenditures upon which rates of payment were based under the medicaid program.

(b) Failure to maintain adequate records is a class A, nonperson misdemeanor.

(c) Upon submitting a claim for or upon receiving payment for goods, services, items, facilities or accommodations under the medicaid program, a person shall maintain adequate records for five years after the date on which payment was received, if payment was received, or for five years after the date on which the claim was submitted, if the payment was not received.

New Sec. 155. (a) Destruction or concealment of records is intentionally destroying or concealing such records as are necessary to disclose fully:

(1) The nature of the goods, services, items, facilities or accommodations for which a claim was submitted or payment was received under the medicaid program; or

(2) all income and expenditures upon which rates of payment were based under the medicaid program.

(b) Destruction or concealment of records is a severity level 9, nonperson felony.

(c) Upon submitting a claim for or upon receiving payment for goods, services, items, facilities or accommodations under the medicaid program, a person shall not destroy or conceal any records for five years after the date on which payment was received, if payment was received, or for five years after the date on which the claim was submitted, if the payment was not received.

New Sec. 156. Offers of repayment or repayment occurring after the filing of criminal charges of payments, goods, services, items, facilities or accommodations wrongfully obtained shall not constitute a defense to or ground for dismissal of criminal charges brought pursuant to sections 150 through 161, and amendments thereto.

New Sec. 157. (a) Any person convicted of a violation of sections 150 through 161, and amendments thereto, may be liable, in addition to any other criminal penalties provided by law, for all of the following:

(1) Payment of full restitution of the amount of the excess payments;

(2) payment of interest on the amount of any excess payments at the maximum legal rate in effect on the date the payment was made to the person for the period from the date upon which payment was made, to the date upon which repayment is made; and

(3) payment of all reasonable expenses that have been necessarily incurred in the enforcement of sections 150 through 161, and amendments thereto, including, but not limited to, the costs of the investigation, litigation and attorney fees.

(b) All moneys recovered pursuant to subsection (a)(1) and (2), shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the medicaid fraud reimbursement fund, which is hereby established in the state treasury. Moneys in the medicaid fraud reimbursement fund shall be divided and payments made from such fund to the federal government and affected state agencies for the refund of moneys falsely obtained from the federal and state governments.

(c) All moneys recovered pursuant to subsection (a)(3) shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the medicaid fraud prosecution revolving fund, which is hereby established in the state treasury. Moneys in the medicaid fraud prosecution revolving fund may be appropriated to the attorney general, or to any county or district attorney who has successfully prosecuted an action for a violation of sections 150 through 161, and amendments thereto, and been awarded such costs of prosecution, in order to defray

the costs of the attorney general and any such county or district attorney in connection with their duties provided by sections 150 through 161, and amendments thereto. No moneys shall be paid into the medicaid fraud prosecution revolving fund pursuant to this section unless the attorney general or appropriate county or district attorney has commenced a prosecution pursuant to this section, and the court finds in its discretion that payment of attorney fees and investigative costs is appropriate under all the circumstances, and the attorney general, or county or district attorney has proven to the court that the expenses were reasonable and necessary to the investigation and prosecution of such case, and the court approves such expenses as being reasonable and necessary.

New Sec. 158. (a) There is hereby created within the office of the attorney general a medicaid fraud and abuse division.

(b) The medicaid fraud and abuse division shall be the same entity to which all cases of suspected medicaid fraud shall be referred by the department of social and rehabilitation services, or its fiscal agent, for the purpose of investigation, criminal prosecution or referral to the district or county attorney for criminal prosecution.

(c) In carrying out these responsibilities, the attorney general shall have:

(1) All the powers necessary to comply with the federal laws and regulations relative to the operation of the medicaid fraud and abuse division;

(2) the power to investigate and criminally prosecute violations of sections 150 through 161, and amendments thereto;

(3) the power to cross-designate assistant United States attorneys as assistant attorneys general;

(4) the power to issue, serve or cause to be issued or served subpoenas or other process in aid of investigations and prosecutions;

(5) the power to administer oaths and take sworn statements under penalty of perjury;

(6) the power to serve and execute in any county, search warrants which relate to investigations authorized by this act; and

(7) the powers of a district or county attorney.

New Sec. 159. (a) The attorney general shall be allowed access to all records held by a provider:

(1) That are directly related to an alleged violation of this act and which are necessary for the purpose of investigating whether any person may have violated sections 150 through 161, and amendments thereto; or

(2) for use or potential use in any legal, administrative or judicial proceeding pursuant to sections 150 through 161, and amendments thereto.

(b) No person holding such records may refuse to provide the attorney general with access to such records on the basis that release would violate any:

(1) Any recipient's right of privacy;

(2) any recipient's privilege against disclosure or use; or

(3) any professional or other privilege or right.

(c) The disclosure of patient information as required by sections 150 through 161, and amendments thereto, shall not subject any provider to liability for breach of any confidential relationship between a patient and a provider.

(d) Notwithstanding K.S.A. 60-427, and amendments thereto, there shall be no privilege preventing the furnishing of such information or reports as required by sections 150 through 161, and amendments thereto, by any person.

New Sec. 160. The provisions of sections 150 through 161, and amendments thereto, are not intended to be exclusive remedies and do not preclude the use of any other criminal or civil remedy.

New Sec. 161. (a) Obstruction of a medicaid fraud investigation is intentionally engaging in one or more of the following during an investigation of any matter pursuant to sections 150 through 161, and amendments thereto:

(1) Falsifying, concealing or covering up a material fact by any trick, misstatement, scheme or device; or

(2) making or causing to be made any materially false writing or doc-

ument knowing that such writing or document contains any false, fictitious or fraudulent statement or entry.

(b) Obstruction of a medicaid fraud investigation is a severity level 9, nonperson felony.

New Sec. 162. (a) Failure to register an aircraft is possessing an aircraft knowing that is not registered in accordance with the regulations of the federal aviation administration contained in title 14, chapter 1, parts 47-49 of the code of federal regulations.

(b) Failure to register an aircraft is a severity level 8, nonperson felony.

(c) The provisions of this section do not apply to any aircraft registration or information supplied by a governmental entity in the course and scope of performing its lawful duties.

New Sec. 163. (a) Fraudulent aircraft registration is:

(1) Owning, possessing, or operating any aircraft in this state knowing that it is registered to a nonexistent person, firm, business or corporation or to a firm, business or corporation that is no longer a legal entity;

(2) knowingly supplying false information by any person to a governmental entity in regard to the name, address, business name or business address of the owner of an aircraft in or operated in the state; or

(3) knowingly supplying false information by any person, firm, business or corporation to any governmental entity in regard to ownership by such person, firm, business or corporation or another firm, business or corporation of an aircraft in or operated in this state if it is determined that such firm, business or corporation:

(A) Is not, or has never been, a legal entity in this state;

(B) is not, or has never been, a legal entity in any other state; or

(C) has lapsed into a state of no longer being a legal entity in this state, and no documented attempt has been made to correct such information with the governmental entity for a period of 90 days after the date on which such lapse took effect with the secretary of state.

(b) Fraudulent aircraft registration is a severity level 8, nonperson felony.

(c) This section does not apply to any aircraft registration or information supplied by a governmental entity in the course and scope of performing its lawful duties.

(d) For the purposes of this section, a firm, business, or corporation that is no longer a legal entity includes any firm, business or corporation that has:

(1) No physical location;

(2) no corporate officers; or

(3) lapsed into an inactive state or been dissolved by order of the secretary of state for a period of at least 90 days and during such period no documented attempt is made to either reinstate the firm, business or corporation or to register its aircraft in the name of a real person or legal entity in accordance with federal aviation administration regulations.

New Sec. 164. (a) Fraudulent acts relating to aircraft identification numbers is knowingly:

(1) Buying, receiving, disposing of, distributing, concealing, operating, or having in possession or attempting to buy, receive, dispose of, distribute, conceal, operate, or possess, by any person, firm, business or corporation of any aircraft or part thereof on which the identification numbers do not meet the requirements of the federal aviation regulations; or

(2) possessing, manufacturing distributing any counterfeit manufacturer's aircraft identification number plate or decal used for the purpose of identification of any aircraft or authorizing, directing, aiding in exchange or giving away any such counterfeit manufacturer's aircraft identification number plate or decal.

(b) Fraudulent acts relating to aircraft identification numbers is a severity level 8, nonperson felony.

(c) The failure to have aircraft identification numbers clearly displayed on the aircraft and in compliance with federal aviation regulations is probable cause for any law enforcement officer in this state to make further inspection of the aircraft in question to ascertain its true identity. A law enforcement officer is authorized to inspect an aircraft for identification numbers:

(1) When it is located on public property;

(2) upon consent of the owner of the private property on which the aircraft is stored; or

(3) when otherwise authorized by law.

New Sec. 165. (a) Bribery is:

(1) Offering, giving or promising to give, directly or indirectly, to any person who is a public officer, candidate for public office or public employee any benefit, reward or consideration to which the person is not legally entitled with intent thereby to influence the person with respect to the performance of the person's powers or duties as a public officer or employee; or

(2) the act of a person who is a public officer, candidate for public office or public employee, in requesting, receiving or agreeing to receive, directly or indirectly, any benefit, reward or consideration given with intent that the person will be so influenced.

(b) Bribery is a severity level 7, nonperson felony. Upon conviction of bribery, a public officer or public employee shall forfeit the person's office or employment. Notwithstanding an expungement of the conviction pursuant to section 254, and amendments thereto, any person convicted of bribery under the provisions of this section shall be forever disqualified from holding public office or public employment in this state.

New Sec. 166. (a) Official misconduct is any of the following acts committed by a public officer or employee in the officer or employee's public capacity or under color of the officer or employee's office or employment:

(1) Knowingly using or authorizing the use of any aircraft, as defined by K.S.A. 3-201, and amendments thereto, vehicle, as defined by K.S.A. 8-1485, and amendments thereto, or vessel, as defined by K.S.A. 32-1102, and amendments thereto, under the officer's or employee's control or direction, or in the officer's or employee's custody, exclusively for the private benefit or gain of the officer or employee or another;

(2) knowingly failing to serve civil process when required by law;

(3) using confidential information acquired in the course of and related to the officer's or employee's office or employment for the private benefit or gain of the officer or employee or another or to intentionally cause harm to another;

(4) except as authorized by law, with the intent to reduce or eliminate competition among bidders or prospective bidders on any contract or proposed contract:

(A) Disclosing confidential information regarding proposals or communications from bidders or prospective bidders on any contract or proposed contract;

(B) accepting any bid or proposal on a contract or proposed contract after the deadline for acceptance of such bid or proposal; or

(C) altering any bid or proposal submitted by a bidder on a contract or proposed contract;

(5) except as authorized by law, knowingly destroying, tampering with or concealing evidence of a crime; or

(6) knowingly submitting to a governmental entity a claim for expenses which is false or duplicates expenses for which a claim is submitted to such governmental entity, another governmental or private entity.

(b) (1) Official misconduct as defined in:

(A) Subsections (a)(1) through (a)(4) is a class A nonperson misdemeanor;

(B) subsection (a)(5) is a:

(i) Severity level 8, nonperson felony if the evidence is evidence of a crime which is a felony; and

(ii) class A nonperson misdemeanor if the evidence is evidence of a crime which is a misdemeanor; and

(C) subsection (a)(6) if the claim is:

(i) $25,000 or more is a severity level 7, nonperson felony;

(ii) at least $1,000 but less than $25,000 is a severity level 9, nonperson felony; and

(iii) less than $1,000 is a class A nonperson misdemeanor.

(2) Upon conviction of official misconduct a public officer or employee shall forfeit such officer or employee's office or employment.

(c) The provisions of subsection (a)(1) shall not apply to any use of persons or property which:

(1) At the time of the use, is authorized by law or by formal written policy of the governmental entity; or

(2) constitutes misuse of public funds, as defined in section 169, and amendments thereto.

(d) As used in this section, "confidential" means any information that is not subject to mandatory disclosure pursuant to K.S.A. 45-221, and amendments thereto.

New Sec. 167. (a) Compensation for past official acts is intentionally giving or offering to give to any public officer or employee any benefit, reward or consideration for having given, in such official capacity as public officer or employee, a decision, opinion, recommendation or vote favorable to the person giving or offering such benefit, reward or consideration, or for having performed an act of official misconduct.

(b) Compensation for past official acts is a class B nonperson misdemeanor.

(c) Subsection (a) shall not apply to the following:

(1) Gifts or other benefits conferred on account of kinship or other personal, professional or business relationships independent of the official status of the receiver; or

(2) Trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

New Sec. 168. (a) Presenting a false claim is, with the intent to defraud, presenting a claim or demand which is false in whole or in part, to a public officer or body authorized to audit, allow or pay such claim.

(b) Permitting a false claim is the auditing, allowing or paying of any claim or demand made upon the state or any subdivision thereof or other governmental instrumentality within the state by a public officer or public employee who knows such claim or demand is false or fraudulent in whole or in part.

(c) (1) Presenting a false claim or permitting a false claim for:

(A) $25,000 or more is a severity level 7, nonperson felony;

(B) at least $1,000 but less than $25,000 is a severity level 9, nonperson felony; and

(C) less than $1,000 is a class A nonperson misdemeanor.

(2) Upon conviction of permitting a false claim, a public officer or public employee shall forfeit the officer or employee's office or employment.

New Sec. 169. (a) Misuse of public funds is knowingly using, lending or permitting another to use public money in a manner not authorized by law, by a custodian or other person having control of public money by virtue of such person's official position.

(b) (1) Misuse of public funds where the aggregate amount of money paid or claimed in violation of this section is:

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

(B) at least $25,000 but less than $100,000 is a severity level 7, nonperson felony;

(C) at least $1,000 but less than $25,000 is a severity level 9, nonperson felony; and

(D) less than $1,000 is a class A nonperson misdemeanor.

(2) Upon conviction of misuse of public funds, the convicted person shall forfeit the person's official position.

(c) As used in this section, "public money" means any money or negotiable instrument which belongs to the state of Kansas or any political subdivision thereof.

New Sec. 170. (a) It shall be unlawful for any person to use for such person's personal use, or to allow any unauthorized person to use, any form of postage knowing such postage to have been paid for with state funds.

(b) Violation of this section is a class C misdemeanor.

(c) Each state agency, department, board, commission or state educational institution shall imprint by postage meter stamp on all state mail that is stamped by a postage meter that:

(1) Such mail carried by such postage is official state of Kansas mail; and

(2) that there is a penalty for the unlawful use of state postage for private purposes.

New Sec. 171. (a) Breach of privacy is knowingly and without lawful authority:

(1) Intercepting, without the consent of the sender or receiver, a message by telephone, telegraph, letter or other means of private communication;

(2) divulging, without the consent of the sender or receiver, the existence or contents of such message if such person knows that the message was illegally intercepted, or if such person illegally learned of the message in the course of employment with an agency in transmitting it;

(3) entering into a private place with intent to listen surreptitiously to private conversations or to observe the personal conduct of any other person or persons therein;

(4) installing or using outside a private place any device for hearing, recording, amplifying or broadcasting sounds originating in such place, which sounds would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein;

(5) installing or using any device or equipment for the interception of any telephone, telegraph or other wire communication without the consent of the person in possession or control of the facilities for such wire communication; or

(6) installing or using a concealed camcorder, motion picture camera or photographic camera of any type, to secretly videotape, film, photograph or record by electronic means, another, identifiable person under or through the clothing being worn by that other person or another, identifiable person who is nude or in a state of undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy.

(b) Breach of privacy is a class A nonperson misdemeanor.

(c) Subsection (a)(1) shall not apply to messages overheard through a regularly installed instrument on a telephone party line or on an extension.

(d) The provisions of this section shall not apply to an operator of a switchboard, or any officer, employee or agent of any public utility providing telephone communications service, whose facilities are used in the transmission of a communication, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity which is incident to the rendition of public utility service or to the protection of the rights of property of such public utility.

(e) As used in this section "private place" means a place where one may reasonably expect to be safe from uninvited intrusion or surveillance, but does not include a place to which the public has lawful access.

New Sec. 172. (a) Denial of civil rights is intentionally denying to another, on account of the race, color, ancestry, national origin or religion of such other the full and equal:

(1) Use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the state of Kansas or any political subdivision or municipality thereof;

(2) use and enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any establishment which provides lodging to transient guests for hire; of any establishment which is engaged in selling food or beverage to the public for consumption upon the premises; or of any place of recreation, amusement, exhibition or entertainment which is open to members of the public;

(3) use and enjoyment of the services, privileges and advantages of any facility for the public transportation of persons or goods;

(4) use and enjoyment of the services, facilities, privileges and advantages of any establishment which offers personal or professional services to members of the public; or

(5) exercise of the right to vote in any election held pursuant to the laws of Kansas.

(b) Denial of civil rights is a class A nonperson misdemeanor.

New Sec. 173. (a) Criminal false communication is:

(1) Communicating to any person, by any means, information that

the person communicating such information knows to be false and will tend to:

(A) Expose another living person to public hatred, contempt or ridicule;

(B) deprive such person of the benefits of public confidence and social acceptance; or

(C) degrade and vilify the memory of one who is dead and to scandalize or provoke surviving relatives and friends; or

(2) recklessly making, circulating or causing to be circulated any false report, statement or rumor with intent to injure the financial standing or reputation of any bank, financial or business institution or the financial standing of any individual in this state.

(b) Criminal false communication is a class A nonperson misdemeanor.

(c) In all prosecutions under this section the truth of the information communicated shall be admitted as evidence. It shall be a defense to a charge of criminal false communication if it is found that such matter was true.

New Sec. 174. (a) Unlawful disclosure of tax information is recklessly disclosing or using for commercial purposes any information obtained in the business of preparing federal or state income tax returns or in the business of assisting taxpayers in preparing such returns, unless such disclosure is:

(1) Consented to by the taxpayer in a separate, written document;

(2) expressly authorized by state or federal law;

(3) necessary to the preparation of the return; or

(4) pursuant to an order of any court of competent jurisdiction.

(b) Unlawful disclosure of tax information is a class A nonperson misdemeanor.

(c) For the purposes of this section, a person is engaged in the business of preparing federal or state income tax returns or in the business of assisting taxpayers in preparing such returns if the person does either of the following:

(1) Advertises or gives publicity to the effect that such person prepares or assists others in the preparation of state or federal income tax returns; or

(2) prepares or assists others in the preparation of state or federal income tax returns for compensation.

(d) Contacting a taxpayer to obtain the taxpayer's written consent to disclosure does not constitute a violation of this section.

New Sec. 175. (a) Unjustifiably exposing a convicted or charged person is unjustifiably communicating or threatening to communicate to another any oral or written statement that any person has been charged with or convicted of a felony, with intent to interfere with the employment or business of the person so charged or convicted.

(b) Unjustifiably exposing a convicted or charged person is a class B nonperson misdemeanor.

(c) This section shall not apply to any person or organization who furnishes information about a person to another person or organization requesting the same.

New Sec. 176. (a) Unlawful public demonstration at a funeral is:

(1) Engaging in a public demonstration at any public location within 150 feet of any entrance to any cemetery, church, mortuary or other location where a funeral is held or conducted, within one hour prior to the scheduled commencement of a funeral, during a funeral or within two hours following the completion of a funeral;

(2) knowingly obstructing, hindering, impeding or blocking another person's entry to or exit from a funeral; or

(3) knowingly impeding vehicles which are part of a funeral procession.

(b) Unlawful public demonstration at a funeral is a class B person misdemeanor. Each day on which a violation occurs shall constitute a separate offense.

(c) As used in this section:

(1) "Funeral" means the ceremonies, processions and memorial services held in connection with the burial or cremation of a person; and

(2) "public demonstration" means:

(A) Any picketing or similar conduct, or

(B) any oration, speech, use of sound amplification equipment or device, or similar conduct that is not part of a funeral.

(d) This section may be cited as the Kansas funeral privacy act.

New Sec. 177. (a) Identity theft is obtaining, possessing, transferring, using, selling or purchasing any personal identifying information, or document containing the same, belonging to or issued to another person, with the intent to defraud that person, or any one else, in order to receive any benefit.

(b) Identity fraud is:

(1) Using or supplying information the person knows to be false in order to obtain a document containing any personal identifying information; or

(2) altering, amending, counterfeiting, making, manufacturing or otherwise replicating any document containing personal identifying information with the intent to deceive;

(c) (1) Identity theft is a:

(A) Severity level 8, nonperson felony, except as provided in subsection (c)(1)(B); and

(B) is a severity level 5, nonperson felony if the monetary loss to the victim or victims is more than $100,000.

(2) Identity fraud is a severity level 8, nonperson felony.

(d) It is not a defense that the person did not know that such personal identifying information belongs to another person, or that the person to whom such personal identifying information belongs or was issued is deceased.

(e) As used in this section "personal identifying information" includes, but is not limited to, the following:

(1) Name;

(2) birth date;

(3) address;

(4) telephone number;

(5) drivers license number or card or non-drivers identification number or card;

(6) social security number or card;

(7) place of employment;

(8) employee identification numbers or other personal identification numbers or cards;

(9) mother's maiden name;

(10) birth, death or marriage certificates;

(11) electronic identification numbers;

(12) electronic signatures; and

(13) any financial number, or password that can be used to access a person's financial resources, including, but not limited to, checking or savings accounts, credit or debit card information, demand deposit or medical information.

New Sec. 178. (a) It is unlawful for any person, with the intent to defraud to possess or use a:

(1) Scanning device to access, read, obtain, memorize or store, temporarily or permanently, information encoded on the computer chip or magnetic strip or stripe of a payment card; or

(2) reencoder to place encoded information on the computer chip or magnetic strip or stripe of a payment card or any electronic medium that allows an authorized transaction to occur.

(b) Violation of this section is a severity level 6, nonperson felony.

(c) As used in this section:

(1) "Scanning device" means a scanner, reader or any other electronic device that is used to access, read, scan, obtain, memorize or store, temporarily or permanently, information encoded on the computer chip or magnetic strip or stripe of a payment card;

(2) "reencoder" means an electronic device that places encoded information from the computer chip, magnetic strip or stripe of a payment card onto the computer chip, magnetic strip or stripe of a different payment card or any electronic medium that allows an authorized transaction to occur; and

(3) "payment card" means a credit card, debit card or any other card

that is issued to an authorized user and that allows the user to obtain, purchase or receive goods, services, money or anything else of value.

New Sec. 179. (a) Riot is five or more persons acting together and without lawful authority engaging in any:

(1) Use of force or violence which produces a breach of the public peace; or

(2) threat to use such force or violence against any person or property if accompanied by power or apparent power of immediate execution.

(b) Incitement to riot is by words or conduct knowingly urging others to engage in riot as defined in subsection (a) under circumstances which produce a clear and present danger of injury to persons or property or a branch of the public peace.

(c) (1) Riot is a class A person misdemeanor.

(2) Incitement to riot is a severity level 8, person felony.

New Sec. 180. (a) Unlawful assembly is:

(1) The meeting or coming together of not less than five persons with the intent to engage in conduct constituting:

(A) Disorderly conduct, as defined by section 181, and amendments thereto; or

(B) riot, as defined by section 179, and amendments thereto; or

(2) when a lawful assembly of not less than five persons, agreeing to engage in conduct constituting disorderly conduct or riot.

(b) Remaining at an unlawful assembly is intentionally failing to depart from the place of an unlawful assembly after being directed to leave by a law enforcement officer.

(c) (1) Unlawful assembly is a class B nonperson misdemeanor.

(2) Remaining at an unlawful assembly is a class A nonperson misdemeanor.

New Sec. 181. (a) Disorderly conduct is one or more of the following acts that the person knows or should know will alarm, anger or disturb others or provoke an assault or other breach of the peace:

(1) Brawling or fighting;

(2) disturbing an assembly, meeting or procession, not unlawful in its character; or

(3) using fighting words or engaging in noisy conduct tending reasonably to arouse alarm, anger or resentment in others.

(b) Disorderly conduct is a class C misdemeanor.

(c) As used in this section, "fighting words" means words that by their very utterance inflict injury or tend to incite the listener to an immediate breach of the peace.

New Sec. 182. (a) Maintaining a public nuisance is knowingly causing or permitting a condition to exist which injures or endangers the public health, safety or welfare.

(b) Permitting a public nuisance is knowingly permitting property under the control of the offender to be used to maintain a public nuisance, as defined in subsection (a).

(c) Maintaining a public nuisance or permitting a public nuisance is a class C misdemeanor.

(d) (1) Upon a conviction of a violation this section for maintaining a public nuisance or permitting a public nuisance on the premises of a club or drinking establishment licensed under the club and drinking establishment act, the court shall report such conviction to the director of alcoholic beverage control.

(2) Upon a conviction of a violation of this section for maintaining a public nuisance or permitting a public nuisance on the premises of a retailer licensed under K.S.A. 41-2701 et seq., and amendments thereto, the court shall report such conviction to the governing body of the city or county which issued the license.

New Sec. 183. (a) Criminal desecration is:

(1) Knowingly obtaining or attempting to obtain unauthorized control of a dead body or remains of any human being or the coffin, urn or other article containing a dead body or remains of any human being; or

(2) recklessly, by means other than by fire or explosive:

(A) Damaging, defacing or destroying the flag, ensign or other symbol of the United States or this state in which another has a property interest without the consent of such other person;

(B) damaging, defacing or destroying any public monument or structure;

(C) damaging, defacing or destroying any tomb, monument, memorial, marker, grave, vault, crypt gate, tree, shrub, plant or any other property in a cemetery; or

(D) damaging, defacing or destroying any place of worship.

(b) (1) Criminal desecration as defined in subsections (a)(2)(B), (a)(2)(C) and (a)(2)(D) if the property is damaged to the extent of:

(A) $25,000 or more is a severity level 7, nonperson felony;

(B) at least $1,000 but less than $25,000 is a severity level 9, nonperson felony; and

(C) if the property is damaged to the extent of less than $1,000 is a class A nonperson misdemeanor.

(2) Criminal desecration as defined in subsections (a)(1) and (a)(2)(A) is a class A nonperson misdemeanor.

New Sec. 184. (a) Harassment by telecommunication device is the use of:

(1) Telephone communication to:

(A) Knowingly make or transmit any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy or indecent;

(B) make a telephone call, whether or not conversation ensues, or transmit a telefacsimile communication with intent to abuse, threaten or harass any person at the called number;

(C) make or cause the telephone of another ring repeatedly with intent to harass any person at the called number;

(D) make repeated telephone calls, during which conversation ensues, or repeatedly transmit a telefacsimile communication with intent to harass any person at the called number;

(E) knowingly play any recording on a telephone, except recordings such as weather information or sports information when the number thereof is dialed, unless the person or group playing the recording shall be identified and state that it is a recording; or

(F) knowingly permit any telephone or telefacsimile communication machine under one's control to be used in violation of this paragraph.

(2) Telefacsimile communication to send or transmit such communication to a court in the state of Kansas for a use other than court business, with no requirement of culpable mental state.

(b) Harassment by telecommunication device is a class A nonperson misdemeanor.

(c) Every telephone directory published for distribution to members of the general public shall contain a notice setting forth a summary of the provisions of this section. Such notice shall be printed in type which is no smaller than any other type on the same page and shall be preceded by the word "WARNING."

(d) As used in this section, "telefacsimile communication" means the use of electronic equipment to send or transmit a copy of a document via telephone line.

New Sec. 185. (a) Giving a false alarm is:

(1) Transmitting in any manner to the fire department of any city, township or other municipality a false alarm of fire, knowing at the time of such transmission that there is no reasonable ground for believing that such fire exists; or

(2) making a call in any manner for emergency service assistance including police, fire, medical or other emergency service provided under K.S.A. 12-5301 et seq., and amendments thereto, knowing at the time of such call that there is no reasonable ground for believing such assistance is needed.

(b) Giving a false alarm is a class A nonperson misdemeanor.

New Sec. 186. (a) Criminal use of weapons is knowingly:

(1) Selling, manufacturing, purchasing or possessing any bludgeon, sand club, metal knuckles or throwing star, or any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement;

(2) possessing with intent to use the same unlawfully against another,

a dagger, dirk, billy, blackjack, slungshot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife, or a dangerous or deadly weapon or instrument;

(3) setting a spring gun;

(4) possessing any device or attachment of any kind designed, used or intended for use in suppressing the report of any firearm;

(5) selling, manufacturing, purchasing or possessing a shotgun with a barrel less than 18 inches in length, or any firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger, whether the person knows or has reason to know the length of the barrel or that the firearm is designed or capable of discharging automatically;

(6) possessing, manufacturing, causing to be manufactured, selling, offering for sale, lending, purchasing or giving away any cartridge which can be fired by a handgun and which has a plastic-coated bullet that has a core of less than 60% lead by weight, whether the person knows or has reason to know that the plastic-coated bullet has a core of less than 60% lead by weight;

(7) selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age whether the person knows or has reason to know the length of the barrel;

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

(9) selling, giving or otherwise transferring any firearm to any person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto;

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

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

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

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

(14) possessing a firearm with a barrel less than 12 inches long by any person less than 18 years of age whether the person knows or has reason to know the length of the barrel.

(b) Criminal use of weapons as defined in:

(1) Subsection (a)(1), (a)(2), (a)(3), (a)(7), (a)(8), (a)(9) or (a)(12) is a class A nonperson misdemeanor;

(2) subsection (a)(4), (a)(5) or (a)(6) is a severity level 9, nonperson felony;

(3) subsection (a)(10) or (a)(11) is a class B nonperson select misdemeanor;

(4) subsection (a)(13) is a severity level 8, nonperson felony; and

(5) subsection (a)(14) is a:

(A) Class A nonperson misdemeanor except as provided in subsection (b)(5)(B);

(B) severity level 8, nonperson felony upon a second or subsequent conviction.

(c) Subsections (a)(1), (a)(2) and (a)(5) shall not apply to:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or

(4) the manufacture of, transportation to, or sale of weapons to a person authorized under subsections (c)(1), (c)(2) and (c)(3) to possess such weapons.

(d) Subsections (a)(4) and (a)(5) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.

(e) Subsection (a)(6) shall not apply to a governmental laboratory or solid plastic bullets.

(f) Subsection (a)(4) shall not apply to a law enforcement officer who is:

(1) Assigned by the head of such officer's law enforcement agency to a tactical unit which receives specialized, regular training;

(2) designated by the head of such officer's law enforcement agency to possess devices described in subsection (a)(4); and

(3) in possession of commercially manufactured devices which are:

(A) Owned by the law enforcement agency;

(B) in such officer's possession only during specific operations; and

(C) approved by the bureau of alcohol, tobacco, firearms and explosives of the United States department of justice.

(g) Subsections (a)(4), (a)(5) and (a)(6) shall not apply to any person employed by a laboratory which is certified by the United States department of justice, national institute of justice, while actually engaged in the duties of their employment and on the premises of such certified laboratory. Subsections (a)(4), (a)(5) and (a)(6) shall not affect the manufacture of, transportation to or sale of weapons to such certified laboratory.

(h) Subsections (a)(4) and (a)(5) shall not apply to or affect any person or entity in compliance with the national firearms act, 26 U.S.C. 5801 et seq.

(i) Subsection (a)(11) shall not apply to:

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

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

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

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

(j) Subsections (a)(9) and (a)(13) shall not apply to a person who has received a certificate of restoration pursuant to K.S.A. 2009 Supp. 75-7c26, and amendments thereto.

(k) Subsection (a)(14) shall not apply if such person, less than 18 years of age, was:

(1) In attendance at a hunter's safety course or a firearms safety course;

(2) engaging in practice in the use of such firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located;

(3) engaging in an organized competition involving the use of such

firearm, or participating in or practicing for a performance by an organization exempt from federal income tax pursuant to section 501(c)(3) of the internal revenue code of 1986 which uses firearms as a part of such performance;

(4) hunting or trapping pursuant to a valid license issued to such person pursuant to article 9 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto;

(5) traveling with any such firearm in such person's possession being unloaded to or from any activity described in subsections (k)(1) through (k)(4), only if such firearm is secured, unloaded and outside the immediate access of such person;

(6) on real property under the control of such person's parent, legal guardian or grandparent and who has the permission of such parent, legal guardian or grandparent to possess such firearm; or

(7) at such person's residence and who, with the permission of such person's parent or legal guardian, possesses such firearm for the purpose of exercising the rights contained in sections 21, 22 or 23, and amendments thereto.

(l) As used in this section, "throwing star" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

New Sec. 187. (a) Criminal carrying of a weapon is knowingly carrying:

(1) Any bludgeon, sandclub, metal knuckles or throwing star, or any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement;

(2) concealed on one's person, a dagger, dirk, billy, blackjack, slungshot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife, or a dangerous or deadly weapon or instrument;

(3) on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance;

(4) any pistol, revolver or other firearm concealed on one's person except when on the person's land or in the person's abode or fixed place of business; or

(5) a shotgun with a barrel less than 18 inches in length or any other firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger whether the person knows or has reason to know the length of the barrel or that the firearm is designed or capable of discharging automatically.

(b) Criminal carrying of a weapon as defined in:

(1) Subsections (a)(1), (a)(2), (a)(3) or (a)(4) is a class A nonperson misdemeanor; and

(2) subsection (a)(5) is a severity level 9, nonperson felony.

(c) Subsection (a) shall not apply to:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or

(4) the manufacture of, transportation to, or sale of weapons to a person authorized under subsections (c)(1), (c)(2) and (c)(3) to possess such weapons.

(d) Subsection (a)(4) shall not apply to:

(1) Watchmen, while actually engaged in the performance of the duties of their employment;

(2) licensed hunters or fishermen, while engaged in hunting or fishing;

(3) private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;

(4) detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;

(5) the state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157, and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157, and amendments thereto;

(6) special deputy sheriffs described in K.S.A. 19-827, and amendments thereto, who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer under K.S.A. 74-5607a, and amendments thereto;

(7) the United States attorney for the district of Kansas, the attorney general, any district attorney or county attorney, any assistant United States attorney if authorized by the United States attorney for the district of Kansas, any assistant attorney general if authorized by the attorney general, or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed. The provisions of this paragraph shall not apply to any person not in compliance with K.S.A. 75-7c19, and amendments thereto; or

(8) any person carrying a concealed weapon as authorized by K.S.A. 2009 Supp. 75-7c01 through 75-7c17, and amendments thereto.

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

(1) Any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor;

(2) any person employed by a laboratory which is certified by the United States department of justice, national institute of justice, while actually engaged in the duties of their employment and on the premises of such certified laboratory. Subsection (a)(5) shall not affect the manufacture of, transportation to or sale of weapons to such certified laboratory; or

(3) any person or entity in compliance with the national firearms act, 26 U.S.C. 5801 et seq.

New Sec. 188. (a) Criminal distribution of firearms to a felon is knowingly:

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

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

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

(b) Criminal distribution of firearms to a felon is a class A nonperson misdemeanor.

(c) Subsection (a)(2) shall apply to a felony under section 37, section

38, section 39, section 40, section 43, subsection (b) or (d) of section 47, subsection (b) or (d) of section 48, subsection (a) of section 50, subsection (b) of section 55, section 67, subsection (b) of section 68, subsection (b) of section 69, subsection (b) of section 93, and amendments thereto, K.S.A. 2009 Supp. 21-36a05 or 21-36a06, and amendments thereto, or K.S.A. 65-4127a, 65-4127b or 65-4160 through 65-4164, prior to their repeal, or a crime under a law of another jurisdiction which is substantially the same as such felony.

(d) It is not a defense that the distributor did not know or have reason to know:

(1) The precise felony the recipient committed;

(2) that the recipient was in possession of a firearm at the time of the commission of the recipient's prior felony; or

(3) that the convictions for such felony have not been expunged or pardoned.

New Sec. 189. (a) Criminal possession of a firearm by a convicted felon is possession of any firearm by a person who:

(1) Has been convicted of a person felony or a violation of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as such felony or violation, or was adjudicated a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a person felony or a voiolation of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, and was found to have been in possession of a firearm at the time of the commission of the crime;

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

(3) possession of any firearm by a person who, within the preceding 10 years, has been convicted of a:

(A) Felony under section 37, section 38, section 39, section 40, section 43, subsection (b) or (d) of section 47, subsection (b) or (d) of section 48, subsection (a) of section 50, subsection (b) of section 55, section 67, subsection (b) of section 68, subsection (b) of section 69, subsection (b) of section 93, and amendments thereto, K.S.A. 2009 Supp. 21-36a05 or 21-36a06, and amendments thereto, or K.S.A. 65-4127a, 65-4127b or 65-4160 through 65-4164, prior to their repeal, or a crime under a law of another jurisdiction which is substantially the same as such felony, has been released from imprisonment for such felony, or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of such felony, was not found to have been in possession of a firearm at the time of the commission of the crime, and has not had the conviction of such crime expunged or been pardoned for such crime; or

(B) nonperson felony under the laws of Kansas or a crime under the laws of another jurisdiction which is substantially the same as such nonperson felony, has been released from imprisonment for such nonperson felony or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a nonperson felony, and was found to have been in possession of a firearm at the time of the commission of the crime.

(b) Criminal possession of a firearm by a convicted felon is a severity level 8, nonperson felony.

New Sec. 190. (a) Aggravated weapons violation by a convicted felon is a violation of any of the provisions of subsections (a)(1) through (a)(6) of section 186 or section 187, and amendments thereto, by a person who:

(1) Within five years preceding such violation has been convicted of a nonperson felony under the laws of Kansas or in any other jurisdiction which is substantially the same as such crime or has been released from imprisonment for such nonperson felony; or

(2) has been convicted of a person felony under the laws of Kansas or in any other jurisdiction which is substantially the same as such crime or has been released from imprisonment for such crime, and has not had the conviction of such crime expunged or been pardoned for such crime.

(b) (1) Aggravated weapons violation is a severity level 9, nonperson felony for a violation of subsections (a)(1) through (a)(5) or subsection (a)(9) of K.S.A. 21-4201, prior to its repeal, or subsection (a)(1) through (a)(3) of section 186 or subsection (a)(1) through (a)(4) of section 187, and amendments thereto.

(2) Aggravated weapons violation is a severity level 8, nonperson felony for a violation of subsections (a)(6), (a)(7) and (a)(8) of K.S.A. 21-4201, prior to its repeal, or subsection (a)(4) through (a)(6) of section 186 or subsection (a)(5) of section 187, and amendments thereto.

New Sec. 191. (a) Defacing identification marks of a firearm is intentionally changing, altering, removing or obliterating the name of the maker, model, manufacturer's number or other mark of identification of any firearm.

(b) Defacing identification marks of a firearm is a severity level 10, nonperson felony.

(c) Possession of any firearm upon which any such mark has been intentionally changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, removed or obliterated the same.

New Sec. 192. Upon conviction of a violation or upon adjudication as a juvenile offender for a violation of section 186, 187, 189, 190 or 193, and amendments thereto, any weapon seized in connection therewith shall remain in the custody of the trial court.

(b) Any stolen weapon so seized and detained, when no longer needed for evidentiary purposes, shall be returned to the person entitled to possession, if known. All other confiscated weapons when no longer needed for evidentiary purposes, shall in the discretion of the trial court, be:

(1) Destroyed;

(2) forfeited to the law enforcement agency seizing the weapon for use within such agency, for sale to a properly licensed federal firearms dealer, for trading to a properly licensed federal firearms dealer for other new or used firearms or accessories for use within such agency or for trading to another law enforcement agency for that agency's use; or

(3) forfeited to the Kansas bureau of investigation for law enforcement, testing, comparison or destruction by the Kansas bureau of investigation forensic laboratory.

(c) If weapons are sold as authorized by subsection (2), the proceeds of the sale shall be credited to the asset seizure and forfeiture fund of the seizing agency.

New Sec. 193. (a) Criminal discharge of a firearm is the:

(1) Reckless and unauthorized discharge of any firearm:

(A) At a dwelling, building or structure in which there is a human being whether the person discharging the firearm knows or has reason to know that there is a human being present;

(B) at a motor vehicle, aircraft, watercraft, train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock or other means of conveyance of persons or property in which there is a human being whether the person discharging the firearm knows or has reason to know that there is a human being present;

(2) reckless and unauthorized discharge of any firearm at a dwelling in which there is no human being; or

(3) discharge of any firearm:

(A) Upon any land or nonnavigable body of water of another, without having obtained permission of the owner or person in possession of such land; or

(B) upon or from any public road, public road right-of-way or railroad right-of-way except as otherwise authorized by law.

(b) Criminal discharge of a firearm as defined in:

(1) Subsection (a)(1) is a:

(A) Severity level 7, person felony except as provided in subsection (b)(1)(B) or (b)(1)(C);

(B) severity level 3, person felony if such criminal discharge results in great bodily harm to a person during the commission thereof; or

(C) severity level 5, person felony if such criminal discharge results in bodily harm to a person during the commission thereof;

(2) subsection (a)(2) is a severity level 8, person felony; and

(3) subsection (a)(3) is a class C misdemeanor.

(c) Subsection (a)(1) shall not apply if the act is a violation of subsection (d) of section 47, and amendments thereto.

(d) Subsection (a)(3) shall not apply to any of the following:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) members of the armed services or reserve forces of the United States or the national guard while in the performance of their official duty;

(4) watchmen, while actually engaged in the performance of the duties of their employment;

(5) private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;

(6) detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;

(7) the state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157, and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157, and amendments thereto; or

(8) the United States attorney for the district of Kansas, the attorney general, or any district attorney or county attorney, while actually engaged in the duties of their employment or any activities incidental to such duties; any assistant United States attorney if authorized by the United States attorney for the district of Kansas and while actually engaged in the duties of their employment or any activities incidental to such duties; any assistant attorney general if authorized by the attorney general and while actually engaged in the duties of their employment or any activities incidental to such duties; or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed and while actually engaged in the duties of their employment or any activities incidental to such duties. The provisions of this paragraph shall not apply to any person not in compliance with K.S.A. 2009 Supp. 75-7c19, and amendments thereto.

New Sec. 194. (a) It shall be unlawful to possess, with no requirement of a culpable mental state, a firearm on the grounds of or in:

(1) Any building located within the capitol complex;

(2) the governor's residence;

(3) any building on the grounds of the governor's residence;

(4) any other state-owned or leased building if the secretary of administration has so designated by rules and regulations and conspicuously placed signs clearly stating that firearms are prohibited within such building; or

(5) any county courthouse, unless, by county resolution, the board of county commissioners authorize the possession of a firearm within such courthouse.

(b) Violation of this section is a class A misdemeanor.

(c) This section shall not apply to:

(1) A commissioned law enforcement officer;

(2) a full-time salaried law enforcement officer of another state or the federal government who is carrying out official duties while in this state;

(3) any person summoned by any such officer to assist in making arrests or preserving the peace while actually engaged in assisting such officer; or

(4) a member of the military of this state or the United States engaged in the performance of duties.

(d) It is not a violation of this section for the:

(1) Governor, the governor's immediate family, or specifically authorized guest of the governor to possess a firearm within the governor's residence or on the grounds of or in any building on the grounds of the governor's residence; or

(2) United States attorney for the district of Kansas, the attorney general, any district attorney or county attorney, any assistant United States attorney if authorized by the United States attorney for the district of Kansas, any assistant attorney general if authorized by the attorney general, or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed, to possess a firearm within any county courthouse and court-related facility, subject to any restrictions or prohibitions imposed in any courtroom by the chief judge of the judicial district. The provisions of this paragraph shall not apply to any person not in compliance with K.S.A. 2009 Supp. 75-7c19, and amendments thereto.

(e) Notwithstanding the provisions of this section, any county may elect by passage of a resolution that the provisions of subsection (d)(2) shall not apply to such county's courthouse or court-related facilities if such:

(1) Facilities have adequate security measures to ensure that no weapons are permitted to be carried into such facilities;

(2) facilities have adequate measures for storing and securing lawfully carried weapons, including, but not limited to, the use of gun lockers or other similar storage options;

(3) county also has a policy or regulation requiring all law enforcement officers to secure and store such officer's firearm upon entering the courthouse or court-related facility. Such policy or regulation may provide that it does not apply to court security or sheriff's office personnel for such county; and

(4) facilities have a sign conspicuously posted at each entryway into such facility stating that the provisions of subsection (d)(2) do not apply to such facility.

(f) As used in this section:

(1) "Adequate security measures" means the use of electronic equipment and personnel to detect and restrict the carrying of any weapons into the facility, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes;

(2) "possession" means having joint or exclusive control over a firearm or having a firearm in a place where the person has some measure of access and right of control; and

(3) "capitol complex" means the same as in K.S.A. 75-4514, and amendments thereto.

New Sec. 195. (a) Unlawful endangerment is knowingly protecting or attempting to protect the manufacture or cultivation of a controlled substance by creating, setting up, building, erecting or using any device or weapon which:

(1) Causes great bodily harm;

(2) causes bodily harm; or

(3) is intended to cause bodily harm to another person.

(b) Unlawful endangerment as defined in:

(1) Subsection (a)(1) is a severity level 5, person felony;

(2) subsection (a)(2) is a severity level 7, person felony; and

(3) subsection (a)(3) is a severity level 8, nonperson felony.

(c) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for battery.

(d) As used in this section, "manufacture" and "cultivation" mean the same as in K.S.A. 2009 Supp. 21-36a01, and amendments thereto.

New Sec. 196. (a) Failure to register explosives is, with no requirement of a culpable mental state, the omission by:

(1) The seller of any explosive or detonating substance, to keep a register of every sale or other disposition of such explosives made by the seller as required by this section; or

(2) any person to whom delivery of any quantity of explosive or other detonating substance is made, to acknowledge the receipt thereof by sign-

ing the person's name in the register provided in subsection (c) on the page where the record of such delivery is entered.

(b) Failure to register explosives as defined in:

(1) Subsection (a)(1) is a class B nonperson misdemeanor; and

(2) subsection (a)(2) is a class C misdemeanor.

(c) The register of sales required by subsection (a)(1) shall contain the date of the sale or other disposition, the name, address, age and occupation of the person to whom the explosive is sold or delivered, the kind and amount of explosive delivered, the place at which it is to be used and for what purpose it is to be used. Such register and record of sale or other disposition shall be open for inspection by any law enforcement officer, mine inspector or fire marshal of this state for a period of not less than one year after the sale or other disposition.

New Sec. 197. (a) Criminal possession of explosives is the possession of any explosive or detonating substance by a person who, within five years preceding such possession, has been convicted of a felony under the laws of this or any other jurisdiction or has been released from imprisonment for a felony.

(b) Criminal disposal of explosives is knowingly distributing any explosive or detonating substance to a person:

(1) Under 21 years of age;

(2) who is both addicted to and an unlawful user of a controlled substance; or

(3) who, within the preceding five years, has been convicted of a felony under the laws of this or any other jurisdiction or has been released from imprisonment for a felony.

(c) Carrying concealed explosives is carrying any explosive or detonating substance on the person in a wholly or partly concealed manner.

(d) (1) Criminal possession of explosives is a severity level 7, person felony.

(2) Criminal disposal of explosives is a severity level 10, person felony.

(3) Carrying concealed explosives is a class C misdemeanor.

(e) As used in subsections (a) and (b), "explosives" means any chemical compound, mixture or device, of which the primary purpose is to function by explosion, and includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters.

New Sec. 198. As used in sections 198 through 201, and amendments thereto:

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

(1) Consisting of three or more persons;

(2) having as one of its primary activities the commission of one or more person felonies, person misdemeanors, felony violations of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, or the comparable juvenile offenses, which if committed by an adult would constitute the commission of such felonies or misdemeanors;

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

(4) whose members, individually or collectively, engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies, person misdemeanors, felony violations of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, the comparable juvenile offenses, which if committed by an adult would constitute the commission of such felonies or misdemeanors or any substantially similar offense from another jurisdiction;

(b) "criminal street gang member" is a person who:

(1) Admits to criminal street gang membership; or

(2) meets three or more of the following criteria:

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

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

(C) is identified as a criminal street gang member by an informant of

previously untested reliability and such identification is corroborated by independent information;

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

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

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

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

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

(c) "criminal street gang activity" means the commission or attempted commission of, or solicitation or conspiracy to commit, one or more person felonies, person misdemeanors, felony violations of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, or the comparable juvenile offenses, which if committed by an adult would constitute the commission of such felonies or misdemeanors on separate occasions;

(d) "criminal street gang associate" means a person who:

(1) Admits to criminal street gang association; or

(2) meets two or more defining criteria for criminal street gang membership described in subsection (b)(2); and

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

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

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

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

New Sec. 199. (a) Recruiting criminal street gang membership is intentionally causing, encouraging, soliciting or recruiting another person to join a criminal street gang that requires, as a condition of membership or continued membership, the commission of any crime or membership initiation by submission to a sexual or physical assault that is criminal in nature, or would be criminal absent consent by the initiated.

(b) Recruiting criminal street gang membership is a severity level 6, person felony.

New Sec. 200. (a) Criminal street gang intimidation is the communication, directly or indirectly with another, any threat of personal injury or actual personal injury to another or any threat of damage or actual damage to property of another with the intent to:

(1) Deter such person from assisting a criminal street gang member or associate to withdraw from such criminal street gang; or

(2) punish or retaliate against such person for having withdrawn from a criminal street gang.

(b) Criminal street gang intimidation is a severity level 5, person felony.

New Sec. 201. When a criminal street gang member is arrested for a person felony, bail shall be at least $50,000 cash or surety, unless the court determines on the record that the defendant is not likely to reoffend, an appropriate intensive pre-trial supervision program is available and the defendant agrees to comply with the mandate of such pre-trial supervision.

New Sec. 202. (a) Endangering the food supply is knowingly:

(1) Bringing into this state any domestic animal which is infected with any contagious or infectious disease or any animal which has been exposed to any contagious or infectious disease;

(2) exposing any animal in this state to any contagious or infectious disease;

(3) except as permitted under K.S.A. 2-2112 et seq., and amendments thereto, bringing or releasing into this state any plant pest as defined in K.S.A. 2-2113, and amendments thereto, or exposing any plant to a plant pest; or

(4) exposing any raw agricultural commodity, animal feed or processed food to any contaminant or contagious or infectious disease.

(b) Aggravated endangering the food supply is endangering the food supply, as defined in subsection (a), when done with the intent to cause:

(1) Damage to plants or animals or to cause economic harm or social unrest; or

(2) illness or injury or death to a human being or beings.

(c) (1) Endangering the food supply is a:

(A) Class A nonperson misdemeanor, except as provided in subsection (c)(1)(B); and

(B) severity level 4, nonperson felony when the contagious or infectious disease is foot-and-mouth disease.

(2) Aggravated endangering the food supply as defined in:

(A) Subsection (b)(1) is a severity level 3, nonperson felony; and

(B) subsection (b)(2) is a severity level 3, person felony.

(d) The provisions of this section shall not apply to bona fide experiments and actions related thereto carried on by commonly recognized research facilities.

(e) As used in this section:

(1) "Animal feed" means an article which is intended for use for food for animals other than humans and which is intended for use as a substantial source of nutrients in the diet of the animal, and is not limited to a mixture intended to be the sole ration of the animal;

(2) "contagious or infectious disease" means any disease which can be spread from one subject to another by direct or indirect contact or by an intermediate agent, including, but not limited to, anthrax, all species of brucellosis, equine infectious anemia, hog cholera, pseudorabies, psoroptic mange, rabies, tuberculosis, vesicular stomatitis, avian influenza, pullorum, fowl typhoid, psittacosis, viscerotropic velogenic Newcastle disease, foot-and-mouth disease, rinderpest, African swine fever, piroplasmosis, vesicular exanthema, Johne's disease, scabies, scrapies, bovine leukosis and bovine spongiform encephalopathy;

(3) "processed food" means any food other than a raw agricultural commodity and includes any raw agricultural commodity that has been subject to processing, such as canning, cooking, freezing, dehydration or milling; and

(4) "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing.

New Sec. 203. (a) Creating a hazard is recklessly:

(1) Storing or abandoning, in any place accessible to children, a container which has a compartment of more than one and one-half cubic feet capacity and a door or lid which locks or fastens automatically when closed and which cannot be easily opened from the inside, and failing to remove the door, lock, lid or fastening device on such container;

(2) being the owner or otherwise having possession of property upon which a cistern, well or cesspool is located, and failing to cover the same with protective covering of sufficient strength and quality to exclude human beings and domestic animals therefrom; or

(3) exposing, abandoning or otherwise leaving any explosive or dangerous substance in a place accessible to children.

(b) Creating a hazard is a class B nonperson misdemeanor.

New Sec. 204. (a) Unlawful failure to report a wound is, with no requirement of a culpable mental state, the failure by an attending physician or other person to report such person's treatment of any of the following wounds, to the office of the chief of police of the city or the office of the sheriff of the county in which such treatment took place:

(1) Any bullet wound, gunshot wound, powder burn or other injury arising from or caused by the discharge of a firearm; or

(2) any wound which is likely to or may result in death and is apparently inflicted by a knife, ice pick or other sharp or pointed instrument.

(b) Unlawful failure to report a wound is a class C misdemeanor.

New Sec. 205. (a) Selling beverage containers with detachable tabs is knowingly selling or offering for sale at retail in this state any metal beverage container so designed and constructed that a part of the container is detachable in opening the container.

(b) Selling beverage containers with detachable tabs is a class C misdemeanor.

(c) As used in this section:

(1) "Beverage container" means any sealed can containing beer, cereal malt beverages, mineral waters, soda water and similar soft drinks so designated by the director of alcoholic beverage control, in liquid form and intended for human consumption; and

(2) "in this state" means within the exterior limits of the state of Kansas and includes all territory within these limits owned by or ceded to the United States of America.

New Sec. 206. (a) It shall be unlawful for any person to knowingly:

(1) Use any alcohol without liquid machine to inhale alcohol vapor or otherwise introduce alcohol in any form into the human body; or

(2) purchase, sell or offer for sale an alcohol without liquid machine.

(b) Violation of this section is a class A nonperson misdemeanor.

(c) As used in this section, "alcohol without liquid machine" means a device designed or marketed for the purpose of mixing alcohol with oxygen or another gas to produce a mist for inhalation for recreational purposes.

New Sec. 207. (a) Unlawfully tampering with electronic monitoring equipment is, knowingly and without authorization, removing, disabling, altering, tampering with, damaging or destroying any electronic monitoring equipment used pursuant to court ordered supervision or as a condition of post-release supervision or parole.

(b) Unlawfully tampering with electronic monitoring equipment is a severity level 6, nonperson felony.

New Sec. 208. (a) Refusal to yield a telephone party line is intentionally refusing to immediately yield or surrender the use of a party line when informed that the line is needed for an emergency call to a fire department or police department or for medical aid or ambulance service.

(b) Refusal to yield a telephone party line is a class C misdemeanor.

(c) No person shall request the use of a party line on the pretext that an emergency exists, knowing that no emergency in fact exists.

(d) Every telephone directory published for distribution to members of the general public shall contain a notice setting forth a summary of the provisions of this section. Such notice shall be printed in type which is no smaller than any other type on the same page and shall be preceded by the word "WARNING." The provisions of this subsection shall not apply to those directories distributed solely for business advertising services, commonly known as classified directories.

(e) As used in this section:

(1) "Party line" means a subscriber's line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number; and

(2) "emergency" means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential.

New Sec. 209. (a) Unlawful possession or use of a traffic control signal preemption device is knowingly:

(1) Possessing a traffic control signal preemption device;

(2) using a traffic control signal preemption device;

(3) selling a traffic control signal preemption device; or

(4) purchasing a traffic control signal preemption device .

(b) A person convicted of violating subsection (a)(1) shall be guilty of a class B misdemeanor.

(c) The provisions of this section shall not apply to the operator, passenger or owner of any of the following authorized emergency vehicles, in the course of such person's emergency duties:

(1) Publicly owned fire department vehicles;

(2) publicly owned police vehicles; or

(3) motor vehicles operated by ambulance services permitted by the emergency medical services board under the provisions of K.S.A. 65-6101 et seq., and amendments thereto.

(d) As used in this section, "traffic control signal preemption device"

means any device, instrument or mechanism designed, intended or used to interfere with the operation or cycle of a traffic-control signal, as defined in K.S.A. 8-1478, and amendments thereto.

(e) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for battery or any homicide.

New Sec. 210. (a) Unlawful interference with a firefighter is knowingly:

(1) Interfering with any firefighter while engaged in the performance of such firefighter's duties; or

(2) obstructing, interfering with or impeding the efforts of any firefighter to reach the location of a fire or other emergency.

(b) Unlawful interference with a firefighter is a class B person misdemeanor.

(c) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for assault or battery.

New Sec. 211. (a) Unlawful interference with an emergency medical services attendant is knowingly:

(1) Interfering with any attendant while engaged in the performance of such attendant's duties, or

(2) obstructing, interfering with or impeding the efforts of any attendant to reach the location of an emergency.

(b) Unlawful interference with an emergency medical services attendant is a class B person misdemeanor.

(c) As used in this section, "attendant" means the same as in K.S.A. 65-6112, and amendments thereto.

(d) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for assault or battery.

New Sec. 212. (a) Promoting obscenity is recklessly:

(1) Manufacturing, mailing, transmitting, publishing, distributing, presenting, exhibiting or advertising any obscene material or obscene device;

(2) possessing any obscene material or obscene device with intent to mail, transmit, publish, distribute, present, exhibit or advertise such material or device;

(3) offering or agreeing to manufacture, mail, transmit, publish, distribute, present, exhibit or advertise any obscene material or obscene device; or

(4) producing, presenting or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.

(b) Promoting obscenity to minors is promoting obscenity, as defined in subsection (a), where a recipient of the obscene material or obscene device or a member of the audience of an obscene performance is a child under the age of 18 years.

(c) (1) Promoting obscenity is a:

(A) Class A nonperson misdemeanor, except as provided in (c)(1)(B); and

(B) severity level 9, person felony upon a second or subsequent conviction.

(2) Promoting obscenity to minors is a:

(A) Class A nonperson misdemeanor, except as provided in (c)(2)(B); and

(B) severity level 8, person felony upon a second or subsequent conviction.

(3) Conviction of a violation of a municipal ordinance prohibiting acts which constitute promoting obscenity or promoting obscenity to minors shall be considered a conviction of promoting obscenity or promoting obscenity to minors for the purpose of determining the number of prior convictions and the classification of the crime under this section.

(d) Upon any conviction of promoting obscenity or promoting obscenity to minors, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed $50,000, conditioned that, in the event the defendant is convicted of a subsequent offense of promoting obscenity within two years after such conviction, the defendant shall forfeit the recognizance.

(e) Evidence that materials or devices were promoted to emphasize their prurient appeal shall be relevant in determining the question of the obscenity of such materials or devices. There shall be a rebuttable presumption that a person promoting obscene materials or obscene devices did so knowingly or recklessly if:

(1) The materials or devices were promoted to emphasize their prurient appeal; or

(2) the person is not a wholesaler and promotes the materials or devices in the course of the person's business.

(f) As used in this section:

(1) Any material or performance is "obscene" if:

(A) The average person applying contemporary community standards would find that the material or performance, taken as a whole, appeals to the prurient interest;

(B) the average person applying contemporary community standards would find that the material or performance has patently offensive representations or descriptions of:

(i) Ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse or sodomy; or

(ii) masturbation, excretory functions, sadomasochistic abuse or lewd exhibition of the genitals; and

(C) taken as a whole, a reasonable person would find that the material or performance lacks serious literary, educational, artistic, political or scientific value;

(2) "material" means any tangible thing which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or other manner;

(3) "obscene device" means a device, including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs, except such devices disseminated or promoted for the purpose of medical or psychological therapy;

(4) "performance" means any play, motion picture, dance or other exhibition performed before an audience;

(5) "sexual intercourse" and "sodomy" mean the same as in section 65, and amendments thereto; and

(6) "wholesaler" means a person who distributes or offers for distribution obscene materials or devices only for resale and not to the consumer and who does not manufacture, publish or produce such materials or devices.

(g) It shall be a defense to a prosecution for promoting obscenity and promoting obscenity to minors that the:

(1) Persons to whom the allegedly obscene material or obscene device was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational or governmental justification for possessing or viewing the same;

(2) defendant is an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by such library and was disseminated in accordance with regular library policies approved by its governing body; or

(3) allegedly obscene material or obscene device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material or device was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incidental to an approved course or program of instruction at such school.

(h) Notwithstanding the provisions of section 15, and amendments thereto, to the contrary, it shall be an affirmative defense to any prosecution for promoting obscenity to minors that:

(1) The defendant had reasonable cause to believe that the minor involved was 18 years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 18 years old or more; or

(2) an exhibition in a state of nudity is for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library.

(i) The provisions of this section and the provisions of ordinances of any city prescribing a criminal penalty for exhibit of any obscene motion

picture shown in a commercial showing to the general public shall not apply to a projectionist, or assistant projectionist, if such projectionist or assistant projectionist has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist and no personal knowledge of the contents of the motion picture. The provisions of this section shall not exempt any projectionist or assistant projectionist from criminal liability for any act unrelated to projection of motion pictures in commercial showings to the general public.

New Sec. 213. (a) No person having custody, control or supervision of any commercial establishment shall knowingly:

(1) Display any material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material or device;

(2) present or distribute to a minor, or otherwise allow a minor to view, with or without consideration, any material which is harmful to minors; or

(3) present to a minor, or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

(b) Violation of this section is a class B nonperson misdemeanor.

(c) Notwithstanding the provisions of section 15, and amendments thereto, to the contrary, it shall be an affirmative defense to any prosecution under this section that:

(1) The allegedly harmful material or device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material or device was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school;

(2) the defendant is an officer, director, trustee or employee of a public library and the allegedly harmful material or device was acquired by a public library and was disseminated in accordance with regular library policies approved by its governing body;

(3) an exhibition in a state of nudity is for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library;

(4) with respect to a prosecution for an act described by subsection (a)(1), the allegedly harmful material was kept behind blinder racks;

(5) with respect to a prosecution for an act described by subsection (a)(2) or (3), the defendant had reasonable cause to believe that the minor involved was 18 years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 18 years old or more; and

(6) with respect to a prosecution for an act described by subsection (a)(3), the allegedly harmful performance was viewed by the minor in the presence of such minor's parent or parents or such minor's legal guardian.

(d) As used in this section:

(1) "Blinder rack" means a device in which material is displayed in such a manner that the lower ⅔ of the material is not exposed to view;

(2) "harmful to minors" means that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse when the material or performance, taken as a whole or, with respect to a prosecution for an act described by subsection (a)(1), that portion of the material that was actually exposed to the view of minors, has the following characteristics:

(A) The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors;

(B) the average adult person applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

(C) a reasonable person would find that the material or performance lacks serious literary, scientific, educational, artistic or political value for minors;

(3) "material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape or video tape;

(4) "minor" means any unmarried person under 18 years of age;

(5) "nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernible state of sexual excitement;

(6) "performance" means any motion picture, file, video tape, played record, phonograph, tape recording, preview, trailer, play, show, skit, dance or other exhibition performed or presented to or before an audience of one or more, with or without consideration;

(7) "sadomasochistic abuse" means flagellation or torture by or upon a person clad in undergarments, in a mask or bizarre costume or in the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed;

(8) "sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals or pubic area or buttocks or with a human female's breast; and

(9) "sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(e) The provisions of this section shall not apply to a retail sales clerk, if such clerk has no financial interest in the materials or performance or in the commercial establishment displaying, presenting or distributing such materials or presenting such performance other than regular employment as a retail sales clerk. The provisions of this section shall not exempt any retail sales clerk from criminal liability for any act unrelated to regular employment as a retail sales clerk.

New Sec. 214. As used in sections 214 through 220, and amendments thereto:

(a) "Bet" means a bargain in which the parties agree that, dependent upon chance, one stands to win or lose something of value specified in the agreement. A bet does not include:

(1) Bona fide business transactions which are valid under the law of contracts including, but not limited to, contracts for the purchase or sale at a future date of securities or other commodities, and agreements to compensation for loss caused by the happening of the chance including, but not limited to, contracts of indemnity or guaranty and life or health and accident insurance;

(2) offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength or endurance or to the bona fide owners of animals or vehicles entered in such a contest;

(3) a lottery as defined in this section;

(4) any bingo game by or for participants managed, operated or conducted in accordance with the laws of the state of Kansas by an organization licensed by the state of Kansas to manage, operate or conduct games of bingo;

(5) a lottery operated by the state pursuant to the Kansas lottery act;

(6) any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act; or

(7) tribal gaming;

(b) "lottery" means an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance. A lottery does not include:

(1) A lottery operated by the state pursuant to the Kansas lottery act; or

(2) tribal gaming;

(c) "consideration" means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant. Mere registration without purchase of goods or services; personal attendance at places or events, without payment of an admission price or fee; listening to or watching radio and television programs; answering the telephone or making a telephone call and acts of like nature are not consideration. "Consideration" shall not include sums of money paid by or for:

(1) Participants in any bingo game managed, operated or conducted

in accordance with the laws of the state of Kansas by any bona fide nonprofit religious, charitable, fraternal, educational or veteran organization licensed to manage, operate or conduct bingo games under the laws of the state of Kansas and it shall be conclusively presumed that such sums paid by or for such participants were intended by such participants to be for the benefit of the sponsoring organizations for the use of such sponsoring organizations in furthering the purposes of such sponsoring organizations, as set forth in the appropriate paragraphs of subsection (c) or (d) of section 501 of the internal revenue code of 1986 and as set forth in K.S.A. 79-4701, and amendments thereto;

(2) participants in any lottery operated by the state pursuant to the Kansas lottery act;

(3) participants in any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act; or

(4) a person to participate in tribal gaming;

(d) (1) "gambling device" means any:

(A) So-called "slot machine" or any other machine, mechanical device, electronic device or other contrivance an essential part of which is a drum or reel with insignia thereon, and:

(i) Which when operated may deliver, as the result of chance, any money or property; or

(ii) by the operation of which a person may become entitled to receive, as the result of chance, any money or property;

(B) other machine, mechanical device, electronic device or other contrivance including, but not limited to, roulette wheels and similar devices, which are equipped with or designed to accommodate the addition of a mechanism that enables accumulated credits to be removed, is equipped with or designed to accommodate a mechanism to record the number of credits removed or is otherwise designed, manufactured or altered primarily for use in connection with gambling, and:

(i) Which when operated may deliver, as the result of chance, any money or property; or

(ii) by the operation of which a person may become entitled to receive, as the result of chance, any money or property;

(C) subassembly or essential part intended to be used in connection with any such machine, mechanical device, electronic device or other contrivance, but which is not attached to any such machine, mechanical device, electronic device or other contrivance as a constituent part; or

(D) any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet.

The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.

(2) "Gambling device" shall not include:

(A) Any machine, mechanical device, electronic device or other contrivance used or for use by a licensee of the Kansas racing commission as authorized by law and rules and regulations adopted by the commission or by the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;

(B) any machine, mechanical device, electronic device or other contrivance, such as a coin-operated bowling alley, shuffleboard, marble machine, a so-called pinball machine, or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and:

(i) Which when operated does not deliver, as a result of chance, any money; or

(ii) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money;

(C) any so-called claw, crane or digger machine and similar devices which are designed and manufactured primarily for use at carnivals or county or state fairs; or

(D) any machine, mechanical device, electronic device or other contrivance used in tribal gaming;

(e) "gambling place" means any place, room, building, vehicle, tent or location which is used for any of the following: Making and settling bets; receiving, holding, recording or forwarding bets or offers to bet;

conducting lotteries; or playing gambling devices. Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was frequently visited by persons known to be commercial gamblers or known as frequenters of gambling places is admissible on the issue of whether it is a gambling place;

(f) "tribal gaming" means the same as in K.S.A. 74-9802, and amendments thereto; and

(g) "tribal gaming commission" means the same as in K.S.A. 74-9802, and amendments thereto.

New Sec. 215. (a) Gambling is:

(1) Making a bet; or

(2) entering or remaining in a gambling place with intent to make a bet, to participate in a lottery or to play a gambling device.

(b) Gambling is a class B nonperson misdemeanor.

New Sec. 216. (a) Illegal bingo operation is the knowing management, operation or conduct of games of bingo in violation of the laws of the state of Kansas pertaining to the regulation, licensing and taxing of games of bingo or rules and regulations adopted pursuant thereto.

(b) Illegal bingo operation is a class A nonperson misdemeanor.

New Sec. 217. (a) Commercial gambling is knowingly:

(1) (A) Operating or receiving all or part of the earnings of a gambling place;

(B) receiving, recording or forwarding bets or offers to bet or, with intent to receive, record or forward bets or offers to bet, possessing facilities to do so;

(C) for gain, becoming a custodian of anything of value bet or offered to be bet;

(D) conducting a lottery, or with intent to conduct a lottery possessing facilities to do so; or

(E) setting up for use or collecting the proceeds of any gambling device; or

(2) (A) granting the use or allowing the continued use of a place as a gambling place; or

(B) permitting another to set up a gambling device for use in a place under the offender's control.

(b) Commercial gambling as defined in:

(1) Subsection (a)(1) is a severity level 8, nonperson felony.

(2) Subsection (a)(2) is a class B nonperson misdemeanor.

New Sec. 218. (a) Dealing in gambling devices is manufacturing, distributing or possessing with intent to distribute any gambling device or sub-assembly or essential part thereof.

(b) Dealing in gambling devices is a severity level 8, nonperson felony.

(c) Proof of possession of any device designed exclusively for gambling purposes, which device is not set up for use or which is not in a gambling place, creates a presumption of possession with intent to distribute.

(d) It shall be a defense to a prosecution under this section that:

(1) The gambling device is an antique slot machine and that the antique slot machine was not operated for gambling purposes while in the owner's or the defendant's possession. A slot machine shall be deemed an antique slot machine if it was manufactured prior to the year 1950; or

(2) the gambling device or sub-assembly or essential part thereof is manufactured, distributed or possessed by a manufacturer registered under the federal gambling devices act of 1962 (15 U.S.C. 1171 et seq.) or a transporter under contract with such manufacturer with intent to distribute for use:

(A) By the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;

(B) by a licensee of the Kansas racing commission as authorized by law and rules and regulations adopted by the commission;

(C) in a state other than the state of Kansas; or

(D) in tribal gaming.

New Sec. 219. (a) It shall be unlawful for any person to possess a gambling device.

(b) Violation of this section is a class B nonperson misdemeanor.

(c) It shall be a defense to a prosecution under this section that:

(1) The gambling device is an antique slot machine and that the antique slot machine was not operated for gambling purposes while in the owner's or the defendant's possession. A slot machine shall be deemed an antique slot machine if it was manufactured prior to the year 1950; or

(2) the gambling device is possessed or under custody or control of a manufacturer registered under the federal gambling devices act of 1962 (15 U.S.C. 1171 et seq.) or a transporter under contract with such manufacturer with intent to distribute for use:

(A) By the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;

(B) by a licensee of the Kansas racing commission as authorized by law and rules and regulations adopted by the commission;

(C) in a state other than the state of Kansas; or

(D) in tribal gaming.

New Sec. 220. (a) Installing communication facilities for gamblers is:

(1) Installing communication facilities in a place known to the installer to be a gambling place;

(2) installing communication facilities knowing that they will be used principally for the purpose of transmitting information to be used in making or settling bets; or

(3) allowing the continued use of communication facilities knowing that such facilities are being used principally for the purpose of transmitting information to be used in making or settling bets.

(b) Installing communications facilities for gamblers is a severity level 8, nonperson felony.

(c) (1) When any public utility providing telephone communications service is notified in writing by a state or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used principally for the purpose of transmitting or receiving gambling information, it shall discontinue or refuse the furnishing of service to such facility, after reasonable notice to the subscriber. No damages, penalty or forfeiture, civil or criminal, shall be found against any such public utility for any act done in compliance with any notice received from a law enforcement agency.

(2) Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a court of competent jurisdiction, that such facility should not be discontinued or removed, or should be restored.

New Sec. 221. (a) A false membership claim is knowingly and falsely representing oneself to be a member of a fraternal or veteran's organization.

(b) False membership claim is a class C misdemeanor.

New Sec. 222. As used in sections 223 through 228, and amendments thereto:

(a) "Animal" means every living vertebrate except a human being;

(b) "farm animal" means an animal raised on a farm or ranch and used or intended for use as food or fiber;

(c) "retailer" means a person regularly engaged in the business of selling tangible personal property, services or entertainment for use or consumption and not for resale;

(d) "wild animal" means a living mammal or marsupial which is normally found in the wild state, but shall not include a farm animal; and

(e) "domestic pet" means any domesticated animal which is kept for pleasure rather than utility.

New Sec. 223. (a) Cruelty to animals is:

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

(2) knowingly abandoning any animal in any place without making provisions for its proper care;

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

(4) intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment;

(5) knowingly but not maliciously killing or injuring any animal; or

(6) administering any poison to any domestic animal.

(b) Cruelty to animals as defined in:

(1) Subsection (a)(1) or (a)(6) is a nonperson felony. Upon conviction of subsection (a)(1) or (a)(6), a person shall be sentenced to not less than 30 days or more than one year's imprisonment and be fined not less than $500 nor more than $5,000. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the minimum mandatory sentence as provided herein. During the mandatory 30 days imprisonment, such offender shall have a psychological evaluation prepared for the court to assist the court in determining conditions of probation. Such conditions shall include, but not be limited to, the completion of an anger management program; and

(2) subsection (a)(2), (a)(3), (a)(4) or (a)(5) are a:

(A) Class A nonperson misdemeanor, except as provided in subsection (b)(2)(B); and

(B) nonperson felony upon the second or subsequent conviction of cruelty to animals as defined in subsection (a)(2), (a)(3), (a)(4) or (a)(5). Upon such conviction, a person shall be sentenced to not less than five days or more than one year's imprisonment and be fined not less than $500 nor more than $2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the minimum mandatory sentence as provided herein.

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

(1) Normal or accepted veterinary practices;

(2) bona fide experiments carried on by commonly recognized research facilities;

(3) killing, attempting to kill, trapping, catching or taking of any animal in accordance with the provisions of chapter 32 or chapter 47 of the Kansas Statutes Annotated, and amendments thereto;

(4) rodeo practices accepted by the rodeo cowboys' association;

(5) the humane killing of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for population control, by the owner thereof or the agent of such owner residing outside of a city or the owner thereof within a city if no animal shelter, pound or licensed veterinarian is within the city, or by a licensed veterinarian at the request of the owner thereof, or by any officer or agent of an incorporated humane society, the operator of an animal shelter or pound, a local or state health officer or a licensed veterinarian three business days following the receipt of any such animal at such society, shelter or pound;

(6) with respect to farm animals, normal or accepted practices of animal husbandry, including the normal and accepted practices for the slaughter of such animals for food or by-products and the careful or thrifty management of one's herd or animals, including animal care practices common in the industry or region;

(7) the killing of any animal by any person at any time which may be found outside of the owned or rented property of the owner or custodian of such animal and which is found injuring or posing a threat to any person, farm animal or property;

(8) an animal control officer trained by a licensed veterinarian in the use of a tranquilizer gun, using such gun with the appropriate dosage for the size of the animal, when such animal is vicious or could not be captured after reasonable attempts using other methods;

(9) laying an equine down for medical or identification purposes;

(10) normal or accepted practices of pest control, as defined in subsection (x) of K.S.A. 2-2438a, and amendments thereto; or

(11) accepted practices of animal husbandry pursuant to regulations promulgated by the United States department of agriculture for domestic pet animals under the animal welfare act, public law 89-544, as amended and in effect on July 1, 2006.

(d) The provisions of subsection (a)(6) shall not apply to any person exposing poison upon their premises for the purpose of destroying wolves, coyotes or other predatory animals.

(e) Any public health officer, law enforcement officer, licensed veterinarian or officer or agent of any incorporated humane society, animal shelter or other appropriate facility may take into custody any animal, upon either private or public property, which clearly shows evidence of

cruelty to animals, as defined in this section. Such officer, agent or veterinarian may inspect, care for or treat such animal or place such animal in the care of a duly incorporated humane society or licensed veterinarian for treatment, boarding or other care or, if an officer of such humane society or such veterinarian determines that the animal appears to be diseased or disabled beyond recovery for any useful purpose, for humane killing. If the animal is placed in the care of an animal shelter, the animal shelter shall notify the owner or custodian, if known or reasonably ascertainable. If the owner or custodian is charged with a violation of this section, the board of county commissioners in the county where the animal was taken into custody shall establish and approve procedures whereby the animal shelter may petition the district court to be allowed to place the animal for adoption or euthanize the animal at any time after 20 days after the owner or custodian is notified or, if the owner or custodian is not known or reasonably ascertainable after 20 days after the animal is taken into custody, unless the owner or custodian of the animal files a renewable cash or performance bond with the county clerk of the county where the animal is being held, in an amount equal to not less than the cost of care and treatment of the animal for 30 days. Upon receiving such petition, the court shall determine whether the animal may be placed for adoption or euthanized. The board of county commissioners in the county where the animal was taken into custody shall review the cost of care and treatment being charged by the animal shelter maintaining the animal.

(f) The owner or custodian of an animal placed for adoption or killed pursuant to subsection (e) shall not be entitled to recover damages for the placement or killing of such animal unless the owner proves that such placement or killing was unwarranted.

(g) Expenses incurred for the care, treatment or boarding of any animal, taken into custody pursuant to subsection (e), pending prosecution of the owner or custodian of such animal for the crime of cruelty to animals, shall be assessed to the owner or custodian as a cost of the case if the owner or custodian is adjudicated guilty of such crime.

(h) Upon the filing of a sworn complaint by any public health officer, law enforcement officer, licensed veterinarian or officer or agent of any incorporated humane society, animal shelter or other appropriate facility alleging the commission of cruelty to animals, the county or district attorney shall determine the validity of the complaint and shall forthwith file charges for the crime if the complaint appears to be valid.

(i) If a person is adjudicated guilty of the crime of cruelty to animals, and the court having jurisdiction is satisfied that an animal owned or possessed by such person would be in the future subjected to such crime, such animal shall not be returned to or remain with such person. Such animal may be turned over to a duly incorporated humane society or licensed veterinarian for sale or other disposition.

(j) As used in this section:

(1) "Equine" means a horse, pony, mule, jenny, donkey or hinny; and

(2) "maliciously" means a state of mind characterized by actual evil-mindedness or specific intent to do a harmful act without a reasonable justification or excuse.

New Sec. 224. (a) Unlawful disposition of animals is knowingly raffling, giving as a prize or premium or using as an advertising device or promotional display living rabbits or chickens, ducklings or goslings.

(b) Unlawful disposition of animals is a class C misdemeanor.

(c) The provisions of this section shall not apply to a person giving such animals to minors for use in agricultural projects under the supervision of commonly recognized youth farm organizations.

New Sec. 225. (a) Unlawful conduct of dog fighting is:

(1) Causing, for amusement or gain, any dog to fight with or injure another dog;

(2) knowingly permitting such fighting or injuring on premises under one's ownership, charge or control; or

(3) training, owning, keeping, transporting or selling any dog with the intent of having it fight with or injure another dog.

(b) Unlawful possession of dog fighting paraphernalia is possession, with the intent to use in the unlawful conduct of dog fighting, any break-

ing stick, treadmill, wheel, hot walker, cat mill, cat walker, jenni, or other paraphernalia.

(c) Unlawful attendance of dog fighting is, entering or remaining on the premises where the unlawful conduct of dog fighting is occurring, whether the person knows or has reason to know that dog fighting is occurring on the premises.

(d) (1) Unlawful conduct of dog fighting is a severity level 10, nonperson felony.

(2) Unlawful possession of dog fighting paraphernalia is a class A nonperson misdemeanor.

(3) Unlawful attendance of dog fighting is a class B nonperson misdemeanor.

(e) When a person is arrested under this section, a law enforcement agency may take into custody any dog on the premises where the dog fight is alleged to have occurred and any dog owned or kept on the premises of any person arrested for unlawful conduct of dog fighting, unlawful attendance of dog fighting, or unlawful possession of dog fighting paraphernalia.

(f) When a law enforcement agency takes custody of a dog under this section, such agency may place the dog in the care of a duly incorporated humane society or licensed veterinarian for boarding, treatment or other care. If it appears to a licensed veterinarian that the dog is diseased or disabled beyond recovery for any useful purpose, such dog may be humanely killed. The dog may be sedated, isolated or restrained if such officer, agent or veterinarian determines it to be in the best interest of the dog, other animals at the animal shelter or personnel of the animal shelter. If the dog is placed in the care of an animal shelter, the board of county commissioners in the county where the animal was taken into custody shall establish and approve procedures whereby the animal shelter may petition the district court to be allowed to place the dog for adoption or euthanize the dog at any time after 20 days after the dog is taken into custody, unless the owner or custodian of the dog files a renewable cash or performance bond with the county clerk of the county where the dog is being held, in an amount equal to not less than the cost of care and treatment of the dog for 30 days. Upon receiving such petition, the court shall determine whether the dog may be placed for adoption or euthanized. The board of county commissioners in the county where the animal was taken into custody shall review the cost of care and treatment being charged by the animal shelter maintaining the animal. Except as provided in subsection (g), if it appears to the licensed veterinarian by physical examination that the dog has not been trained for aggressive conduct or is a type of dog that is not commonly bred or trained for aggressive conduct, the district or county attorney shall order that the dog be returned to its owner when the dog is not needed as evidence in a case filed under this section or section 223 and amendments thereto. The owner or keeper of a dog placed for adoption or humanely killed under this subsection shall not be entitled to damages unless the owner or keeper proves that such placement or killing was unwarranted.

(g) If a person is convicted of unlawful conduct of dog fighting, unlawful attendance of dog fighting or unlawful possession of dog fighting paraphernalia, a dog taken into custody pursuant to subsection (e) shall not be returned to such person and the court shall order the owner or keeper to pay to the animal shelter all expenses incurred for the care, treatment and boarding of such dog, including any damages caused by such dog, prior to conviction of the owner or keeper. Disposition of such dog shall be in accordance with section 223, and amendments thereto. If no such conviction results, the dog shall be returned to the owner or keeper and the court shall order the county where the dog was taken into custody to pay to the animal shelter all expenses incurred by the shelter for the care, treatment and boarding of such dog, including any damages caused by such dog, prior to its return.

(h) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for cruelty to animals.

New Sec. 226. (a) Illegal ownership or keeping of an animal is, with no requirement of a culpable mental state, owning, or keeping on one's premises, an animal by a person convicted of unlawful conduct of dog fighting as defined in section 225, and amendments thereto, or cruelty to

animals as defined in subsection (a)(1) of section 223, and amendments thereto, within five years of the date of such conviction.

(b) Illegal ownership or keeping of an animal is a class B nonperson misdemeanor.

New Sec. 227. (a) Inflicting harm, disability or death to a police dog, arson dog, assistance dog, game warden dog or search and rescue dog is knowingly, and without lawful cause or justification poisoning, inflicting great bodily harm, permanent disability or death, upon a police dog, arson dog, assistance dog, game warden dog or search and rescue dog.

(b) Inflicting harm, disability or death to a police dog, arson dog, assistance dog, game warden dog or search and rescue dog is a nonperson felony. Upon conviction of this subsection, a person shall be sentenced to not less than 30 days or more than one year's imprisonment and be fined not less than $500 nor more than $5,000. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the minimum mandatory sentence as provided herein. During the mandatory 30 days imprisonment, such offender shall have a psychological evaluation prepared for the court to assist the court in determining conditions of probation. Such conditions shall include, but not be limited to, the completion of an anger management program.

(c) As used in this section:

(1) "Arson dog" means any dog which is owned, or the service of which is employed, by the state fire marshal or a fire department for the principal purpose of aiding in the detection of liquid accelerants in the investigation of fires;

(2) "assistance dog" has the meaning provided by K.S.A. 2009 Supp. 39-1113, and amendments thereto;

(3) "fire department" means a public fire department under the control of the governing body of a city, township, county, fire district or benefit district or a private fire department operated by a nonprofit corporation providing fire protection services for a city, township, county, fire district or benefit district under contract with the governing body of the city, township, county or district;

(4) "game warden dog" means any dog which is owned, or the service of which is employed, by the department of wildlife and parks for the purpose of aiding in detection of criminal activity, enforcement of laws, apprehension of offenders or location of persons or wildlife;

(5) "police dog" means any dog which is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws or apprehension of offenders; and

(6) "search and rescue dog" means any dog which is owned or the service of which is employed, by a law enforcement or emergency response agency for the purpose of aiding in the location of persons missing in disasters or other times of need.

New Sec. 228. (a) Unlawful conduct of cockfighting is:

(1) Causing, for amusement or gain, any gamecock to fight with or injure or kill another gamecock;

(2) knowingly permitting such fighting or injuring on premises under one's ownership, charge or control; or

(3) training, grooming, preparing or medicating any gamecock with the intent of having it fight with or injure or kill another gamecock.

(b) Unlawful possession of cockfighting paraphernalia is possession of spurs, gaffs, swords, leather training spur covers or anything worn by a gamecock during a fight to further the killing power of such gamecock.

(c) Unlawful attendance of cockfighting is entering or remaining on the premises where the unlawful conduct of cockfighting is occurring, whether or not the person knows or has reason to know that cockfighting is occurring on the premises.

(d) (1) Unlawful conduct of cockfighting is a level 10, nonperson felony.

(2) Unlawful possession of cockfighting paraphernalia is a class A nonperson misdemeanor.

(3) Unlawful attendance of cockfighting is a class B nonperson misdemeanor.

(e) As used in this section, "gamecock" means a domesticated fowl that is bred, reared or trained for the purpose of fighting with other fowl.

(f) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for cruelty to animals.

New Sec. 229. (a) Prostitution is performing for hire, or offering or agreeing to perform for hire where there is an exchange of value, any of the following acts:

(1) Sexual intercourse;

(2) sodomy; or

(3) manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another.

(b) Prostitution is a class B nonperson misdemeanor.

New Sec. 230. (a) Promoting prostitution is knowingly:

(1) Establishing, owning, maintaining or managing a house of prostitution, or participating in the establishment, ownership, maintenance or management thereof;

(2) permitting any place partially or wholly owned or controlled by the defendant to be used as a house of prostitution;

(3) procuring a prostitute for a house of prostitution;

(4) inducing another to become a prostitute;

(5) soliciting a patron for a prostitute or for a house of prostitution;

(6) procuring a prostitute for a patron;

(7) procuring transportation for, paying for the transportation of, or transporting a person within this state with the intention of assisting or promoting that person's engaging in prostitution; or

(8) being employed to perform any act which is prohibited by this section.

(b) Promoting prostitution is a:

(1) Class A person misdemeanor when the prostitute is 16 or more years of age, except as provided in subsection (b)(2);

(2) severity level 7, person felony when the prostitute is 16 or more years of age and committed by a person who has, prior to the commission of the crime, been convicted of promoting prostitution;

(3) severity level 6, person felony when the prostitute is under 16 years of age, except as provided in subsection (b)(4); and

(4) off-grid person felony when the offender is 18 years of age or older and the prostitute is less than 14 years of age.

New Sec. 231. (a) Patronizing a prostitute is knowingly:

(1) Entering or remaining in a house of prostitution with intent to engage in sexual intercourse, sodomy or any unlawful sexual act with a prostitute; or

(2) hiring a prostitute to engage in sexual intercourse, sodomy or any unlawful sexual act.

(b) Patronizing a prostitute is a class C misdemeanor.

New Sec. 232. (a) Extortion is:

(1) Intentionally and wrongfully demanding, soliciting or receiving anything of value from the owner, proprietor or other person having a financial interest in a business; and

(2) by means of either a threat, express or implied, or a promise, express or implied, that the person so demanding, soliciting or receiving such thing of value will:

(A) Cause the competition of the person from whom the payment is demanded, solicited or received to be diminished or eliminated;

(B) cause the price of goods or services purchased or sold in the business to be increased, decreased or maintained at a stated level; or

(C) protect the property used in the business or the person or family of the owner, proprietor or other interested person from injury by violence or other unlawful means.

(b) Racketeering is a severity level 7, nonperson felony.

New Sec. 233. (a) Debt adjusting is knowingly engaging in the business of making contracts, express or implied, with a debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaging in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors.

(b) Debt adjusting is a class B nonperson misdemeanor.

(c) The provisions of this section shall not apply to those situations

involving debt adjusting, which is incidental to the lawful practice of law in this state or to any person registered as a credit services organization under the Kansas credit services organization act.

New Sec. 234. (a) A deceptive commercial practice is the knowing act, use or employment by any person of any deception, fraud, false pretense, false promise, or misrepresentation of a material fact, with the intent that others shall rely thereon in connection with the sale of any merchandise.

(b) A deceptive commercial practice is a class B nonperson misdemeanor.

(c) It shall not be a defense to a charge of deceptive commercial practice that no person has in fact been misled, deceived or damaged thereby.

(d) As used in this section:

(1) "Merchandise" means any objects, wares, goods, commodities, intangibles, real estate or services;

(2) "person" means any natural person, partnership, domestic corporation, foreign corporation, company, trust, business entity or association; and

(3) "sale" means any sale, offer for sale, or attempt to sell any merchandise for any consideration.

(e) This section shall not apply to the owner or publisher of any newspaper, magazine or other printed matter wherein an advertisement appears, or to the owner or operator of a radio or television station which disseminates an advertisement, when such owner, publisher or operator had no knowledge of the intent, design or purpose of the advertisement.

New Sec. 235. (a) Equity skimming is, with the intent to defraud, intentionally engaging in a pattern or practice of:

(1) Purchasing one family to four family dwellings, including condominiums and cooperatives or acquiring any right, title or interest therein, including, but not limited to, an equity of redemption interest, which are subject to a loan in default at time of purchase or in default within one year subsequent to the purchase and the loan is secured by a mortgage;

(2) failing to deliver to the holder of the mortgage before a sheriff's sale or holder of the certificate of purchase during the period of redemption all rent proceeds received from rental of the property, not to exceed the monthly payment of principal and interest required by the note and mortgage; and

(3) applying or authorizing the application of rents from such dwellings for such person's own use.

(b) Equity skimming is a class A nonperson misdemeanor.

(c) Each purchase of a dwelling pursuant to subsection (a) shall be deemed a separate offense.

New Sec. 236. (a) A tie-in magazine sale is knowingly selling, offering for sale, or consigning for sale by a wholesaler a magazine or other periodical of one kind or name to a retailer conditioned on the requirement that such retailer shall agree to, or shall, purchase or receive on consignment for sale a magazine or periodical of another kind or name.

(b) A tie-in magazine sale is a class B nonperson misdemeanor.

(c) As used in this section:

(1) "Retailer" means a person who sells magazines or periodicals at retail; and

(2) "wholesaler" means a person who sells or distributes or delivers on consignment for sale or who offers to sell or distribute or deliver on consignment for sale magazines or other periodicals to a retailer.

New Sec. 237. (a) Commercial bribery is conferring, offering or agreeing to confer, or soliciting, accepting or agreeing to accept, any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity or trust by:

(1) An agent or employee of another;

(2) a person acting in a fiduciary capacity;

(3) a lawyer, physician, accountant, appraiser or other professional adviser;

(4) an officer, director, partner, manager or other participant in the affairs of a corporation, partnership or unincorporated association; or

(5) an arbitrator or other purportedly disinterested adjudicator or referee.

(b) Commercial bribery is a severity level 8, nonperson felony.

(c) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for theft.

New Sec. 238. (a) Sports bribery is:

(1) Conferring, or offering or agreeing to confer, any benefit upon a sports participant with intent to influence such participant not to give such participant's best efforts in a sports contest;

(2) conferring or offering or agreeing to confer, any benefit upon a sports official with intent to influence such official to perform such official's duties improperly;

(3) accepting, agreeing to accept or soliciting by a sports participant of any benefit from another person upon an understanding that such sports participant will thereby be influenced not to give such participant's best efforts in a sports contest; or

(4) accepting, agreeing to accept or soliciting by a sports official any benefit from another person upon an understanding that such official will perform such official's duties improperly.

(b) Sports bribery as defined in:

(1) Subsection (a)(1) or (a)(2) is a severity level 9, nonperson felony; and

(2) Subsection (a)(3) or (a)(4) is a class A nonperson misdemeanor.

(c) As used in this section and section 239, and amendments thereto:

(1) "Sports contest" means any professional or amateur sports or athletic game or contest viewed by the public;

(2) "sports participant" means any person who participates or expects to participate in a sports contest as a player, contestant or member of a team, or as a coach, manager, trainer or other person directly associated with a player, contestant or team; and

(3) "sports official" means any person who acts or expects to act in a sports contest as an umpire, referee, judge or otherwise to officiate at a sports contest.

New Sec. 239. (a) Tampering with a sports contest is seeking to influence a sports participant or sports official, or tampering with any animal or equipment or other thing involved in the conduct or operation of a sports contest, in a manner known to be contrary to the rules and usages governing such contest and with intent to influence the outcome of such contest.

(b) Tampering with a sports contest is a severity level 9, nonperson felony.

New Sec. 240. (a) Knowingly employing an alien illegally within the territory of the United States is the employment of such alien within the state of Kansas by an employer who knows such person to be illegally within the territory of the United States.

(b) Knowingly employing an alien illegally within the territory of the United States is a class C misdemeanor.

(c) The provisions of this section shall not apply to aliens who have entered the United States illegally and thereafter are permitted to remain within the United States, temporarily or permanently, pursuant to federal law.

New Sec. 241. Sections 241 through 269, and amendments thereto, shall be liberally construed to the end that persons convicted of crime shall be dealt with in accordance with their individual characteristics, circumstances, needs and potentialities as revealed by case studies; that dangerous offenders shall be correctively treated in custody for long terms as needed; and that other offenders shall be dealt with by probation, suspended sentence, fine or assignment to a community correctional services program whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the offender, or shall be committed for at least a minimum term within the limits provided by law.

New Sec. 242. (a) For the purpose of sentencing, the following classes of misdemeanors and the punishment and the terms of confinement authorized for each class are established:

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

(2) class B, the sentence for which shall be a definite term of con-

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

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

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

(b) Upon conviction of a misdemeanor, a person may be punished by a fine, as provided in section 1, and amendments thereto, instead of or in addition to confinement, as provided in this section.

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

(d) Except as provided in subsection (e), in addition to or in lieu of any other sentence authorized by law, whenever a person is convicted of having committed, while under 21 years of age, a misdemeanor under K.S.A. 8-1599, 41-719 or 41-727 or K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, the court shall order such person to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. If the court finds that the person is indigent, the fee may be waived.

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

New Sec. 243. As used in sections 241 through 256, and sections 271 through 286, and amendments thereto:

(a) "Court" means any court having jurisdiction and power to sentence offenders for violations of the laws of this state;

(b) "community correctional services program" means a program which operates under the community corrections act and to which a defendant is assigned for supervision, confinement, detention, care or treatment, subject to conditions imposed by the court. A defendant assigned to a community correctional services program shall be subject to the continuing jurisdiction of the court and in no event shall be considered to be in the custody of or under the supervision of the secretary of corrections;

(c) "correctional institution" means any correctional institution established by the state for the confinement of offenders, and under control of the secretary of corrections;

(d) "house arrest" is an individualized program in which the freedom of an inmate is restricted within the community, home or noninstitutional residential placement and specific sanctions are imposed and enforced. "House arrest" may include:

(1) Electronic monitoring which requires a transmitter to be worn by the defendant or inmate which broadcasts an encoded signal to the receiver located in the defendant's or inmate's home. The receiver is connected to a central office computer and is notified of any absence of the defendant or inmate; or

(2) voice identification-encoder which consists of an encoder worn by the defendant or inmate. A computer is programmed to randomly call the defendant or inmate and such defendant or inmate is required to provide voice identification and then insert the encoder into the verifier box, confirming identity;

(e) "parole" means the release of a prisoner to the community by the Kansas parole board prior to the expiration of such prisoner's term, subject to conditions imposed by the board and to the secretary of correction's supervision. Parole also means the release by a court of competent jurisdiction of a person confined in the county jail or other local place of

detention after conviction and prior to expiration of such person's term, subject to conditions imposed by the court and its supervision. Where a court or other authority has filed a warrant against the prisoner, the Kansas parole board or paroling court may release the prisoner on parole to answer the warrant of such court or authority;

(f) "postrelease supervision," for crimes committed on or after July 1, 1993, means the same as in section 284, and amendments thereto;

(g) "probation" means a procedure under which a defendant, convicted of a crime, is released by the court after imposition of sentence, without imprisonment except as provided in felony cases, subject to conditions imposed by the court and subject to the supervision of the probation service of the court or community corrections. In felony cases, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence and up to 60 days in a county jail upon each revocation of the probation sentence pursuant to subsection (b)(3) of section 271, and amendments thereto; and

(h) "suspension of sentence" means a procedure under which a defendant, convicted of a crime, is released by the court without imposition of sentence. The release may be with or without supervision in the discretion of the court. In felony cases, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of suspension of sentence pursuant to subsection (b)(4) of K.S.A. 21-4603, and amendments thereto.

New Sec. 244. (a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

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

(2) impose the fine applicable to the offense;

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

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

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

(6) assign the defendant to a house arrest program pursuant to section 249, and amendments thereto;

(7) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (c) of section 242, and amendments thereto;

(8) order the defendant to repay the amount of any reward paid by any crime stoppers chapter, individual, corporation or public entity which materially aided in the apprehension or conviction of the defendant; repay the amount of any costs and expenses incurred by any law enforcement agency in the apprehension of the defendant, if one of the current crimes of conviction of the defendant includes escape or aggravated escape, as defined in section 136, and amendments thereto; repay expenses incurred by a fire district, fire department or fire company responding to a fire which has been determined to be arson under section 98, and amendments thereto, if the defendant is convicted of such crime; repay the amount of any public funds utilized by a law enforcement agency to pur-

chase controlled substances from the defendant during the investigation which leads to the defendant's conviction; or repay the amount of any medical costs and expenses incurred by any law enforcement agency or county. Such repayment of the amount of any such costs and expenses incurred by a county, law enforcement agency, fire district, fire department or fire company or any public funds utilized by a law enforcement agency shall be deposited and credited to the same fund from which the public funds were credited to prior to use by the county, law enforcement agency, fire district, fire department or fire company;

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

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

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

(12) suspend imposition of sentence in misdemeanor cases.

(b) (1) In addition to or in lieu of any of the above, the court shall order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime, unless the court finds compelling circumstances which would render a plan of restitution unworkable. In regard to a violation of section 177, and amendments thereto, such damage or loss shall include, but not be limited to, attorney fees and costs incurred to repair the credit history or rating of the person whose personal identification documents were obtained and used in violation of such section, and to satisfy a debt, lien or other obligation incurred by the person whose personal identification documents were obtained and used in violation of such section. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefor.

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

(c) In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (d) of section 242, and amendments thereto.

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

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

(f) (1) When a new felony is committed while the offender is incarcerated and serving a sentence for a felony, or while the offender is on probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision for a felony, a new sentence shall be imposed pursuant to the consecutive sentencing requirements of section 246, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(2) When a new felony is committed while the offender is incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671 prior to its repeal or K.S.A. 2009 Supp. 38-2373, and amendments thereto, for an offense, which if committed by an adult would constitute the commission of a felony, upon conviction, the court shall sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure. The conviction shall operate as a full and complete discharge from any obligations, except for an order of restitution, imposed on the offender arising from the offense for which the offender was committed to a juvenile correctional facility.

(3) When a new felony is committed while the offender is on release for a felony pursuant to the provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto, or similar provisions of the laws of another jurisdiction, a new sentence may be imposed pursuant to the consecutive sentencing requirements of section 246, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(g) Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of section 305, and amendments thereto, prior to revocation of a nonprison sanction of a defendant whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of section 305, and amendments thereto, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, the court shall consider placement of the defendant in the Labette correctional conservation camp, conservation camps established by the secretary of corrections pursuant to K.S.A. 75-52,127, and amendment thereto, or a community intermediate sanction center. Pursuant to this paragraph the defendant shall not be sentenced to imprisonment if space is available in a conservation camp or a community intermediate sanction center and the defendant meets all of the conservation camp's or a community intermediate sanction center's placement criteria unless the court states on the record the reasons for not placing the defendant in a conservation camp or a community intermediate sanction center.

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

(i) In addition to any of the above, the court shall order the defendant to reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and

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

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

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

(l) The secretary of corrections is authorized to make direct placement to the Labette correctional conservation camp or a conservation camp established by the secretary pursuant to K.S.A. 75-52,127, and amendments thereto, of an inmate sentenced to the secretary's custody if the inmate: (1) Has been sentenced to the secretary for a probation revocation, as a departure from the presumptive nonimprisonment grid block of either sentencing grid, for an offense which is classified in grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, or for an offense which is classified in grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes and such offense does not meet the requirements of section 305, and amendments thereto, and (2) otherwise meets admission criteria of the camp. If the inmate successfully completes a conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district attorney. The inmate shall then be assigned by the court to six months of follow-up supervision conducted by the appropriate community corrections services program. The court may also order that supervision continue thereafter for the length of time authorized by section 305, and amendments thereto.

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

(n) Except as provided by subsection (f) of section 286, and amendments thereto, in addition to any of the above, for felony violations of K.S.A. 2009 Supp. 21-36a06, and amendments thereto, the court shall require the defendant who meets the requirements established in section 305, and amendments thereto, to participate in a certified drug abuse treatment program, as provided in K.S.A. 2009 Supp. 75-52,144, and amendments thereto, including, but not limited to, an approved aftercare plan. If the defendant fails to participate in or has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the treatment program, as established by judicial finding, the defendant shall be subject to revocation of probation and the defendant shall serve the underlying prison sentence as established in section 305, and amendments thereto. For those offenders who are convicted on or after the effective date of this act, upon completion of the underlying prison sentence, the defendant shall not be subject to a period of postrelease supervision. The amount of time spent participating in such program shall not be credited as service on the underlying prison sentence.

(o) (1) Except as provided in paragraph (3), in addition to any other penalty or disposition imposed by law, upon a conviction for unlawful

possession of a controlled substance or controlled substance analog in violation of K.S.A. 2009 Supp. 21-36a06, and amendments thereto, in which the trier of fact makes a finding that the unlawful possession occurred while transporting the controlled substance or controlled substance analog in any vehicle upon a highway or street, the offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state shall be suspended for one year.

(2) Upon suspension of a license pursuant to this subsection, the court shall require the person to surrender the license to the court, which shall transmit the license to the division of motor vehicles of the department of revenue, to be retained until the period of suspension expires. At that time, the licensee may apply to the division for return of the license. If the license has expired, the person may apply for a new license, which shall be issued promptly upon payment of the proper fee and satisfaction of other conditions established by law for obtaining a license unless another suspension or revocation of the person's privilege to operate a motor vehicle is in effect.

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

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

(C) Upon expiration of the period of time for which conditions are imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by such licensee. In the event such license has expired, such person may apply to the division for a new license, which shall be issued immediately by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless such person's privilege to operate a motor vehicle on the highways of this state has been suspended or revoked prior thereto. If any person shall violate any of the conditions imposed under this paragraph, such person's driver's license or privilege to operate a motor vehicle on the highways of this state shall be revoked for a period of not less than 60 days nor more than one year by the judge of the court in which such person is convicted of violating such conditions.

(4) As used in this subsection, "highway" and "street" have the meanings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto.

New Sec. 245. (a) When a person is sentenced to imprisonment upon conviction of a felony, the judgment of the court shall order that such person be committed, for such term or terms as the court may direct, to the custody of the secretary of corrections. When such person is sentenced to the custody of the secretary of corrections and such sentence is subsequently modified in any respect, including discharge of such defendant from custody, by a court of this state having jurisdiction of such matter, such court shall thereupon notify the secretary of corrections of the nature of such modification.

(b) The secretary of corrections may designate as the place of confinement any available and suitable correctional institution or facility maintained by the state of Kansas or a political subdivision thereof.

(c) Any person serving a sentence of imprisonment may be transferred from one institution to another by order of the secretary of corrections.

New Sec. 246. (a) When separate sentences of imprisonment for different crimes are imposed on a defendant on the same date, including sentences for crimes for which suspended sentences, probation or assignment to a community correctional services program have been revoked, such sentences shall run concurrently or consecutively as the court directs. Whenever the record is silent as to the manner in which two or more sentences imposed at the same time shall be served, they shall be served concurrently, except as provided in subsections (c), (d) and (e).

(b) Any person who is convicted and sentenced for a crime committed while on probation, assignment to a community correctional services program, parole or conditional release for a misdemeanor shall serve the sentence concurrently with or consecutively to the term or terms under which the person was on probation, assigned to a community correctional services program or on parole or conditional release, as the court directs.

(c) Any person who is convicted and sentenced for a crime committed while on probation, assigned to a community correctional services program, on parole, on conditional release or on postrelease supervision for a felony shall serve the sentence consecutively to the term or terms under which the person was on probation, assigned to a community correctional services program or on parole or conditional release.

(d) Any person who is convicted and sentenced for a crime committed while on release for a felony pursuant to article 28 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto, shall serve the sentence consecutively to the term or terms under which the person was released.

(e) (1) Any person who is convicted and sentenced for a crime committed while such person is incarcerated and serving a sentence for a felony in any place of incarceration shall serve the sentence consecutively to the term or terms under which the person was incarcerated.

(2) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while the person was imprisoned for an offense committed prior to July 1, 1993, and the person is not eligible for the retroactive application of the sentencing guidelines act, the new sentence shall not be aggregated with the old sentence but shall begin when the person is paroled or reaches the conditional release date on the old sentence, whichever is earlier. If the offender was past the offender's conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the Kansas parole board or reaches the maximum sentence date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of post incarceration supervision shall be based on the longest term of post incarceration supervision imposed for all crimes upon which sentence was imposed or until discharged from supervision by the Kansas parole board. The term of post incarceration supervision imposed by this paragraph shall apply retroactively to crimes committed prior to July 1, 2008.

(3) As used in this subsection, "post incarceration supervision" includes parole and postrelease supervision.

(f) The provisions of this subsection relating to parole eligibility shall be applicable to persons convicted of crimes committed prior to January 1, 1979, but shall be applicable to persons convicted of crimes committed on or after that date only to the extent that the terms of this subsection are not in conflict with the provisions of K.S.A. 22-3717, and amendments thereto. In calculating the time to be served on concurrent and consecutive sentences, the following rules shall apply:

(1) When indeterminate terms run concurrently, the shorter minimum terms merge in and are satisfied by serving the longest minimum term and the shorter maximum terms merge in and are satisfied by conditional release or discharge on the longest maximum term if the terms are imposed on the same date.

(2) When concurrent terms are imposed on different dates, computation will be made to determine which term or terms require the longest period of imprisonment to reach parole eligibility, conditional release and maximum dates, and that sentence will be considered the controlling sentence. The parole eligibility date may be computed and projected on one sentence and the conditional release date and maximum may be computed and projected from another to determine the controlling sentence.

(3) When indeterminate terms imposed on the same date are to be served consecutively, the minimum terms are added to arrive at an aggregate minimum to be served equal to the sum of all minimum terms and the maximum terms are added to arrive at an aggregate maximum equal to the sum of all maximum terms.

(4) When indeterminate sentences are imposed to be served consecutively to sentences previously imposed in any other court or the sentencing court, the aggregated minimums and maximums shall be computed from the effective date of the subsequent sentences which have been imposed as consecutive. For the purpose of determining the sentence begins date and the parole eligibility and conditional release dates, the inmate shall be given credit on the aggregate sentence for time spent imprisoned on the previous sentences, but not exceeding an amount equal to the previous minimum sentence less the maximum amount of good time credit that could have been earned on the minimum sentence. For the purpose of computing the maximum date, the inmate shall be given credit for all time spent imprisoned on the previous sentence. This method for computation of the maximum sentence shall be utilized for all sentences computed pursuant to this subsection after July 1, 1983.

Nothing in this subsection (f)(4) shall affect the authority of the Kansas parole board to determine the parole eligibility of inmates pursuant to subsection (d) of K.S.A. 22-3717, and amendments thereto.

(5) When consecutive sentences are imposed which are to be served consecutive to sentences for which a prisoner has been on probation, assigned to a community correctional services program, on parole or on conditional release, the amount of time served on probation, on assignment to a community correctional services program, on parole or on conditional release shall not be credited as service on the aggregate sentence in determining the parole eligibility, conditional release and maximum dates, except that credit shall be given for any amount of time spent in a residential facility while on probation or assignment to a community correctional residential services program.

(g) When a definite and an indefinite term run consecutively, the period of the definite term is added to both the minimum and maximum of the indeterminate term and both sentences are satisfied by serving the indeterminate term. The provisions of this subsection shall not apply to crimes committed on or after July 1, 1993.

(h) When a defendant is sentenced in a state court and is also under sentence from a federal court or other state court or is subject to sentence in a federal court or other state court for an offense committed prior to the defendant's sentence in a Kansas state court, the court may direct that custody of the defendant may be relinquished to federal or other state authorities and that such state sentences as are imposed may run concurrently with any federal or other state sentence imposed.

New Sec. 247. (a) Except as required by subsection (c), nothing in this section shall be construed to limit the authority of the court to impose or modify any general or specific conditions of probation, suspension of sentence or assignment to a community correctional services program. The court services officer or community correctional services officer may recommend, and the court may order, the imposition of any conditions of probation, suspension of sentence or assignment to a community correctional services program. For crimes committed on or after July 1, 1993, in presumptive nonprison cases, the court services officer or community correctional services officer may recommend, and the court may order, the imposition of any conditions of probation or assignment to a community correctional services program. The court may at any time order the modification of such conditions, after notice to the court services officer or community correctional services officer and an opportunity for such officer to be heard thereon. The court shall cause a copy of any such order to be delivered to the court services officer and the probationer or

to the community correctional services officer and the community corrections participant, as the case may be. The provisions of K.S.A. 75-5291, and amendments thereto, shall be applicable to any assignment to a community correctional services program pursuant to this section.

(b) The court may impose any conditions of probation, suspension of sentence or assignment to a community correctional services program that the court deems proper, including, but not limited to, requiring that the defendant:

(1) Avoid such injurious or vicious habits, as directed by the court, court services officer or community correctional services officer;

(2) avoid such persons or places of disreputable or harmful character, as directed by the court, court services officer or community correctional services officer;

(3) report to the court services officer or community correctional services officer as directed;

(4) permit the court services officer or community correctional services officer to visit the defendant at home or elsewhere;

(5) work faithfully at suitable employment insofar as possible;

(6) remain within the state unless the court grants permission to leave;

(7) pay a fine or costs, applicable to the offense, in one or several sums and in the manner as directed by the court;

(8) support the defendant's dependents;

(9) reside in a residential facility located in the community and participate in educational, counseling, work and other correctional or rehabilitative programs;

(10) perform community or public service work for local governmental agencies, private corporations organized not for profit, or charitable or social service organizations performing services for the community;

(11) perform services under a system of day fines whereby the defendant is required to satisfy fines, costs or reparation or restitution obligations by performing services for a period of days, determined by the court on the basis of ability to pay, standard of living, support obligations and other factors;

(12) participate in a house arrest program pursuant to section 249, and amendments thereto;

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

(14) in felony cases, except for violations of K.S.A. 8-1567, and amendments thereto, be confined in a county jail not to exceed 60 days, which need not be served consecutively.

(c) In addition to any other conditions of probation, suspension of sentence or assignment to a community correctional services program, the court shall order the defendant to comply with each of the following conditions:

(1) The defendant shall obey all laws of the United States, the state of Kansas and any other jurisdiction to the laws of which the defendant may be subject;

(2) make reparation or restitution to the aggrieved party for the damage or loss caused by the defendant's crime, in an amount and manner determined by the court and to the person specified by the court, unless the court finds compelling circumstances which would render a plan of restitution unworkable. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefore;

(3) (A) pay a probation or community correctional services fee of $25 if the person was convicted of a misdemeanor or a fee of $50 if the person was convicted of a felony. In any case the amount of the probation or community correctional services fee specified by this paragraph may be reduced or waived by the judge if the person is unable to pay that amount;

(B) the probation or community correctional services fee imposed by this paragraph shall be charged and collected by the district court. The clerk of the district court shall remit all revenues received under this paragraph from probation or community correctional services fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund; and

(C) This paragraph shall not apply to persons placed on probation or released on parole to reside in Kansas under the uniform act for out-of-state parolee supervision; and

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

New Sec. 248. (a) The period of suspension of sentence, probation or assignment to community corrections fixed by the court shall not exceed two years in misdemeanor cases, subject to renewal and extension for additional fixed periods of two years. Probation, suspension of sentence or assignment to community corrections may be terminated by the court at any time and upon such termination or upon termination by expiration of the term of probation, suspension of sentence or assignment to community corrections, an order to this effect shall be entered by the court.

(b) The district court having jurisdiction of the offender may parole any misdemeanant sentenced to confinement in the county jail. The period of such parole shall be fixed by the court and shall not exceed two years and shall be terminated in the manner provided for termination of suspended sentence and probation.

(c) For all crimes committed on or after July 1, 1993, the duration of probation in felony cases sentenced for the following severity levels on the sentencing guidelines grid for nondrug crimes and the sentencing guidelines grid for drug crimes is as follows:

(1) For nondrug crimes the recommended duration of probations is:

(A) 36 months for crimes in crime severity levels 1 through 5; and

(B) 24 months for crimes in crime severity levels 6 and 7;

(2) for drug crimes the recommended duration of probation is 36 months for crimes in crime severity levels 1 and 2.

(3) in felony cases sentenced at severity levels 9 and 10 on the sentencing guidelines grid for nondrug crimes and severity level 4 on the sentencing guidelines grid for drug crimes, if a nonprison sanction is imposed, the court shall order the defendant to serve a period of probation, or assignment to a community correctional services program as provided under K.S.A. 75-5291 et seq., and amendments thereto, of up to 12 months in length;

(4) in felony cases sentenced at severity level 8 on the sentencing guidelines grid for nondrug crimes and severity level 3 on the sentencing guidelines grid for drug crimes, if a nonprison sanction is imposed, the court shall order the defendant to serve a period of probation, or assignment to a community correctional services program, as provided under K.S.A. 75-5291 et seq., and amendments thereto, of up to 18 months in length;

(5) if the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will be jeopardized or that the welfare of the inmate will not be served by the length of the probation terms provided in subsections (c)(3) and (c)(4), the court may impose a longer period of probation. Such an increase shall not be considered a departure and shall not be subject to appeal;

(6) except as provided in subsections (c)(7) and (c)(8), the total period in all cases shall not exceed 60 months, or the maximum period of the

prison sentence that could be imposed whichever is longer. Nonprison sentences may be terminated by the court at any time;

(7) if the defendant is convicted of nonsupport of a child, the period may be continued as long as the responsibility for support continues. If the defendant is ordered to pay full or partial restitution, the period may be continued as long as the amount of restitution ordered has not been paid; and

(8) the court may modify or extend the offender's period of supervision, pursuant to a modification hearing and a judicial finding of necessity. Such extensions may be made for a maximum period of five years or the maximum period of the prison sentence that could be imposed, whichever is longer, inclusive of the original supervision term.

New Sec. 249. (a) The court or the secretary of corrections may implement a house arrest program for defendants or inmates being sentenced by the court or in the custody of the secretary of corrections, except:

(1) No defendant shall be placed by the court under house arrest if found guilty of:

(A) Any crime designated as a class A or B felony in article 34 or 35 of the Kansas Statutes Annotated, prior to their repeal;

(B) subsection (b) of section 81, and amendments thereto; or

(C) section 79, and amendments thereto;

(2) no inmate shall be placed under house arrest if such inmate's security status is greater than minimum security; or

(3) no inmate shall be placed under house arrest who has been denied parole by the parole board within the last 6 months. Any inmate who, while participating in the house arrest program, is denied parole by the parole board shall be allowed to remain under house arrest until the completion of the sentence or until the inmate is otherwise removed from the program.

(b) Prior to the placement of an inmate under house arrest, the court or secretary shall provide written notification to the sheriff and district or county attorney of the county in which any person under house arrest is to be placed and to the chief law enforcement officer of any incorporated city or town in which such person is to be placed of the placement of the person under house arrest within the county or incorporated city or town.

(c) House arrest sanctions shall be administered by the court and the secretary of corrections, respectively, through rules and regulations, and may include, but are not limited to, rehabilitative restitution in money or in kind, curfew, revocation or suspension of the driver's license, community service, deprivation of nonessential activities or privileges, or other appropriate restraints on the inmate's liberty.

New Sec. 250. (a) When a defendant is placed on parole by the district court, on probation, assigned to a community correctional services program by a district court or under suspended sentence and such defendant is permitted to go from the judicial district of that court, supervision over the defendant may be transferred from that judicial district to another with the concurrence of the receiving chief court services officer, or if in a community corrections services program, by the concurrence of the director of the receiving program.

(b) The district court from which the defendant is on parole, probation, community correctional services program or suspended sentence may retain jurisdiction of the defendant.

New Sec. 251. (a) A person who has been convicted of a felony may, in addition to the sentence authorized by law, be ordered to pay a fine which shall be fixed by the court as follows:

(1) For any off-grid felony crime or any felony ranked in severity level 1 of the drug grid as provided in section 286, and amendments thereto, a sum not exceeding $500,000;

(2) for any felony ranked in severity levels 1 through 5 of the nondrug grid as provided in section 285 and amendments thereto, or in severity levels 2 or 3 of the drug grid as provided in section 286, and amendments thereto, a sum not exceeding $300,000; and

(3) for any felony ranked in severity levels 6 through 10 of the nondrug grid as provided in section 285, and amendments thereto, or in severity level 4 of the drug grid as provided in section 286, and amendments thereto, a sum not exceeding $100,000.

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

(1) For a class A misdemeanor, a sum not exceeding $2,500;

(2) for a class B misdemeanor, a sum not exceeding $1,000;

(3) for a class C misdemeanor, a sum not exceeding $500; and

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

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

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

(e) A person who has been convicted of a cigarette or tobacco infraction shall be sentenced to pay a fine of $25.

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

New Sec. 252. (a) When the law authorizes any other disposition, a fine shall not be imposed as the sole and exclusive punishment unless having regard to the nature and circumstances of the crime and to the history and character of the defendant, the court finds that the fine alone suffices for the protection of the public.

(b) The court shall not sentence a defendant to pay a fine in addition to a sentence of imprisonment, probation or assignment to a community correctional services program unless:

(1) The defendant has derived a pecuniary gain from the crime; or

(2) the court finds that a fine is adapted to deterrence of the crime involved or to the correction of the offender.

(c) In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose.

(d) If a fine is ordered pursuant to subsection (b), the court's findings regarding the requirements of subsections (b) and (c) shall be stated on the record.

New Sec. 253. (a) A person who has been convicted in any state or federal court of a felony shall, by reason of such conviction, be ineligible to hold any public office under the laws of the state of Kansas, or to register as a voter or to vote in any election held under the laws of the state of Kansas or to serve as a juror in any civil or criminal case.

(b) The ineligibilities imposed by this section shall attach upon conviction and shall continue until such person has completed the terms of the authorized sentence.

(c) The ineligibilities imposed upon a convicted person by this section shall be in addition to such other penalties as may be provided by law.

New Sec. 254. (a) (1) Except as provided in subsections (b) and (c), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, nondrug crimes ranked in severity levels 6 through 10 or any felony ranked in severity level 4 of the drug grid, may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

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

(b) Except as provided in subsection (c), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed, the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for

crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any nondrug crime ranked in severity levels 1 through 5 or any felony ranked in severity levels 1 through 3 of the drug grid, or:

(1) Vehicular homicide, as defined by section 41, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

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

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

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

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

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

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

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

(c) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses:

(1) Rape as defined in section 67, and amendments thereto;

(2) indecent liberties with a child or aggravated indecent liberties with a child as defined in section 70, and amendments thereto;

(3) criminal sodomy as defined in subsection (a)(3) or (a)(4) of section 68, and amendments thereto;

(4) aggravated criminal sodomy as defined in section 68, and amendments thereto;

(5) indecent solicitation of a child or aggravated indecent solicitation of a child as defined in section 72, and amendments thereto;

(6) sexual exploitation of a child as defined in section 74, and amendments thereto;

(7) aggravated incest as defined in section 81, and amendments thereto;

(8) endangering a child or aggravated endangering a child as defined in section 78, and amendments thereto;

(9) abuse of a child as defined in section 79, and amendments thereto;

(10) capital murder as defined in section 36, and amendments thereto;

(11) murder in the first degree as defined in section 37, and amendments thereto;

(12) murder in the second degree as defined in section 38, and amendments thereto;

(13) voluntary manslaughter as defined in section 39, and amendments thereto;

(14) involuntary manslaughter as defined in section 40, and amendments thereto;

(15) sexual battery as defined in section 69, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed;

(16) aggravated sexual battery as defined in section 69, and amendments thereto;

(17) a violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation;

(18) a violation of K.S.A. 8-2,144, and amendments thereto, including any diversion for such violation; or

(19) any conviction for any offense in effect at any time prior to the effective date of this act, that is comparable to any offense as provided in this subsection.

(d) (1) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecutor and the arresting law enforcement agency. The petition shall state the:

(A) Defendant's full name;

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

(C) defendant's sex, race and date of birth;

(D) crime for which the defendant was arrested, convicted or diverted;

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

(F) identity of the convicting court, arresting law enforcement authority or diverting authority.

(2) Except as provided further, there shall be no docket fee for filing a petition pursuant to this section. On and after July 1, 2009 through June 30, 2010, the supreme court may impose a charge, not to exceed $10 per case, to fund the costs of non-judicial personnel. The charge established in this section shall be the only fee collected or moneys in the nature of a fee collected for the case. Such charge shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

(3) All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas parole board.

(e) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

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

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

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

(f) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

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

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

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 2009 Supp. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services;

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

(C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or

to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) to aid in determining the petitioner's qualifications for the following under the Kansas expanded lottery act: (i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;

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

(G) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(H) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

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

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

(K) for applications received on and after July 1, 2006, to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 2009 Supp. 75-7c01 et seq., and amendments thereto;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

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

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

(g) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

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

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

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecutor, and such request is accompanied by a statement

that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

(8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(9) the governor or the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

(10) the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications of the following under the Kansas expanded lottery act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;

(11) the Kansas sentencing commission;

(12) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-gaming compact;

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

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

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

(16) the attorney general and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act.

New Sec. 255. (a) In any criminal action in which the defendant is convicted, the judge, if the judge sentences the defendant to confinement, shall direct that for the purpose of computing defendant's sentence and parole eligibility and conditional release dates thereunder, that such sentence is to be computed from a date, to be specifically designated by the court in the sentencing order of the journal entry of judgment. Such date shall be established to reflect and shall be computed as an allowance for the time which the defendant has spent incarcerated pending the disposition of the defendant's case. In recording the commencing date of such sentence the date as specifically set forth by the court shall be used as the date of sentence and all good time allowances as are authorized by the secretary of corrections are to be allowed on such sentence from such date as though the defendant were actually incarcerated in any of the institutions of the state correctional system.

(b) In any criminal action in which probation, assignment to a con-

servation camp or assignment to community corrections is revoked and the defendant is sentenced to confinement, for the purpose of computing the defendant's sentence and parole eligibility and conditional release date, the defendant's sentence is to be computed from a date, hereafter to be specifically designated in the sentencing order of the journal entry of judgment. Such date shall be established to reflect and shall be computed as an allowance for the time which the defendant has spent in a residential facility while on probation, assignment to a conservation camp or assignment to community correctional residential services program. The commencing date of such sentence shall be used as the date of sentence and all good time allowances as are authorized by law are to be allowed on such sentence from such date as though the defendant were actually incarcerated in a correctional institution.

(c) Such credit is not to be considered to reduce the minimum or maximum terms of confinement authorized by law for the offense of which the defendant has been convicted.

New Sec. 256. Any person confined in jail under judgment of conviction before a district magistrate judge may be paroled, such person's parole terminated and absolute discharge granted by a district judge having jurisdiction of appeals from such district magistrate judge in criminal cases, in the same manner and subject to the same restrictions as if such person had been convicted in and placed on probation by such district judge.

New Sec. 257. (a) If a defendant is charged with capital murder, the county or district attorney shall file written notice if such attorney intends, upon conviction of the defendant, to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death. Such notice shall be filed with the court and served on the defendant or the defendant's attorney not later than five days after the time of arraignment. If such notice is not filed and served as required by this subsection, the county or district attorney may not request such a sentencing proceeding and the defendant, if convicted of capital murder, shall be sentenced to life without the possibility of parole, and no sentence of death shall be imposed hereunder.

(b) Except as provided in sections 258 and 262, and amendments thereto, upon conviction of a defendant of capital murder, the court, upon motion of the county or district attorney, shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If any person who served on the trial jury is unable to serve on the jury for the sentencing proceeding, the court shall substitute an alternate juror who has been impaneled for the trial jury. If there are insufficient alternate jurors to replace trial jurors who are unable to serve at the sentencing proceeding, the trial judge may summon a special jury of 12 persons which shall determine the question of whether a sentence of death shall be imposed. Jury selection procedures, qualifications of jurors and grounds for exemption or challenge of prospective jurors in criminal trials shall be applicable to the selection of such special jury. The jury at the sentencing proceeding may be waived in the manner provided by K.S.A. 22-3403, and amendments thereto, for waiver of a trial jury. If the jury at the sentencing proceeding has been waived or the trial jury has been waived, the sentencing proceeding shall be conducted by the court.

(c) In the sentencing proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in section 264, and amendments thereto, and any mitigating circumstances. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating circumstances as the state has made known to the defendant prior to the sentencing proceeding shall be admissible, and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the sentencing proceeding shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary pres-

entation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(d) At the conclusion of the evidentiary portion of the sentencing proceeding, the court shall provide oral and written instructions to the jury to guide its deliberations.

(e) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more of the aggravating circumstances enumerated in section 264, and amendments thereto, exist and, further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist, the defendant shall be sentenced to death; otherwise, the defendant shall be sentenced to life without the possibility of parole. The jury, if its verdict is a unanimous recommendation of a sentence of death, shall designate in writing, signed by the foreman of the jury, the statutory aggravating circumstances which it found beyond a reasonable doubt. If, after a reasonable time for deliberation, the jury is unable to reach a verdict, the judge shall dismiss the jury and impose a sentence of life without the possibility of parole and shall commit the defendant to the custody of the secretary of corrections. In nonjury cases, the court shall follow the requirements of this subsection in determining the sentence to be imposed.

(f) Notwithstanding the verdict of the jury, the trial court shall review any jury verdict imposing a sentence of death hereunder to ascertain whether the imposition of such sentence is supported by the evidence. If the court determines that the imposition of such a sentence is not supported by the evidence, the court shall modify the sentence and sentence the defendant to life without the possibility of parole, and no sentence of death shall be imposed hereunder. Whenever the court enters a judgment modifying the sentencing verdict of the jury, the court shall set forth its reasons for so doing in a written memorandum which shall become part of the record.

(g) A defendant who is sentenced to imprisonment for life without the possibility of parole shall spend the remainder of the defendant's natural life incarcerated and in the custody of the secretary of corrections. A defendant who is sentenced to imprisonment for life without the possibility of parole shall not be eligible for parole, probation, assignment to a community correctional services program, conditional release, postrelease supervision, or suspension, modification or reduction of sentence. Upon sentencing a defendant to imprisonment for life without the possibility of parole, the court shall commit the defendant to the custody of the secretary of corrections and the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with the defendant to the correctional institution, that the defendant has been sentenced to imprisonment for life without the possibility of parole.

New Sec. 258. Upon conviction of a defendant of capital murder and a finding that the defendant was less than 18 years of age at the time of the commission thereof, the court shall sentence the defendant as otherwise provided by law, and no sentence of death or life without the possibility of parole shall be imposed hereunder.

New Sec. 259. (a) A judgment of conviction resulting in a sentence of death shall be subject to automatic review by an appeal to the supreme court of Kansas in the manner provided by the applicable statutes and rules of the supreme court governing appellate procedure. The review and appeal shall be expedited in every manner consistent with the proper presentation thereof and given priority pursuant to the statutes and rules of the supreme court governing appellate procedure.

(b) The supreme court of Kansas shall consider the question of sentence as well as any errors asserted in the review and appeal and shall be authorized to notice unassigned errors appearing of record if the ends of justice would be served thereby.

(c) With regard to the sentence, the court shall determine:

(1) Whether the sentence of death was imposed under the influence of passion, prejudice or any other arbitrary factor; and

(2) whether the evidence supports the findings that an aggravating circumstance or circumstances existed and that any mitigating circumstances were insufficient to outweigh the aggravating circumstances.

(d) The court shall be authorized to enter such orders as are necessary to effect a proper and complete disposition of the review and appeal.

New Sec. 260. (a) Except as provided in section 258, and amendments thereto, if a defendant is convicted of the crime of capital murder and a sentence of death is not imposed pursuant to subsection (e) of section 257, and amendments thereto, or requested pursuant to subsection (a) or (b) of section 257, and amendments thereto, the defendant shall be sentenced to life without the possibility of parole.

(b) If a defendant is convicted of murder in the first degree based upon the finding of premeditated murder, the court shall determine whether the defendant shall be required to serve a mandatory term of imprisonment of 40 years or for crimes committed on and after July 1, 1999, a mandatory term of imprisonment of 50 years or sentenced as otherwise provided by law.

(c) In order to make such determination, the court may be presented evidence concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in section 264, and amendments thereto, and any mitigating circumstances. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating circumstances as the state has made known to the defendant prior to the sentencing shall be admissible and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the time of sentencing shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(d) If the court finds that one or more of the aggravating circumstances enumerated in section 264, and amendments thereto, exist and, further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist, the defendant shall be sentenced pursuant to section 263, and amendments thereto; otherwise, the defendant shall be sentenced as provided by law. The court shall designate, in writing, the statutory aggravating circumstances which it found. The court may make the findings required by this subsection for the purpose of determining whether to sentence a defendant pursuant to section 263, and amendments thereto, notwithstanding contrary findings made by the jury or court pursuant to subsection (e) of section 257, and amendments thereto, for the purpose of determining whether to sentence such defendant to death.

New Sec. 261. If the court authorizes prosecution as an adult of a juvenile pursuant to K.S.A. 2009 Supp. 38-2347, and amendments thereto, the county or district attorney may proceed pursuant to sections 260, 262, 263, 264 and 265, and amendments thereto.

New Sec. 262. (a) If, under section 257, and amendments thereto, the county or district attorney has filed a notice of intent to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death and the defendant is convicted of the crime of capital murder, the defendant's counsel or the warden of the correctional institution or sheriff having custody of the defendant may request a determination by the court of whether the defendant is mentally retarded. If the court determines that there is not sufficient reason to believe that the defendant is mentally retarded, the court shall so find and the defendant shall be sentenced in accordance with sections 257, 259, 264, 265, 268 and 269, and amendments thereto. If the court determines that there is sufficient reason to believe that the defendant is mentally retarded, the court shall conduct a hearing to determine whether the defendant is mentally retarded.

(b) If a defendant is convicted of the crime of capital murder and a sentence of death is not imposed, or if a defendant is convicted of the crime of murder in the first degree based upon the finding of premeditated murder, the defendant's counsel or the warden of the correctional institution or sheriff having custody of the defendant may request a determination by the court of whether the defendant is mentally retarded. If the court determines that there is not sufficient reason to believe that the defendant is mentally retarded, the court shall so find and the de-

fendant shall be sentenced in accordance with sections 260, 263, 264 and 265, and amendments thereto. If the court determines that there is sufficient reason to believe that the defendant is mentally retarded, the court shall conduct a hearing to determine whether the defendant is mentally retarded.

(c) At the hearing, the court shall determine whether the defendant is mentally retarded. The court shall order a psychiatric or psychological examination of the defendant. For that purpose, the court shall appoint two licensed physicians or licensed psychologists, or one of each, qualified by training and practice to make such examination, to examine the defendant and report their findings in writing to the judge within 10 days after the order of examination is issued. The defendant shall have the right to present evidence and cross-examine any witnesses at the hearing. No statement made by the defendant in the course of any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in evidence against the defendant in any criminal proceeding.

(d) If, at the conclusion of a hearing pursuant to subsection (a), the court determines that the defendant is not mentally retarded, the defendant shall be sentenced in accordance with sections 257, 259, 264, 265, 268 and 269, and amendments thereto.

(e) If, at the conclusion of a hearing pursuant to subsection (b), the court determines that the defendant is not mentally retarded, the defendant shall be sentenced in accordance with sections 260, 263, 264 and 265, and amendments thereto.

(f) If, at the conclusion of a hearing pursuant to this section, the court determines that the defendant is mentally retarded, the court shall sentence the defendant as otherwise provided by law, and no sentence of death, life without the possibility of parole, or mandatory term of imprisonment shall be imposed hereunder.

(g) Unless otherwise ordered by the court for good cause shown, the provisions of subsection (b) shall not apply if it has been determined, pursuant to a hearing granted under the provisions of subsection (a), that the defendant is not mentally retarded.

(h) As used in this section, "mentally retarded" means having significantly subaverage general intellectual functioning, as defined by K.S.A. 76-12b01, and amendments thereto, to an extent which substantially impairs one's capacity to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law.

New Sec. 263. When it is provided by law that a person shall be sentenced pursuant to this section, such person shall be sentenced to imprisonment for life and shall not be eligible for probation or suspension, modification or reduction of sentence. Except as otherwise provided, in addition, a person sentenced pursuant to this section shall not be eligible for parole prior to serving 40 years' imprisonment, and such 40 years' imprisonment shall not be reduced by the application of good time credits. For crimes committed on and after July 1, 1999, a person sentenced pursuant to this section shall not be eligible for parole prior to serving 50 years' imprisonment, and such 50 years' imprisonment shall not be reduced by the application of good time credits. For crimes committed on or after July 1, 2006, a mandatory minimum term of imprisonment of 50 years shall not apply if the court finds that the defendant, because of the defendant's criminal history classification, is subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range exceeds 600 months. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established pursuant to the sentencing range. Upon sentencing a defendant pursuant to this section, the court shall commit the defendant to the custody of the secretary of corrections and the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with the defendant to the correctional institution, that the defendant has been sentenced pursuant to section 263, and amendments thereto.

New Sec. 264. Aggravating circumstances shall be limited to the following:

(a) The defendant was previously convicted of a felony in which the

defendant inflicted great bodily harm, disfigurement, dismemberment or death on another.

(b) The defendant knowingly or purposely killed or created a great risk of death to more than one person.

(c) The defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

(d) The defendant authorized or employed another person to commit the crime.

(e) The defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.

(f) The defendant committed the crime in an especially heinous, atrocious or cruel manner. A finding that the victim was aware of such victim's fate or had conscious pain and suffering as a result of the physical trauma that resulted in the victim's death is not necessary to find that the manner in which the defendant killed the victim was especially heinous, atrocious or cruel. Conduct which is heinous, atrocious or cruel may include, but is not limited to:

(1) Prior stalking of or criminal threats to the victim;

(2) preparation or planning, indicating an intention that the killing was meant to be especially heinous, atrocious or cruel;

(3) infliction of mental anguish or physical abuse before the victim's death;

(4) torture of the victim;

(5) continuous acts of violence begun before or continuing after the killing;

(6) desecration of the victim's body in a manner indicating a particular depravity of mind, either during or following the killing; or

(7) any other conduct the court expressly finds is especially heinous.

(g) The defendant committed the crime while serving a sentence of imprisonment on conviction of a felony.

(h) The victim was killed while engaging in, or because of the victim's performance or prospective performance of, the victim's duties as a witness in a criminal proceeding.

New Sec. 265. (a) Mitigating circumstances shall include, but are not limited to, the following:

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

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

(3) The victim was a participant in or consented to the defendant's conduct.

(4) The defendant was an accomplice in the crime committed by another person, and the defendant's participation was relatively minor.

(5) The defendant acted under extreme distress or under the substantial domination of another person.

(6) The capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law was substantially impaired.

(7) The age of the defendant at the time of the crime.

(8) At the time of the crime, the defendant was suffering from post-traumatic stress syndrome caused by violence or abuse by the victim.

(b) Pursuant to hearing under section 257, and amendments thereto, mitigating circumstances shall include circumstances where a term of imprisonment is found to be sufficient to defend and protect the people's safety from the defendant.

New Sec. 266. (a) An aggravated habitual sex offender shall be sentenced to imprisonment for life without the possibility of parole. Such offender shall spend the remainder of the offender's natural life incarcerated and in the custody of the secretary of corrections. An offender who is sentenced to imprisonment for life without the possibility of parole shall not be eligible for parole, probation, assignment to a community correctional services program, conditional release, postrelease supervision, or suspension, modification or reduction of sentence.

(b) Upon sentencing a defendant to imprisonment for life without the possibility of parole, the court shall commit the defendant to the custody of the secretary of corrections and the court shall state in the sentencing order of the judgment form or journal entry, whichever is

delivered with the defendant to the correctional institution, that the defendant has been sentenced to imprisonment for life without the possibility of parole.

(c) As used in this section:

(1) "Aggravated habitual sex offender" means a person who, on and after July 1, 2006: (A) Has been convicted in this state of a sexually violent crime, as described in subsection (c)(3)(A) through (c)(3)(J) or (c)(3)(L); and (B) prior to the conviction of the felony under subparagraph (A), has been convicted on at least two prior conviction events of any sexually violent crime;

(2) "prior conviction event" means one or more felony convictions of a sexually violent crime occurring on the same day and within a single court. These convictions may result from multiple counts within an information or from more than one information. If a person crosses a county line and commits a felony as part of the same criminal act or acts, such felony, if such person is convicted, shall be considered part of the prior conviction event.

(3) "Sexually violent crime" means:

(A) Rape, as defined in section 67, and amendments thereto;

(B) indecent liberties with a child or aggravated indecent liberties with a child, as defined in section 70, and amendments thereto;

(C) criminal sodomy, as defined in subsection (a)(3) and (a)(4) of section 68, and amendments thereto;

(D) aggravated criminal sodomy, as defined in section 68, and amendments thereto;

(E) indecent solicitation of a child or aggravated indecent solicitation of a child, as defined in section 72, and amendments thereto;

(F) sexual exploitation of a child, as defined in section 74, and amendments thereto;

(G) aggravated sexual battery, as defined in section 69, and amendments thereto;

(H) aggravated incest, as defined in section 81, and amendments thereto;

(I) any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent crime as defined in this section;

(J) an attempt, conspiracy or criminal solicitation, as defined in section 33, 34 or 35, and amendments thereto, of a sexually violent crime as defined in this section; or

(K) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

New Sec. 267. (a) (1) Except as provided in subsection (b) or (d), a defendant who is 18 years of age or older and is convicted of the following crimes committed on or after July 1, 2006, shall be sentenced to a term of imprisonment for life with a mandatory minimum term of imprisonment of not less than 25 years unless the court determines that the defendant should be sentenced as determined in subsection (a)(2):

(A) Aggravated trafficking, as defined in section 61, and amendments thereto, if the victim is less than 14 years of age;

(B) rape, as defined in subsection (a)(3) of section 67, and amendments thereto;

(C) aggravated indecent liberties with a child, as defined in subsection (b)(3) of section 70, and amendments thereto;

(D) aggravated criminal sodomy, as defined in subsection (b)(1) or (b)(2) of section 68, and amendments thereto;

(E) promoting prostitution, as defined in section 230, and amendments thereto, if the prostitute is less than 14 years of age;

(F) sexual exploitation of a child, as defined in subsection (a)(1) or (a)(4) of section 74, and amendments thereto, if the child is less than 14 years of age; and

(G) an attempt, conspiracy or criminal solicitation, as defined in section 33, 34 or 35, and amendments thereto, of an offense defined in subsections (a)(1)(A) through (a)(1)(F).

(2) The provision of subsection (a)(1) requiring a mandatory mini-

mum term of imprisonment of not less than 25 years shall not apply if the court finds:

(A) The defendant is an aggravated habitual sex offender and sentenced pursuant to section 266, and amendments thereto; or

(B) the defendant, because of the defendant's criminal history classification, is subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range exceeds 300 months. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established pursuant to the sentencing range.

(b) (1) On and after July 1, 2006, if a defendant who is 18 years of age or older is convicted of a crime listed in subsection (a)(1) and such defendant has previously been convicted of a crime listed in subsection (a)(1), a crime in effect at any time prior to May 24, 2007, which is substantially the same as a crime listed in subsection (a)(1) or a crime under a law of another jurisdiction which is substantially the same as a crime listed in subsection (a)(1), the court shall sentence the defendant to a term of imprisonment for life with a mandatory minimum term of imprisonment of not less than 40 years. The provisions of this paragraph shall not apply to a crime committed under section 71, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as section 71, and amendments thereto.

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

(A) The defendant is an aggravated habitual sex offender and sentenced pursuant to section 266, and amendments thereto; or

(B) the defendant, because of the defendant's criminal history classification, is subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range exceeds 480 months. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established pursuant to the sentencing range.

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

(d) (1) On or after July 1, 2006, for a first time conviction of an offense listed in subsection (a)(1), the sentencing judge shall impose the mandatory minimum term of imprisonment provided by subsection (a), unless the judge finds substantial and compelling reasons, following a review of mitigating circumstances, to impose a departure. If the sentencing judge departs from such mandatory minimum term of imprisonment, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. The departure sentence shall be the sentence pursuant to the revised Kansas sentencing guidelines act, sections 282 through 305, and amendments thereto, and no sentence of a mandatory minimum term of imprisonment shall be imposed hereunder.

(2) As used in this subsection, "mitigating circumstances" shall include, but are not limited to, the following:

(A) The defendant has no significant history of prior criminal activity;

(B) the crime was committed while the defendant was under the influence of extreme mental or emotional disturbances;

(C) the victim was an accomplice in the crime committed by another person, and the defendant's participation was relatively minor;

(D) the defendant acted under extreme distress or under the substantial domination of another person;

(E) the capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law was substantially impaired; and

(F) the age of the defendant at the time of the crime.

New Sec. 268. (a) In the event the term of imprisonment for life without the possibility of parole or any provision of section 266 or 267, and amendments thereto, authorizing such term is held to be unconstitutional by the supreme court of Kansas or the United States supreme court, the court having jurisdiction over a person previously sentenced shall cause such person to be brought before the court and shall modify the sentence to require no term of imprisonment for life without the possibility of parole and shall sentence the defendant to the maximum term of imprisonment otherwise provided by law.

(b) In the event a sentence of death or any provision of this act authorizing such sentence is held to be unconstitutional by the supreme court of Kansas or the United States supreme court, the court having jurisdiction over a person previously sentenced shall cause such person to be brought before the court and shall modify the sentence and resentence the defendant as otherwise provided by law.

(c) In the event the mandatory term of imprisonment or any provision of chapter 341 of the 1994 Session Laws of Kansas authorizing such mandatory term is held to be unconstitutional by the supreme court of Kansas or the United States supreme court, the court having jurisdiction over a person previously sentenced shall cause such person to be brought before the court and shall modify the sentence to require no mandatory term of imprisonment and shall sentence the defendant as otherwise provided by law.

New Sec. 269. (a) The provisions of K.S.A. 21-4622 through 21-4630, as they existed immediately prior to July 1, 1994, shall be applicable only to persons convicted of crimes committed on or after July 1, 1990, and before July 1, 1994.

(b) The provisions of K.S.A. 21-4622 through 21-4627 and 21-4629 and 21-4630, as amended on July 1, 1994, shall be applicable only to persons convicted of crimes committed on or after July 1, 1994.

(c) K.S.A. 21-4633 through 21-4640 shall be applicable only to persons convicted of crimes committed on or after July 1, 1994.

New Sec. 270. For the purpose of sentencing, the following classes of felonies and terms of imprisonment authorized for each class are established:

(a) Class A, the sentence for which shall be imprisonment for life.

(b) Class B, the sentence for which shall be an indeterminate term of imprisonment, the minimum of which shall be fixed by the court at not less than five years nor more than 15 years and the maximum of which shall be fixed by the court at not less than 20 years nor more than life.

(c) Class C, the sentence for which shall be an indeterminate term of imprisonment, the minimum of which shall be fixed by the court at not less than three years nor more than five years and the maximum of which shall be fixed by the court at not less than 10 years nor more than 20 years.

(d) Class D, the sentence for which shall be an indeterminate term of imprisonment fixed by the court as follows:

(1) For a crime specified in article 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to such section's repeal a minimum of not less than two years nor more than three years and a maximum of not less than five years nor more than 10 years; and

(2) for any other crime, a minimum of not less than one year nor more than three years and a maximum of not less than five years nor more than 10 years.

(e) Class E, the sentence for which shall be an indeterminate term of imprisonment, the minimum of which shall be one year and the maximum of which shall be fixed by the court at not less than two years nor more than five years.

(f) Unclassified felonies, which shall include all crimes declared to be felonies without specification as to class, the sentence for which shall be in accordance with the sentence specified in the statute that defines the crime. If no sentence is provided in the statute, the offender shall be sentenced as for a class E felony.

(g) The provisions of this section shall not apply to crimes committed on or after July 1, 1993.

New Sec. 271. (a) Whenever any person has been found guilty of a crime and the court finds that an adequate presentence investigation can-

not be conducted by resources available within the judicial district, including mental health centers and mental health clinics, the court may require that a presentence investigation be conducted by the Topeka correctional facility or by the state security hospital. If the offender is sent to the Topeka correctional facility or the state security hospital for a presentence investigation under this section, the correctional facility or hospital may keep the offender confined for a maximum of 60 days, except that an inmate may be held for a longer period of time on order of the secretary, or until the court calls for the return of the offender. While held at the Topeka correctional facility or the state security hospital the defendant may be treated the same as any person committed to the secretary of corrections or secretary of social and rehabilitation services for purposes of maintaining security and control, discipline, and emergency medical or psychiatric treatment, and general population management except that no such person shall be transferred out of the state or to a federal institution or to any other location unless the transfer is between the correctional facility and the state security hospital. The correctional facility or the state security hospital shall compile a complete mental and physical evaluation of such offender and shall make its findings and recommendations known to the court in the presentence report.

(b) Except as provided in subsection (c), whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections or, if confinement is for a term less than one year, to jail for the term provided by law;

(2) impose the fine applicable to the offense;

(3) release the defendant on probation subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution. In felony cases, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence and up to 60 days in a county jail upon each revocation of the probation sentence;

(4) suspend the imposition of the sentence subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution. In felony cases, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of suspension of sentence;

(5) assign the defendant to a community correctional services program subject to the provisions of K.S.A. 75-5291, and amendments thereto, and such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(6) assign the defendant to a conservation camp for a period not to exceed six months;

(7) assign the defendant to a house arrest program pursuant to section 252, and amendments thereto;

(8) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (c) of section 242, and amendments thereto;

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

(10) impose any appropriate combination of subsections (b)(1) through (b)(9).

In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (d) of section 242, and amendments thereto.

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

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

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

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

(c) Whenever any juvenile felon, as defined in K.S.A. 38-16,112, prior to its repeal, has been found guilty of a class A or B felony, the court shall commit the defendant to the custody of the secretary of corrections and may impose the fine applicable to the offense.

(d) (1) Except when an appeal is taken and determined adversely to the defendant as provided in subsection (d)(2), at any time within 120 days after a sentence is imposed, after probation or assignment to a community correctional services program has been revoked, the court may modify such sentence, revocation of probation or assignment to a community correctional services program by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits and shall modify such sentence if recommended by the Topeka correctional facility unless the court finds and sets forth with particularity the reasons for finding that the safety of members of the public will be jeopardized or that the welfare of the inmate will not be served by such modification.

(2) If an appeal is taken and determined adversely to the defendant, such sentence may be modified within 120 days after the receipt by the clerk of the district court of the mandate from the supreme court or court of appeals.

(e) The court shall modify the sentence at any time before the expiration thereof when such modification is recommended by the secretary of corrections unless the court finds and sets forth with particularity the reasons for finding that the safety of members of the public will be jeopardized or that the welfare of the inmate will not be served by such modification. The court shall have the power to impose a less severe penalty upon the inmate, including the power to reduce the minimum below the statutory limit on the minimum term prescribed for the crime of which the inmate has been convicted. The recommendation of the secretary of corrections, the hearing on the recommendation and the order of modification shall be made in open court. Notice of the recommendation of modification of sentence and the time and place of the hearing thereon shall be given by the inmate, or by the inmate's legal counsel, at least 21 days prior to the hearing to the county or district attorney of the county where the inmate was convicted. After receipt of such notice and at least 14 days prior to the hearing, the county or district attorney shall give notice of the recommendation of modification of sentence and the time and place of the hearing thereon to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's next of kin if the next of kin's address is known to the county or district attorney. Proof of service of each notice required to be given by this subsection shall be filed with the court.

(f) After such defendant has been assigned to a conservation camp but prior to the end of 180 days, the chief administrator of such camp shall file a performance report and recommendations with the court. The

court shall enter an order based on such report and recommendations modifying the sentence, if appropriate, by sentencing the defendant to any of the authorized dispositions provided in subsection (b), except to reassign such person to a conservation camp as provided in subsection (b)(6).

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

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

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

(j) The provisions of this section shall apply to crimes committed before July 1, 1993.

New Sec. 272. (a) Whenever a defendant is convicted of a misdemeanor, the court before which the conviction is had may request a presentence investigation by a court services officer. Whenever a defendant is convicted of a felony, the court shall require that a presentence investigation be conducted by a court services officer or in accordance with section 271, and amendments thereto, unless the court finds that adequate and current information is available in a previous presentence investigation report or from other sources.

(b) Whenever a presentence report is requested, the court services officer, with the assistance of the county or district attorney, shall secure, except for good cause shown, information concerning:

(1) The circumstances of the offense and any mitigating or aggravating factors involved in the defendant's behavior;

(2) the attitude of the complainant or victim and, if possible in homicide cases, the victim's immediate family;

(3) the criminal record, social history and present condition of the defendant; and

(4) any other facts or circumstances that may aid the court in sentencing, which may include, but is not limited to, the financial, social, psychological, physical or other harm or loss suffered by victims of the offense and the restitution needs of such victims. Except where specifically prohibited by law, all local governmental and state agencies shall furnish to the officer conducting the presentence investigation any records requested by the officer. If ordered by the court, the presentence investigation shall include a physical and mental examination of the defendant.

(c) Presentence investigation reports shall be in the form and contain the information prescribed by rule of the supreme court, and shall contain any other information prescribed by the district court.

(d) The judicial administrator of the courts shall confer and consult with the secretary of corrections when considering changes or revisions in the form and content of presentence investigation reports so that the reports will be in such form and contain such information as will be of assistance to the secretary in exercising or performing the secretary's functions, powers and duties.

(e) The provisions of this section shall not apply to felony crimes committed on or after July 1, 1993.

New Sec. 273. (a) (1) The judge shall make available to the attorney for the state or counsel for the defendant the presentence report, any report that may be received from the Topeka correctional facility or the state security hospital and other diagnostic reports and shall allow the attorney or counsel a reasonable time to review the report before sentencing the defendant.

(2) The court shall permit the attorney for the state or the counsel for the defendant to copy and retain any of the reports under subsection (a)(1). Any reports copied and retained shall be kept in the records of the

attorney for the state or the counsel for the defendant. All costs of copying such reports shall be paid by the office of the attorney for the state or the counsel for the defendant making the request.

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

(c) For felony crimes committed on or after July 1, 1993, the provisions of this section are not applicable to the presentence investigation report.

New Sec. 274. (a) In sentencing a person to prison, the court, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, shall fix the lowest minimum term which, in the opinion of such court, is consistent with the public safety, the needs of the defendant, and the seriousness of the defendant's crime.

(b) The following factors, while not controlling, shall be considered by the court in fixing the minimum term of imprisonment:

(1) The defendant's history of prior criminal activity;

(2) the extent of the harm caused by the defendant's criminal conduct;

(3) whether the defendant intended that the defendant's criminal conduct would cause or threaten serious harm;

(4) the degree of the defendant's provocation;

(5) whether there were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;

(6) whether the victim of the defendant's criminal conduct induced or facilitated its commission; and

(7) whether the defendant has compensated or will compensate the victim of the defendant's criminal conduct for the damage or injury that the victim sustained.

(c) The provisions of this section shall not apply to crimes committed on or after July 1, 1993.

New Sec. 275. (a) If a defendant is convicted of a felony specified in article 34, 35 or 36 of chapter 21 of Kansas Statutes Annotated prior to their repeal, the punishment for which is confinement in the custody of the secretary of corrections after having previously been convicted of any such felony or comparable felony under the laws of another state, the federal government or a foreign government, the trial judge may sentence the defendant as follows, upon motion of the prosecutor:

(1) The court may fix a minimum sentence of not less than the least nor more than twice the greatest minimum sentence authorized by section 270, and amendments thereto, for the crime for which the defendant is convicted; and

(2) the court may fix a maximum sentence of not less than the least nor more than twice the greatest maximum sentence provided for the crime by section 270, and amendments thereto.

(b) If a defendant is convicted of a felony specified in article 34, 35 or 36 of chapter 21 of Kansas Statutes Annotated prior to their repeal, having been convicted at least twice before for any such felony offenses or comparable felony offenses under the laws of another state, the federal government or a foreign government, the trial judge shall sentence the defendant as follows, upon motion of the prosecutor:

(1) The court shall fix a minimum sentence of not less than the greatest nor more than three times the greatest minimum sentence authorized for the crime for which the defendant is convicted by section 270, and amendments thereto; and

(2) the court may fix a maximum sentence of not less than the least nor more than three times the greatest maximum sentence provided for the crime by section 270, and amendments thereto.

(c) If a defendant is convicted of a felony other than a felony specified in article 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated prior to their repeal, having been convicted at least twice before for any such felony offenses or comparable felony offenses under the laws of another state, the federal government or a foreign government, the trial judge shall sentence the defendant as follows, upon motion of the prosecutor:

(1) The court shall fix a minimum sentence of not less than the greatest nor more than two times the greatest minimum sentence authorized for the crime for which the defendant is convicted by section 270, and amendments thereto; and

(2) the court may fix a maximum sentence of not less than the least nor more than two times the greatest maximum sentence provided for the crime by section 270, and amendments thereto.

(d) If any portion of a sentence imposed under K.S.A. 21-107a, prior to their repeal, or under this section, is determined to be invalid by any court because a prior felony conviction is itself invalid, upon resentencing the court may consider evidence of any other prior felony conviction that could have been utilized under K.S.A. 21-107a, prior to their repeal, or under this section, at the time the original sentence was imposed, whether or not it was introduced at that time, except that if the defendant was originally sentenced as a second offender, the defendant shall not be resentenced as a third offender.

(e) The provisions of this section shall not be applicable to:

(1) Any person convicted of a felony of which a prior conviction of a felony is a necessary element;

(2) any person convicted of a felony for which a prior conviction of such felony is considered in establishing the class of felony for which the person may be sentenced; or

(3) any felony committed on or after July 1, 1993.

(f) A judgment may be rendered pursuant to this section only after the court finds from competent evidence the fact of former convictions for a felony committed by the prisoner, in or out of the state.

New Sec. 276. (a) Except as provided in subsection (c), probation, assignment to a community correctional services program or suspension of sentence shall not be granted to any defendant who is convicted of the commission of the crime of rape, the crime of aggravated sodomy or any crime set out in article 34 of chapter 21 of the Kansas Statutes Annotated prior to their repeal, in which the defendant used any firearm in the commission thereof and such defendant shall be sentenced to not less than the minimum sentence of imprisonment authorized by law for that crime. This section shall not apply to any crime committed by a person under 18 years of age.

(b) When a court has sentenced a defendant as provided above, the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with the defendant to the correctional institution, that the defendant has been sentenced pursuant to this section based on a finding by the court that a firearm was so used.

(c) The provisions of this section shall not apply to any crime committed by a person where such application would result in a manifest injustice.

(d) The provisions of this section shall not apply to any crime committed on or after July 1, 1993.

New Sec. 277. The presumptive sentence for a person who has never before been convicted of a felony, but has now been convicted of a class D or E felony or convicted of an attempt to commit a class D felony shall be probation, unless the conviction is of a crime or of an attempt to commit a crime specified in article 34, 35 or 36 of chapter 21 of Kansas Statutes Annotated prior to their repeal or in the uniform controlled substances act or the person convicted is a juvenile offender in the custody of the department of social and rehabilitation services. In determining whether to impose the presumptive sentence, the court shall consider any prior record of the person's having been convicted or having been adjudicated to have committed, while a juvenile, an offense which would constitute a felony if committed by an adult. If the presumptive sentence provided by this section is not imposed, the provisions of section 278, and

amendments thereto, shall apply. The provisions of this section shall not apply to crimes committed on or after July 1, 1993.

New Sec. 278. (a) If probation is not granted pursuant to section 277, and amendments thereto, subject to the provisions of K.S.A. 75-5291, and amendments thereto, the presumptive sentence for a person convicted of a class D or E felony shall be assignment to a community correctional services program on terms the court determines.

(b) In determining whether to impose the presumptive sentence provided by this section, the court shall consider whether any of the following aggravating circumstances existed:

(1) Whether the crime is a felony violation of the uniform controlled substances act or an attempt to commit such an offense;

(2) whether the crime is a crime specified in article 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated prior to their repeal or an attempt to commit such an offense; or

(3) any prior record of the person's having been convicted of a felony or having been adjudicated to have committed, while a juvenile, an offense which would constitute a felony if committed by an adult.

(c) The provisions of this section shall not apply to crimes committed on or after July 1, 1993.

New Sec. 279. (a) Except as provided in subsection (b), a person who has been convicted of a felony may, in addition to or instead of the imprisonment authorized by law, be sentenced to pay a fine which shall be fixed by the court as follows:

(1) For a class B or C felony, a sum not exceeding $15,000.

(2) For a class D or E felony, a sum not exceeding $10,000.

(b) A person who has been convicted of a felony violation of or any attempt or conspiracy to commit a felony violation of any provision of the uniform controlled substances act may, in addition to or instead of the imprisonment authorized by law, be sentenced to pay a fine which shall be fixed by the court as follows:

(1) For a class A felony, a sum not exceeding $500,000.

(2) For a class B or C felony, a sum not exceeding $300,000.

(3) For a class D or E felony, a sum not exceeding $100,000.

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

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

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

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

(4) For an unclassified misdemeanor, any sum authorized by the statute that defines the crime; if no penalty is provided in such law, the fine shall not exceed the fine provided herein for a class C misdemeanor.

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

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

(f) The provisions of this section shall not apply to crimes committed on or after July 1, 1993.

New Sec. 280. (a) If the defendant is to be sentenced to the custody of the secretary of corrections, the court may prepare a judgment form which shall be signed by the court and filed with the clerk. If prepared, the judgment form shall reflect the conviction, the sentence and the commitment, and shall contain the following:

(1) The pronouncement of guilt including:

(A) The title of the crime;

(B) the statute violated; and

(C) the date the offense occurred.

(2) The sentence imposed including:

(A) The terms as required by subsection (b) of section 271, and amendments thereto;

(B) if applicable, a description of any increase in sentence because of previous felony conviction pursuant to section 275, and amendments thereto;

(C) if applicable, a statement that this defendant has been convicted

of a class A, B or C felony by reason of aiding, abetting, advising, or counseling another to commit a crime, or by reason of the principle provided for in subsection (2) of K.S.A. 21-3205, prior to its repeal;

(D) if applicable, a statement that this defendant, age 18 or over, has been mandatorily sentenced pursuant to section 276, and amendments thereto, for use of a firearm in a crime under article 34 of chapter 21, prior to its repeal or the crime of rape or aggravated sodomy; and

(E) a statement of the effective date of the sentence indicating whether it is the date of imposition or some date earlier to give credit for time confined pending disposition of the case pursuant to section 255, and amendments thereto, or credit for time on probation or assignment to community corrections pursuant to section 255, and amendments thereto.

(3) The order of commitment to the custody of the secretary, if not issued as a separate order.

(b) The court may attach to or include in the judgment form any of the following:

(1) A statement of reasons for imposing the sentence as ordered other than those reasons required above to be stated;

(2) a description of aggravating or mitigating circumstances the court took into consideration when ordering the commitment;

(3) recommendations on a program of rehabilitation for the offender, based on presentence investigation reports and any other information available. Such recommendations may include desirable treatment for corrections of physical deformities or disfigurement that may, if possible, be corrected by medical or surgical procedures or by prosthesis;

(4) a recommendation for further evaluation at the Topeka correctional facility, even though the defendant was committed for presentence investigation;

(5) the copy of the evidence from trial or part thereof transmitted pursuant to K.S.A. 75-5219, and amendments thereto.

(c) The court shall forward a copy of all presentence investigation reports and other diagnostic reports on the offender received by the district court, including any reports received from the Topeka correctional facility or the state security hospital, to the officer having the offender in custody for delivery with the offender to the correctional institution.

(d) The provisions of this section shall not apply to crimes committed on or after July 1, 1993.

New Sec. 281. If the defendant is to be sentenced to the secretary of corrections, the court shall issue an order of commitment to cause the transfer of custody of the defendant over to the secretary. Such order may be made part of the sentencing document whether that be the judgment form or the journal entry. The commitment order shall be supported by the record of judgment of conviction and sentence, whether by judgment form or by journal entry, and delivered with the defendant to the correctional institution.

New Sec. 282. Sections 282 through 305, and amendments thereto, shall be known and may be cited as the revised Kansas sentencing guidelines act.

New Sec. 283. (a) The sentencing guidelines and prosecuting standards, as contained in sections 282 through 305, and amendments thereto, shall apply equally to all offenders in all parts of the state.

(b) The sentencing court may consider in all cases a range of alternatives with gradations of supervisory, supportive and custodial facilities at its disposal so as to permit a sentence appropriate for each individual case, consistent with these guidelines and the permitted dispositional and durational departures contained in sections 282 through 305, and amendments thereto.

(c) Except as otherwise provided, the sentencing guidelines and prosecuting standards shall be applicable to felony crimes committed on or after July 1, 1993, and shall have no application to crimes committed prior to July 1, 1993. If it cannot be determined whether the crime was committed on or after July 1, 1993, the person convicted of committing such crime shall be sentenced as if such crime had been committed prior to July 1, 1993. A crime is committed prior to July 1, 1993, if any of the essential elements of the crime as then defined occurred before July 1, 1993. Except as provided in K.S.A. 21-4724, prior to its repeal, prose-

cutions for prior crimes shall be governed, prosecuted and punished under the laws existing at the time such crimes were committed.

New Sec. 284. As used in sections 282 through 305, and amendments thereto:

(a) "Aggravating factor" means a substantial and compelling reason justifying an exceptional sentence whereby the sentencing court may impose a departure sentence outside the standard sentencing range for a crime. An aggravating factor may result in a dispositional or durational departure;

(b) "commission" means the Kansas sentencing commission;

(c) "criminal history" means and includes an offender's criminal record of adult felony, class A misdemeanor, class B person misdemeanor or select misdemeanor convictions and comparable juvenile adjudications at the time such offender is sentenced;

(d) "criminal history score" means the summation of the convictions described as criminal history that place an offender in one of the criminal history score categories listed on the horizontal axis of the sentencing guidelines grids;

(e) "decay factor" means prior convictions that are no longer considered as part of an offender's criminal history score;

(f) "departure" means a sentence which is inconsistent with the presumptive sentence for an offender;

(g) "dispositional departure" means a departure sentence imposing a nonprison sanction when the presumptive sentence is prison or prison when the presumptive sentence is nonimprisonment;

(h) "dispositional line" means the solid black line on the sentencing guidelines grids which separates the grid blocks in which the presumptive sentence is a term of imprisonment and postrelease supervision from the grid blocks in which the presumptive sentence is nonimprisonment;

(i) "durational departure" means a departure sentence which is inconsistent with the presumptive term of imprisonment or nonimprisonment;

(j) "good time" means a method of behavior control or sanctions utilized by the department of corrections;

(k) "grid" means the sentencing guidelines grid for nondrug crimes as provided in section 285, and amendments thereto, or the sentencing guidelines grid for drug crimes as provided in section 286, and amendments thereto, or both;

(l) "grid block" means a box on the grid formed by the intersection of the crime severity ranking of a current crime of conviction and an offender's criminal history classification;

(m) "imprisonment" means imprisonment in a facility operated by the Kansas department of corrections;

(n) "mitigating factor" means a substantial and compelling reason justifying an exceptional sentence whereby the sentencing court may impose a departure sentence outside of the standard sentencing range for a crime. A mitigating factor may result in a dispositional or durational departure;

(o) "nonimprisonment", "nonprison" or "nonprison sanction" means probation, community corrections, conservation camp, house arrest or any other community based disposition;

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

(q) "presumptive sentence" means the sentence provided in a grid block for an offender classified in that grid block by the combined effect of the crime severity ranking of the offender's current crime of conviction and the offender's criminal history;

(r) "prison" means a facility operated by the Kansas department of corrections; and

(s) "sentencing range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

New Sec. 285. (a) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. The following sentencing guidelines grid shall be applicable to nondrug felony crimes:

SENTENCING RANGE - NONDRUG OFFENSES

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

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

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

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

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

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

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

(A) Prison sentence;

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

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

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

(A) Prison sentence; and

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

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

(g) The sentence for a violation of section 48, and amendments thereto, aggravated battery against a law enforcement officer committed prior to July 1, 2006, or a violation of section 47, and amendments thereto, aggravated assault against a law enforcement officer, which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

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

(i) The sentence for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of section 49, subsections (b)(3) and (b)(4) of section 109, section 223 and section 227, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or section 288, and amendments thereto. If because of the offender's criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the offender is subject to imprisonment, the provisions of this section and section 288, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in section 109, and amendments thereto. Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of section 49, subsections (b)(3) and (b)(4) of section 109, section 223 and section 227, and amendments thereto, shall not be served in a state facility in the custody of the secretary of corrections, except that the term of imprisonment for felony violations of K.S.A. 8-1567, and amendments thereto, may be served in a state correctional facility designated by the secretary of corrections if the secretary determines that substance abuse treatment resources and

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

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

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

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

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

(B) (i) has been convicted of rape, as defined in K.S.A. 21-3502, prior to its repeal, or section 67, and amendments thereto; and

(ii) at the time of the conviction under paragraph (B)(i) has at least one conviction for rape in this state or comparable felony under the laws of another state, the federal government or a foreign government.

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

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

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

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

(B) the commission of felony violations of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto; and

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

(D) its members, individually or collectively, engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, or any substantially similar offense from another jurisdiction.

(l) Except as provided in subsection (o), the sentence for a violation of subsection (a)(1) of section 93, and amendments thereto, when such person being sentenced has a prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715, prior to its repeal, 21-3716, prior to its repeal, subsection (a)(1) or (a)(2) of section 93 or subsection (b) of section 93, and amendments thereto, shall be presumed imprisonment.

(m) The sentence for a violation of K.S.A 22-4903 or subsection (a)(2) of section 138, and amendments thereto, shall be presumptive imprisonment. If an offense under such sections is classified in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison sentence as provided in subsection (q).

(n) The sentence for a violation of criminal deprivation of property, as defined in section 89, and amendments thereto, when such property is a motor vehicle, and when such person being sentenced has any combination of two or more prior convictions of subsection (b) of K.S.A. 21-3705, prior to its repeal, or of criminal deprivation of property, as defined in section 89, and amendments thereto, when such property is a motor vehicle, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(o) The sentence for a felony violation of theft of property as defined in section 87, and amendments thereto, or burglary as defined in subsection (a) of section 93, and amendments thereto, when such person being

sentenced has no prior convictions for a violation of K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of property as defined in section 87, and amendments thereto, or burglary as defined in subsection (a) of section 93, and amendments thereto; or the sentence for a felony violation of theft of property as defined in section 87, and amendments thereto, when such person being sentenced has one or two prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87, and amendments thereto, or burglary as defined in section 93, and amendments thereto; or the sentence for a felony violation of burglary as defined in subsection (a) of section 93, and amendments thereto, when such person being sentenced has one prior felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87, and amendments thereto, or burglary as defined in section 93, and amendments thereto, shall be the sentence as provided by this section, except that the court may order an optional nonprison sentence for a defendant to participate in a drug treatment program, including, but not limited to, an approved after-care plan, if the court makes the following findings on the record:

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

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

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

A defendant sentenced to an optional nonprison sentence under this subsection shall be supervised by community correctional services. The provisions of subsection (f)(1) of section 305, and amendments thereto, shall apply to a defendant sentenced under this subsection. The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(p) The sentence for a felony violation of theft of property as defined in section 87, and amendments thereto, when such person being sentenced has any combination of three or more prior felony convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87, and amendments thereto, or burglary as defined in section 93; or the sentence for a violation of burglary as defined in subsection (a) of section 93, and amendments thereto, when such person being sentenced has any combination of two or more prior convictions for violations of K.S.A. 21-3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as defined in section 87, and amendments thereto, or burglary as defined in section 93, and amendments thereto, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section, except that the court may recommend that an offender be placed in the custody of the secretary of corrections, in a facility designated by the secretary to participate in an intensive substance abuse treatment program, upon making the following findings on the record:

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

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

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

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

(q) As used in this section, an "optional nonprison sentence" is a

sentence which the court may impose, in lieu of the presumptive sentence, upon making the following findings on the record:

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

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

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

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

(r) The sentence for a violation of subsection (c)(2) of section 48, and amendments thereto, shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

New Sec. 286. (a) The provisions of this section shall be applicable to the sentencing guidelines grid for drug crimes. The following sentencing guidelines grid for drug crimes shall be applicable to felony crimes under K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, except as otherwise provided by law:

SENTENCING RANGE - DRUG 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	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
III	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	27 24 23	23 22 21	19 18 17	16 15 14
IV	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

(b) Sentences expressed in the sentencing guidelines grid for drug crimes in subsection (a) represent months of imprisonment.

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

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

(A) Prison sentence;

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

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

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

(d) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I, the court may impose an optional nonprison sentence as provided in subsection (q) of section 285, and amendments thereto.

(e) The sentence for a second or subsequent conviction of K.S.A. 65-4159, prior to its repeal, or K.S.A. 2009 Supp. 21-36a03, and amendments thereto, manufacture of any controlled substance or controlled substance analog shall be a presumptive term of imprisonment of two times the maximum duration of the presumptive term of imprisonment. The court may impose an optional reduction in such sentence of not to exceed 50% of the mandatory increase provided by this subsection upon making a finding on the record that one or more of the mitigating factors as specified in section 296, and amendments thereto, justify such a reduction in sentence. Any decision made by the court regarding the reduction in such sentence shall not be considered a departure and shall not be subject to appeal.

(f) (1) The sentence for a third or subsequent felony conviction of K.S.A. 65-4160 or 65-4162, prior to their repeal, or K.S.A. 2009 Supp. 21-36a06, and amendments thereto, shall be a presumptive term of imprisonment and the defendant shall be sentenced to prison as provided by this section. The defendant's term of imprisonment shall be served in the custody of the secretary of corrections in a facility designated by the secretary. Subject to appropriations therefore, the defendant shall participate in an intensive substance abuse treatment program, of at least four months duration, selected by the secretary of corrections. If the secretary determines that substance abuse treatment resources are otherwise available, such term of imprisonment may be served in a facility designated by the secretary of corrections in the custody of the secretary of corrections to participate in an intensive substance abuse treatment program. The secretary's determination regarding the availability of treatment resources shall not be subject to review. Upon the successful completion of such intensive treatment program, the offender shall be returned to the court and the court may modify the sentence by directing that a less severe penalty be imposed in lieu of that originally adjudged. If the offender's term of imprisonment expires, the offender shall be placed under the applicable period of postrelease supervision.

(2) Such defendant's term of imprisonment shall not be subject to modification under paragraph (1) if:

(A) The defendant has previously completed a certified drug abuse treatment program, as provided in K.S.A. 2009 Supp. 75-52,144, and amendments thereto;

(B) has been discharged or refused to participate in a certified drug

abuse treatment program, as provided in K.S.A. 2009 Supp. 75-52,144, and amendments thereto;

(C) has completed an intensive substance abuse treatment program under paragraph (1); or

(D) has been discharged or refused to participate in an intensive substance abuse treatment program under paragraph (1).

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

(g) (1) Except as provided further, if the trier of fact makes a finding that an offender carried a firearm to commit a drug felony, or in furtherance of a drug felony, possessed a firearm, in addition to the sentence imposed pursuant to sections 282 through 305, and amendments thereto, the offender shall be sentenced to:

(A) Except as provided in subsection (g)(1)(B), an additional 6 months' imprisonment; and

(B) if the trier of fact makes a finding that the firearm was discharged, an additional 18 months' imprisonment.

(2) The sentence imposed pursuant to subsection (g)(1) shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(3) The provisions of this subsection shall not apply to violations of K.S.A. 2009 Supp. 21-36a06 or 21-36a13, and amendments thereto.

New Sec. 287. (a) Sentences of imprisonment shall represent the time a person shall actually serve, subject to a reduction of the primary sentence for good time as authorized by section 302, and amendments thereto.

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

(c) Violations of sections 36, 37, 56, 57 and 126, and amendments thereto, are off-grid crimes for the purpose of sentencing. Except as otherwise provided by sections 257, 258, 259, 262, 264, 265, 268 and 269, and amendments thereto, the sentence shall be imprisonment for life and shall not be subject to statutory provisions for suspended sentence, community service or probation.

(d) As identified in sections 61, 67, 68, 70, 74 and 230, and amendments thereto, if the offender is 18 years of age or older and the victim is under 14 years of age, such violations are off-grid crimes for the purposes of sentencing. Except as provided in section 266, and amendments thereto, the sentence shall be imprisonment for life pursuant to section 267, and amendments thereto.

New Sec. 288. The crime severity scale contained in the sentencing guidelines grid for nondrug crimes as provided in section 285, and amendments thereto, consists of 10 levels of crimes. Crimes listed within each level are considered to be relatively equal in severity. Level 1 crimes are the most severe crimes and level 10 crimes are the least severe crimes. If a person is convicted of two or more crimes, then the severity level shall be determined by the most severe crime of conviction.

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

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

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

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

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

(4) The offense severity level of a crime for which the court has accepted a plea of guilty or nolo contendere pursuant to K.S.A. 22-3210, and amendments thereto, or of a crime of which the defendant has been convicted shall not be elevated or enhanced for sentencing purposes as a result of the discovery of prior convictions or any other basis for such enhancement subsequent to the acceptance of the plea or conviction. Any

such prior convictions discovered after the plea has been accepted by the court shall be counted in the determination of the criminal history of the offender.

New Sec. 289. (a) The crime severity scale contained in the sentencing guidelines grid for drug offenses as provided in section 286, and amendments thereto, consists of 4 levels of crimes. Crimes listed within each level are considered to be relatively equal in severity. Level 1 crimes are the most severe crimes and level 4 crimes are the least severe crimes.

(b) The provisions of this section shall also be applicable to the presumptive sentences for anticipatory crimes as provided in sections 33, 34 and 35, and amendments thereto.

New Sec. 290. The criminal history scale is represented in abbreviated form on the horizontal axis of the sentencing guidelines grids. The relative severity of each criminal history category decreases from left to right on such grids. Criminal history category A is the most serious classification. Criminal history category I is the least serious classification. The criminal history categories in the criminal history scale are:

Criminal History Category	Descriptive Criminal History
(A)	The offender's criminal history includes three or more adult convictions or juvenile adjudications, in any combination, for person felonies.
(B)	The offender's criminal history includes two adult convictions or juvenile adjudications, in any combination, for person felonies.
(C)	The offender's criminal history includes one adult conviction or juvenile adjudication for a person felony, and one or more adult conviction or juvenile adjudication for a nonperson felony.
(D)	The offender's criminal history includes one adult conviction or juvenile adjudication for a person felony, but no adult conviction or juvenile adjudications for a nonperson felony.
(E)	The offender's criminal history includes three or more adult convictions or juvenile adjudications for nonperson felonies, but no adult conviction or juvenile adjudication for a person felony.
(F)	The offender's criminal history includes two adult convictions or juvenile adjudications for nonperson felonies, but no adult conviction or juvenile adjudication for a person felony.
(G)	The offender's criminal history includes one adult conviction or juvenile adjudication for a nonperson felony, but no adult conviction or juvenile adjudication for a person felony.
(H)	The offender's criminal history includes two or more adult convictions or juvenile adjudications for nonperson and/or select misdemeanors, and no more than two adult convictions or juvenile adjudications for person misdemeanors, but no adult conviction or juvenile adjudication for either a person or nonperson felony.
(I)	The offender's criminal history includes no prior record; or, one adult conviction or juvenile adjudication for a person, nonperson, or select misdemeanor, but no adult conviction or juvenile adjudication for either a person or nonperson felony.

New Sec. 291. (a) Criminal history categories contained in the sentencing guidelines grids are based on the following types of prior convictions: Person felony adult convictions, nonperson felony adult convictions, person felony juvenile adjudications, nonperson felony juvenile adjudications, person misdemeanor adult convictions, nonperson class A misdemeanor adult convictions, person misdemeanor juvenile adjudications, nonperson class A misdemeanor juvenile adjudications, select class B nonperson misdemeanor adult convictions, select class B nonperson misdemeanor juvenile adjudications and convictions and adjudications for violations of municipal ordinances or county resolutions which are comparable to any crime classified under the state law of Kansas as a person misdemeanor, select nonperson class B misdemeanor or nonperson class A misdemeanor. A prior conviction is any conviction, other than another count in the current case which was brought in the same information or complaint or which was joined for trial with other counts in the current case pursuant to K.S.A. 22-3203, and amendments thereto, which occurred prior to sentencing in the current case regardless of whether

the offense that led to the prior conviction occurred before or after the current offense or the conviction in the current case.

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

(c) Except as otherwise provided, all convictions, whether sentenced consecutively or concurrently, shall be counted separately in the offender's criminal history.

(d) Except as provided in section 296, and amendments thereto, the following are applicable to determining an offender's criminal history classification:

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

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

(3) There will be no decay factor applicable for:

(A) Adult convictions;

(B) a juvenile adjudication for an offense which would constitute a person felony if committed by an adult;

(C) a juvenile adjudication for an offense committed before July 1, 1993, which would have been a class A, B or C felony, if committed by an adult; or

(D) a juvenile adjudication for an offense committed on or after July 1, 1993, which would be an off-grid felony, a nondrug severity level 1, 2, 3, 4 or 5 felony, or a drug severity level 1, 2 or 3 felony, if committed by an adult.

(4) Except as otherwise provided, a juvenile adjudication will decay if the current crime of conviction is committed after the offender reaches the age of 25, and the juvenile adjudication is for an offense:

(A) Committed before July 1, 1993, which would have been a class D or E felony if committed by an adult;

(B) committed on or after July 1, 1993, which would be a nondrug level 6, 7, 8, 9 or 10, or drug level 4, nonperson felony if committed by an adult; or

(C) which would be a misdemeanor if committed by an adult.

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

(6) Unless otherwise provided by law, unclassified felonies and misdemeanors, shall be considered and scored as nonperson crimes for the purpose of determining criminal history.

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

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

(9) Prior convictions of any crime shall not be counted in determining the criminal history category if they enhance the severity level or applicable penalties, elevate the classification from misdemeanor to felony, or are elements of the present crime of conviction. Except as otherwise provided, all other prior convictions will be considered and scored.

New Sec. 292. In addition to the provisions of section 291, and amendments thereto, the following shall apply in determining an offender's criminal history classification as contained in the presumptive sentencing guidelines grids:

(a) Every three prior adult convictions or juvenile adjudications of class A and class B person misdemeanors in the offender's criminal history, or any combination thereof, shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes. Every three prior adult convictions or juvenile adjudications of assault as defined in subsection (a) of section 47, and amendments thereto, occurring within a period commencing three years prior to the date of conviction for the current crime of conviction shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes.

(b) A conviction of criminal use of weapons as defined in subsection

(a)(8) or (a)(13) of section 186, and amendments thereto, or possession of a firearm on the grounds or in the state capitol building as defined in section 194, and amendments thereto, will be scored as a select class B nonperson misdemeanor conviction or adjudication and shall not be scored as a person misdemeanor for criminal history purposes.

(c) (1) If the current crime of conviction was committed before July 1, 1996, and is for subsection (b) of K.S.A. 21-3404, as in effect on June 30, 1996, involuntary manslaughter in the commission of driving under the influence, then, each prior adult conviction or juvenile adjudication for K.S.A. 8-1567, and amendments thereto, shall count as one person felony for criminal history purposes.

(2) If the current crime of conviction was committed on or after July 1, 1996, and is for a violation of subsection (a)(3) of section 40, and amendments thereto, each prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for: (A) An act described in K.S.A. 8-1567, and amendments thereto; or (B) a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the act described in K.S.A. 8-1567, and amendments thereto, shall count as one person felony for criminal history purposes.

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

(1) As a prior person felony if the prior conviction or adjudication was classified as a burglary as defined in subsection (a)(1) of section 93, and amendments thereto.

(2) As a prior nonperson felony if the prior conviction or adjudication was classified as a burglary as defined in subsection (a)(2) or (a)(3) of section 93, and amendments thereto.

The facts required to classify prior burglary adult convictions and juvenile adjudications shall be established by the state by a preponderance of the evidence.

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

(f) Except as provided in subsections (d)(3)(B), (d)(3)(C), (d)(3)(D) and (d)(4) of section 291, and amendments thereto, juvenile adjudications will be applied in the same manner as adult convictions. Out-of-state juvenile adjudications will be treated as juvenile adjudications in Kansas.

(g) A prior felony conviction of an attempt, a conspiracy or a solicitation as provided in section 33, 34 or 35, and amendments thereto, to commit a crime shall be treated as a person or nonperson crime in accordance with the designation assigned to the underlying crime.

(h) Drug crimes are designated as nonperson crimes for criminal history scoring.

New Sec. 293. The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea to a charged offense or to a lesser or related offense, the prosecutor may do any of the following:

(a) Move for dismissal of other charges or counts;

(b) recommend a particular sentence within the sentencing range applicable to the offense or to the offense to which the offender pled guilty;

(c) recommend a particular sentence outside of the sentencing range only when departure factors exist and such factors are stated on the record;

(d) agree to file a particular charge or count;

(e) agree not to file charges or counts; or

(f) make any other promise to the defendant, except that the prosecutor shall not enter into any agreement to decline to use a prior drug conviction of the defendant to elevate or enhance the severity level of a drug crime as provided in K.S.A. 2009 Supp. 21-36a03, 21-36a05 or 21-36a06, and amendments thereto, or make any agreement to exclude any prior conviction from the criminal history of the defendant.

New Sec. 294. (a) The court shall order the preparation of the presentence investigation report by the court services officer as soon as possible after conviction of the defendant.

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

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

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

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

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

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

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

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

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

(9) For defendants who are being sentenced for a conviction of a felony violation of K.S.A. 65-4160 or 65-4162, prior to their repeal or K.S.A. 2009 Supp. 21-36a06, and amendments thereto, and meet the requirements of section 305, and amendments thereto, the drug abuse assessment as provided in section 305, and amendments thereto.

(10) For defendants who are being sentenced for a third or subsequent felony conviction of a violation of K.S.A. 65-4160 or 65-4162, prior to their repeal or K.S.A. 2009 Supp. 21-36a06, and amendments thereto, the drug abuse assessment as provided in section 305, and amendments thereto.

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

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

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

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

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

New Sec. 295. (a) The offender's criminal history shall be admitted in open court by the offender or determined by a preponderance of the evidence at the sentencing hearing by the sentencing judge.

(b) Except to the extent disputed in accordance with subsection (c), the summary of the offender's criminal history prepared for the court by the state shall satisfy the state's burden of proof regarding an offender's criminal history.

(c) Upon receipt of the criminal history worksheet prepared for the court, the offender shall immediately notify the district attorney and the court with written notice of any error in the proposed criminal history worksheet. Such notice shall specify the exact nature of the alleged error. The state shall have the burden of proving the disputed portion of the offender's criminal history. The sentencing judge shall allow the state reasonable time to produce evidence to establish its burden of proof. If the offender later challenges such offender's criminal history, which has been previously established, the burden of proof shall shift to the offender to prove such offender's criminal history by a preponderance of the evidence.

New Sec. 296. (a) Except as provided in subsection (b), the sentencing judge shall impose the presumptive sentence provided by the sentencing guidelines unless the judge finds substantial and compelling reasons to impose a departure sentence. If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure.

(b) Subject to the provisions of subsection (b) of section 298, and amendments thereto, any fact that would increase the penalty for a crime beyond the statutory maximum, other than a prior conviction, shall be submitted to a jury and proved beyond a reasonable doubt.

(c) (1) Subject to the provisions of subsections (c)(3) and (e), the following nonexclusive list of mitigating factors may be considered in determining whether substantial and compelling reasons for a departure exist:

(A) The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction.

(B) The offender played a minor or passive role in the crime or participated under circumstances of duress or compulsion. This factor may be considered when it is not sufficient as a complete defense.

(C) The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants, drugs or alcohol does not fall within the purview of this factor.

(D) The defendant, or the defendant's children, suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(E) The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.

(2) Subject to the provisions of subsection (c)(3), the following nonexclusive list of aggravating factors may be considered in determining whether substantial and compelling reasons for departure exist:

(A) The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity which was known or should have been known to the offender.

(B) The defendant's conduct during the commission of the current

offense manifested excessive brutality to the victim in a manner not normally present in that offense.

(C) The offense was motivated entirely or in part by the race, color, religion, ethnicity, national origin or sexual orientation of the victim or the offense was motivated by the defendant's belief or perception, entirely or in part, of the race, color, religion, ethnicity, national origin or sexual orientation of the victim whether or not the defendant's belief or perception was correct.

(D) The offense involved a fiduciary relationship which existed between the defendant and the victim.

(E) The defendant, 18 or more years of age, employed, hired, used, persuaded, induced, enticed or coerced any individual under 16 years of age to:

(i) Commit any person felony;

(ii) assist in avoiding detection or apprehension for commission of any person felony; or

(iii) attempt, conspire or solicit, as defined in sections 33, 34 and 35, and amendments thereto, to commit any person felony.

That the defendant did not know the age of the individual under 16 years of age shall not be a consideration.

(F) The defendant's current crime of conviction is a crime of extreme sexual violence and the defendant is a predatory sex offender. As used in this subsection:

(i) "Crime of extreme sexual violence" is a felony limited to the following:

(a) A crime involving a nonconsensual act of sexual intercourse or sodomy with any person;

(b) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is 14 or more years of age but less than 16 years of age and with whom a relationship has been established or promoted for the primary purpose of victimization; or

(c) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is less than 14 years of age.

(ii) "Predatory sex offender" is an offender who has been convicted of a crime of extreme sexual violence as the current crime of conviction and who:

(a) Has one or more prior convictions of any crimes of extreme sexual violence. Any prior conviction used to establish the defendant as a predatory sex offender pursuant to this subsection shall also be counted in determining the criminal history category; or

(b) suffers from a mental condition or personality disorder which makes the offender likely to engage in additional acts constituting crimes of extreme sexual violence.

(iii) "Mental condition or personality disorder" means an emotional, mental or physical illness, disease, abnormality, disorder, pathology or condition which motivates the person, affects the predisposition or desires of the person, or interferes with the capacity of the person to control impulses to commit crimes of extreme sexual violence.

(G) The defendant was incarcerated during the commission of the offense.

(H) The crime involved two or more participants in the criminal conduct, and the defendant played a major role in the crime as the organizer, leader, recruiter, manager or supervisor.

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

(3) If a factual aspect of a crime is a statutory element of the crime or is used to subclassify the crime on the crime severity scale, that aspect of the current crime of conviction may be used as an aggravating or mitigating factor only if the criminal conduct constituting that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime.

(d) In determining aggravating or mitigating circumstances, the court shall consider:

(1) Any evidence received during the proceeding;

(2) the presentence report;

(3) written briefs and oral arguments of either the state or counsel for the defendant; and

(4) any other evidence relevant to such aggravating or mitigating circumstances that the court finds trustworthy and reliable.

(e) Upon motion of the prosecutor stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who is alleged to have committed an offense, the court may consider such mitigation in determining whether substantial and compelling reasons for a departure exist. In considering this mitigating factor, the court may consider the following:

(1) The court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the prosecutor's evaluation of the assistance rendered;

(2) the truthfulness, completeness and reliability of any information or testimony provided by the defendant;

(3) the nature and extent of the defendant's assistance;

(4) any injury suffered, or any danger or risk of injury to the defendant or the defendant's family resulting from such assistance; and

(5) the timeliness of the defendant's assistance.

New Sec. 297. (a) The following aggravating factors apply to drug crimes and may be considered in determining whether substantial and compelling reasons for departure exist:

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

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

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

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

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

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

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

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

(2) The offender possessed illegal drugs with the intent to distribute, which were distributed, or offered for distribution:

(A) to a person under 18 years of age; or

(B) in the immediate presence of a person under 18 years of age.

(3) The offender, 18 or more years of age, employed, hired, used, persuaded, induced, enticed or coerced any individual under 16 years of age:

(A) To violate any provision of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto;

(B) to assist in avoiding detection or apprehension for violation of any provision of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto; or

(C) to attempt, conspire or solicit, as defined in section 33, 34 or 35, and amendments thereto, to commit a violation of any provision of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto.

That the offender did not know the age of the individual under 16 years of age shall not be a consideration.

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

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

New Sec. 298. (a) (1) Whenever a person is convicted of a felony, the court upon motion of either the defendant or the state, shall hold a hearing to consider imposition of a departure sentence other than an upward durational departure sentence. The motion shall state the type of

departure sought and the reasons and factors relied upon. The hearing shall be scheduled so that the parties have adequate time to prepare and present arguments regarding the issues of departure sentencing. The county or district attorney shall notify the victim of a crime or the victim's family of the right to be present at the hearing. The parties may submit written arguments to the court prior to the date of the hearing and may make oral arguments before the court at the hearing. The court shall review the victim impact statement. Prior to the hearing, the court shall transmit to the defendant or the defendant's attorney and the prosecutor copies of the presentence investigation report.

(2) At the conclusion of the hearing or within 20 days thereafter, the court shall issue findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.

(3) If the court decides to depart on its own volition, without a motion from the state or the defendant, the court must notify all parties of its intent and allow reasonable time for either party to respond if requested. The notice shall state the type of departure intended by the court and the reasons and factors relied upon.

(4) In each case in which the court imposes a sentence that deviates from the presumptive sentence, the court shall make findings of fact as to the reasons for departure as provided in this subsection regardless of whether a hearing is requested.

(b) (1) Upon motion of the county or district attorney to seek an upward durational departure sentence, the court shall consider imposition of such upward durational departure sentence in the manner provided in subsection (b)(2). The county or district attorney shall file such motion to seek an upward durational departure sentence not less than 30 days prior to the date of trial or if the trial date is to take place in less than 30 days then within five days from the date of the arraignment.

(2) The court shall determine if the presentation of any evidence regarding the alleged fact or factors that may increase the penalty for a crime beyond the statutory maximum, other than a prior conviction, shall be presented to a jury and proved beyond a reasonable doubt during the trial of the matter or whether such evidence should be submitted to the jury in a separate departure sentencing hearing following the determination of the defendant's innocence or guilt.

(3) If the presentation of the evidence regarding the alleged fact or factors is submitted to the jury during the trial of the matter as determined by the court, then the provisions of subsections (b)(5), (b)(6) and (b)(7) shall be applicable.

(4) If the court determines it is in the interest of justice, the court shall conduct a separate departure sentence proceeding to determine whether the defendant may be subject to an upward durational departure sentence. Such proceeding shall be conducted by the court before the trial jury as soon as practicable. If any person who served on the trial jury is unable to serve on the jury for the upward durational departure sentence proceeding, the court shall substitute an alternate juror who has been impaneled for the trial jury. If there are insufficient alternate jurors to replace trial jurors who are unable to serve at the upward durational departure sentence proceeding, the court may conduct such upward durational departure sentence proceeding before a jury which may have 12 or less jurors, but at no time less than six jurors. Any decision of an upward durational departure sentence proceeding shall be decided by a unanimous decision of the jury. Jury selection procedures, qualifications of jurors and grounds for exemption or challenge of prospective jurors in criminal trials shall be applicable to the selection of such jury. The jury at the upward durational departure sentence proceeding may be waived in the manner provided by K.S.A. 22-3403, and amendments thereto, for waiver of a trial jury. If the jury at the upward durational departure sentence proceeding has been waived or the trial jury has been waived, the upward durational departure sentence proceeding shall be conducted by the court.

(5) In the upward durational departure sentence proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of determining if any specific factors exist that may serve to enhance the maximum sentence as provided by section 296 or 297, and amendments thereto. Only such evidence as the state has made known to the defendant prior to the upward durational departure

sentence proceeding shall be admissible, and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the upward durational departure sentence proceeding shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral arguments.

(6) The court shall provide oral and written instructions to the jury to guide its deliberations.

(7) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more specific factors exist that may serve to enhance the maximum sentence, the defendant may be sentenced pursuant to sections 296 through 299, and amendments thereto; otherwise, the defendant shall be sentenced as provided by law. The jury, if its verdict is a unanimous recommendation that one or more of the specific factors that may serve to enhance the maximum sentence exists, shall designate in writing, signed by the foreman of the jury, the specific factor or factors which the jury found beyond a reasonable doubt. If, after a reasonable time for deliberation, the jury is unable to reach a verdict of finding any of the specific factors, the court shall dismiss the jury and shall only impose a sentence as provided by law. In nonjury cases, the court shall follow the requirements of this subsection in determining if one or more of the specific factors exist that may serve to enhance the maximum sentence.

New Sec. 299. (a) When a departure sentence is appropriate, the sentencing judge may depart from the sentencing guidelines as provided in this section. The sentencing judge shall not impose a downward dispositional departure sentence for any crime of extreme sexual violence, as defined in section 296, and amendments thereto. The sentencing judge shall not impose a downward durational departure sentence for any crime of extreme sexual violence, as defined in section 296, and amendments thereto, to less than 50% of the center of the range of the sentence for such crime.

(b) When a sentencing judge departs in setting the duration of a presumptive term of imprisonment:

(1) The judge shall consider and apply the sentencing guidelines, which is to impose a sentence that is proportionate to the severity of the crime of conviction and the offender's criminal history; and

(2) the presumptive term of imprisonment set in such departure shall not total more than double the maximum duration of the presumptive imprisonment term.

(c) When a sentencing judge imposes a prison term as a dispositional departure:

(1) The judge shall consider and apply the primary purpose of the sentencing guidelines, which is to impose a sentence that is proportionate to the severity of the crime of conviction; and

(2) the term of imprisonment shall not exceed the maximum duration of the presumptive imprisonment term listed within the sentencing grid. Any sentence inconsistent with the provisions of this section shall constitute an additional departure and shall require substantial and compelling reasons independent of the reasons given for the dispositional departure.

(d) If the sentencing judge imposes a nonprison sentence as a dispositional departure from the guidelines, the recommended duration shall be as provided in subsection (c) of section 248, and amendments thereto.

New Sec. 300. (a) The provisions of subsections (a), (b), (c), (d), (e) and (h) of section 246, and amendments thereto, regarding multiple sentences shall apply to the sentencing of offenders pursuant to the sentencing guidelines. The mandatory consecutive sentence requirements contained in subsections (c), (d) and (e) of section 246, and amendments thereto, shall not apply if such application would result in a manifest injustice.

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

(1) When the sentencing judge imposes multiple sentences consec-

utively, the consecutive sentences shall consist of an imprisonment term which is the sum of the consecutive imprisonment terms, and a supervision term. The postrelease supervision term will be based on the longest supervision term imposed for any of the crimes.

(2) The sentencing judge shall establish a base sentence for the primary crime. The primary crime is the crime with the highest crime severity ranking. An off-grid crime shall not be used as the primary crime in determining the base sentence when imposing multiple sentences. If sentences for off-grid and on-grid convictions are ordered to run consecutively, the offender shall not begin to serve the on-grid sentence until paroled from the off-grid sentence, and the postrelease supervision term will be based on the off-grid crime. If more than one crime of conviction is classified in the same crime category, the sentencing judge shall designate which crime will serve as the primary crime. In the instance of sentencing with both the drug grid and the nondrug grid and simultaneously having a presumption of imprisonment and probation, the sentencing judge shall use the crime which presumes imprisonment as the primary crime. In the instance of sentencing with both the drug grid and the nondrug grid and simultaneously having a presumption of either both probation or both imprisonment, the sentencing judge shall use the crime with the longest sentence term as the primary crime.

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

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

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

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

(7) If the sentence for the consecutive sentences is a prison term, the postrelease supervision term is a term of postrelease supervision as established for the primary crime.

(8) If the sentence for the primary crime is a nonprison sentence, a nonprison term will be imposed for each crime conviction, but the nonprison terms shall not be aggregated or served consecutively even though the underlying prison sentences have been ordered to be served consecutively. Upon revocation of the nonprison sentence, the offender shall serve the prison sentences consecutively as provided in this section.

(c) The following shall apply for a departure from the presumptive sentence based on aggravating factors within the context of consecutive sentences:

(1) The court may depart from the presumptive limits for consecutive sentences only if the judge finds substantial and compelling reasons to impose a departure sentence for any of the individual crimes being sentenced consecutively.

(2) When a departure sentence is imposed for any of the individual crimes sentenced consecutively, the imprisonment term of that departure sentence shall not exceed twice the maximum presumptive imprisonment term that may be imposed for that crime.

(3) The total imprisonment term of the consecutive sentences, including the imprisonment term for the departure crime, shall not exceed twice the maximum presumptive imprisonment term of the departure sentence following aggravation.

New Sec. 301. (a) A departure sentence is subject to appeal by the defendant or the state. The appeal shall be to the appellate courts in accordance with rules adopted by the supreme court.

(b) Pending review of the sentence, the sentencing court or the appellate court may order the defendant confined or placed on conditional release, including bond.

(c) On appeal from a judgment or conviction entered for a felony committed on or after July 1, 1993, the appellate court shall not review:

(1) Any sentence that is within the presumptive sentence for the crime; or

(2) any sentence resulting from an agreement between the state and the defendant which the sentencing court approves on the record.

(d) In any appeal from a judgment of conviction imposing a sentence that departs from the presumptive sentence prescribed by the sentencing grid for a crime, sentence review shall be limited to whether the sentencing court's findings of fact and reasons justifying a departure:

(1) Are supported by the evidence in the record; and

(2) constitute substantial and compelling reasons for departure.

(e) In any appeal, the appellate court may review a claim that:

(1) A sentence that departs from the presumptive sentence resulted from partiality, prejudice, oppression or corrupt motive;

(2) the sentencing court erred in either including or excluding recognition of a prior conviction or juvenile adjudication for criminal history scoring purposes; or

(3) the sentencing court erred in ranking the crime severity level of the current crime or in determining the appropriate classification of a prior conviction or juvenile adjudication for criminal history purposes.

(f) The appellate court may reverse or affirm the sentence. If the appellate court concludes that the trial court's factual findings are not supported by evidence in the record or do not establish substantial and compelling reasons for a departure, it shall remand the case to the trial court for resentencing.

(g) The appellate court shall issue a written opinion whenever the judgment of the sentencing court is reversed. The court may issue a written opinion in any other case when it is believed that a written opinion will provide guidance to sentencing judges and others in implementing the sentencing guidelines adopted by the Kansas sentencing commission. The appellate courts may provide by rule for summary disposition of cases arising under this section when no substantial question is presented by the appeal.

(h) A review under summary disposition shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required unless ordered by the appellate court and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(i) The sentencing court shall retain authority irrespective of any notice of appeal for 90 days after entry of judgment of conviction to modify its judgment and sentence to correct any arithmetic or clerical errors.

New Sec. 302. (a) The secretary of corrections is hereby authorized to adopt rules and regulations providing for a system of good time calculations. Such rules and regulations shall provide circumstances upon which an inmate may earn good time credits and for the forfeiture of earned credits. Such circumstances may include factors related to program and work participation and conduct and the inmate's willingness to examine and confront past behavioral patterns that resulted in the commission of the inmate's crimes.

(b) For purposes of determining release of an inmate, the following shall apply with regard to good time calculations:

(1) Good behavior by inmates is the expected norm and negative behavior will be punished; and

(2) the amount of good time which can be earned by an inmate and subtracted from any sentence is limited to:

(A) For a crime committed on or after July 1, 1993, an amount equal to 15% of the prison part of the sentence; or

(B) for a drug severity level 3 or 4 or a nondrug severity level 7 through 10 crime committed on or after January 1, 2008, an amount equal to 20% of the prison part of the sentence.

(c) Any time which is earned and subtracted from the prison part of the sentence of any inmate pursuant to good time calculation shall be added to such inmate's postrelease supervision term.

(d) An inmate shall not be awarded good time credits pursuant to this section for any review period established by the secretary of corrections in which a court finds that the inmate has done any of the following while in the custody of the secretary of corrections:

(1) Filed a false or malicious action or claim with the court;

(2) brought an action or claim with the court solely or primarily for delay or harassment;

(3) testified falsely or otherwise submitted false evidence or information to the court;

(4) attempted to create or obtain a false affidavit, testimony or evidence; or

(5) abused the discovery process in any judicial action or proceeding.

(e) (1) For purposes of determining release of an inmate who is serving only a sentence for a nondrug severity level 4 through 10 crime or a drug severity level 3 or 4 crime committed on or after January 1, 2008, the secretary of corrections is hereby authorized to adopt rules and regulations regarding program credit calculations. Such rules and regulations shall provide circumstances upon which an inmate may earn program credits and for the forfeiture of earned credits and such circumstances may include factors substantially related to program participation and conduct. In addition to any good time credits earned and retained, the following shall apply with regard to program credit calculations:

(A) A system shall be developed whereby program credits may be earned by inmates for the successful completion of requirements for a general education diploma, a technical or vocational training program, a substance abuse treatment program or any other program designated by the secretary which has been shown to reduce offender's risk after release; and

(B) the amount of time which can be earned and retained by an inmate for the successful completion of programs and subtracted from any sentence is limited to not more than 60 days.

(2) Any time which is earned and subtracted from the prison part of the sentence of any inmate pursuant to program credit calculation shall be added to such inmate's postrelease supervision obligation, if applicable.

(3) When separate sentences of imprisonment for different crimes are imposed on a defendant on the same date, a defendant shall only be eligible for program credits if such crimes are a nondrug severity level 4 through 10 or a drug severity level 3 or 4.

(4) Program credits shall not be earned by any offender successfully completing a sex offender treatment program.

(5) The secretary of corrections shall report to the Kansas sentencing commission and the Kansas reentry policy council the data on the program credit calculations.

New Sec. 303. The Kansas sentencing commission shall meet as necessary for the purpose of modifying and improving the guidelines. The secretary of corrections shall notify the commission at any time when it is determined that prisons in the state have been filled to 90% or more of their overall capacity. The commission shall then propose modifications which amend the sentencing guidelines grid, including severity levels, criminal history scores or other factors which would result in the reduction of any sentence, as deemed necessary to maintain the prison population within the reasonable management capacity of the prisons as determined after consultation with the secretary of corrections. Such proposed modifications shall be submitted to the legislature by February 1 in any year in which the commission proposes to make the change. No change will be in effect without the approval of the legislature and the governor.

New Sec. 304. All costs and expenses associated with postconviction prison and nonprison sanctions imposed for felony convictions and time spent in a county jail pursuant to a nonprison sanction imposed for felony convictions shall be the responsibility of and paid by the state of Kansas.

New Sec. 305. (a) There is hereby established a nonprison sanction of certified drug abuse treatment programs for certain offenders who are

sentenced on or after November 1, 2003. Placement of offenders in certified drug abuse treatment programs by the court shall be limited to placement of adult offenders, convicted of a felony violation of K.S.A. 65-4160 or 65-4162, prior to their repeal or K.S.A. 2009 Supp. 21-36a06, and amendments thereto:

(1) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes and such offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their repeal or K.S.A. 2009 Supp. 21-36a03, 21-36a05 or 21-36a16, and amendments thereto, or any substantially similar offense from another jurisdiction; or

(2) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of the sentencing guidelines grid for drug crimes, such offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their repeal, or K.S.A. 2009 Supp. 21-36a03, 21-36a05 or 21-36a16, and amendments thereto, or any substantially similar offense from another jurisdiction, if the person felonies in the offender's criminal history were severity level 8, 9 or 10 or nongrid offenses of the sentencing guidelines grid for nondrug crimes, and the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will not be jeopardized by such placement in a drug abuse treatment program.

(b) As a part of the presentence investigation pursuant to section 294, and amendments thereto, offenders who meet the requirements of subsection (a) shall be subject to:

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

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

(c) The sentencing court shall commit the offender to treatment in a drug abuse treatment program until the court determines the offender is suitable for discharge by the court. The term of treatment shall not exceed 18 months. The court may extend the term of probation, pursuant to subsection (c)(3) of section 248, and amendments thereto. The term of treatment may not exceed the term of probation.

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

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

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

(A) Is convicted of a new felony; or

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

(2) Offenders who are discharged from such program shall be subject to the revocation provisions of subsection (n) of section 244, and amendments thereto.

(g) As used in this section, "mental health professional" includes licensed social workers, licensed psychiatrists, licensed psychologists, licensed professional counselors or registered alcohol and other drug abuse counselors licensed or certified as addiction counselors who have been certified by the secretary of corrections to treat offenders pursuant to K.S.A. 2009 Supp. 75-52,144, and amendments thereto.

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

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

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

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

Sec. 306. K.S.A. 22-3427 is hereby amended to read as follows: 22-3427. ~~(1)~~ *(a)* When any person has been convicted of a violation of any law of the state of Kansas and has been sentenced to confinement, it shall be the duty of the sheriff of the county, upon receipt of a certified copy of the journal entry of judgment, judgment form showing conviction, sentence, and commitment, or an order of commitment supported by a recorded judgment of sentence, to cause such person to be confined in accordance with the sentence.

~~(2)~~ *(b)* The certified copy of a judgment and sentence to confinement or imprisonment shall be sufficient authority for the jailer or warden or other person in charge of the place of confinement to detain such person for the period of the sentence.

(c) The court shall forward a copy of all presentence investigation reports and other diagnostic reports on the offender received by the district court, including any reports received from the Topeka correctional facility— east or the state security hospital, to the officer having the offender in custody for delivery with the offender to the correctional institution.

Sec. 307. K.S.A. 21-3101, 21-3102, 21-3103, 21-3104, 21-3105, 21-3106, 21-3107, 21-3108, 21-3109, 21-3110a, 21-3111, 21-3112, 21-3201, 21-3202, 21-3203, 21-3204, 21-3205, 21-3206, 21-3207, 21-3208, 21-3209, 21-3210, 21-3211, 21-3212, 21-3213, 21-3214, 21-3215, 21-3216, 21-3217, 21-3218, 21-3219, 21-3301, 21-3302, 21-3303, 21-3401, 21-3402, 21-3403, 21-3404, 21-3405, 21-3406, 21-3408, 21-3409, 21-3410, 21-3411, 21-3412, 21-3413, 21-3414, 21-3415, 21-3416, 21-3418, 21-3420, 21-3421, 21-3422, 21-3422a, 21-3423, 21-3424, 21-3425, 21-3426, 21-3427, 21-3428, 21-3430, 21-3434, 21-3435, 21-3437, 21-3439, 21-3442, 21-3443, 21-3444, 21-3445, 21-3446, 21-3447, 21-3448, 21-3449, 21-3450, 21-3451, 21-3452, 21-3501, 21-3502, 21-3503, 21-3504, 21-3505, 21-3506, 21-3507, 21-3508, 21-3510, 21-3511, 21-3512, 21-3513, 21-3515, 21-3516, 21-3517, 21-3518, 21-3520, 21-3521, 21-3522, 21-3601, 21-3602, 21-3603, 21-3604, 21-3604a, 21-3605, 21-3608, 21-3609, 21-3610b, 21-3612, 21-3701, 21-3703, 21-3704, 21-3707, 21-3709, 21-3710, 21-3711, 21-3712, 21-3713, 21-3715, 21-3716, 21-3719, 21-3720, 21-3721, 21-3722, 21-3724, 21-3725, 21-3726, 21-3727, 21-3728, 21-3729, 21-3730, 21-3731, 21-3734, 21-3738, 21-3739, 21-3742, 21-3743, 21-3744, 21-3748, 21-3749, 21-3750, 21-3751, 21-3755, 21-3756, 21-3757, 21-3758, 21-3759, 21-3760, 21-3761, 21-3762, 21-3763, 21-3764, 21-3765, 21-3766, 21-3801, 21-3802, 21-3805, 21-3807, 21-3808, 21-3809, 21-3810, 21-3812, 21-3813, 21-3814, 21-3815, 21-3816, 21-3817, 21-3818, 21-3819, 21-3820, 21-3821, 21-3822, 21-3823, 21-3824, 21-3825, 21-3827, 21-3828, 21-3829, 21-3830, 21-3831, 21-3832, 21-3833, 21-3834, 21-3835, 21-3836, 21-3837, 21-3838, 21-3839, 21-3840, 21-3841, 21-3842, 21-3844, 21-3845, 21-3846, 21-3847, 21-3848, 21-3849, 21-3850, 21-3851, 21-3852, 21-3853, 21-3854, 21-3855, 21-3856, 21-3901, 21-3902, 21-3903, 21-3904, 21-3905, 21-3910, 21-3911, 21-3912, 21-4001, 21-4002, 21-4003, 21-4004, 21-4005, 21-4006, 21-4018, 21-4019, 21-4101, 21-4102, 21-4103, 21-4104, 21-4105, 21-4106, 21-4106a, 21-4107, 21-4110, 21-4111, 21-4113, 21-4202, 21-4204a, 21-4206, 21-4207, 21-4208, 21-4209, 21-4209a, 21-4209b, 21-4210, 21-4211, 21-4212, 21-4213, 21-4216, 21-4219, 21-4220, 21-4221, 21-4222, 21-4223, 21-4224, 21-4225, 21-4227, 21-4228, 21-4229, 21-4230, 21-4231, 21-4232, 21-4301, 21-4301a, 21-4301b, 21-4301c, 21-4302, 21-4303, 21-4303a, 21-4304, 21-4305, 21-4306, 21-4307, 21-4308, 21-4309, 21-4311, 21-4312, 21-4313, 21-4314, 21-4317, 21-4318, 21-4401, 21-4402, 21-4403, 21-4404, 21-4405, 21-4406, 21-4407, 21-4408, 21-4409, 21-4410, 21-4501, 21-4501a, 21-4503, 21-4503a, 21-4504, 21-4601, 21-4602, 21-4603, 21-4603b, 21-4604, 21-4605, 21-4606, 21-4606a, 21-4606b, 21-4607, 21-4609, 21-4610, 21-4610a, 21-4612, 21-4613, 21-4614, 21-4614a, 21-4615, 21-4618, 21-4620, 21-4621, 21-4622, 21-4623, 21-4624, 21-4625, 21-4626, 21-4627, 21-4629, 21-4630, 21-4631, 21-4632, 21-4633, 21-4634, 21-4635, 21-4636, 21-4637, 21-4638, 21-4639, 21-4640, 21-4641, 21-4643, 21-4644, 21-4645, 21-4701, 21-4702, 21-4703, 21-4706, 21-4707, 21-4709, 21-4710, 21-4711, 21-4716, 21-4718, 21-4720, 21-4721, 21-4722, 21-4723, 21-4724, 21-4725, 21-4726, 21-4727, 21-4728, 21-4801 and 22-3427 and K.S.A. 2009 Supp. 21-3110, 21-3412a, 21-3419, 21-3419a, 21-3436, 21-3438, 21-3523, 21-3525, 21-3608a, 21-3610, 21-

3610c, 21-3702, 21-3705, 21-3718, 21-3736, 21-3737, 21-3811, 21-3826, 21-3843, 21-4015a, 21-4201, 21-4203 21-4204, 21-4205, 21-4217, 21-4218, 21-4226 21-4310, 21-4315, 21-4316, 21-4319, 21-4502, 21-4603d, 21-4608, 21-4611, 21-4619, 21-4642 21-4704, 21-4705, 21-4708, 21-4713, 21-4714, 21-4715, 21-4717, 21-4719 and 21-4729 are hereby repealed.

Sec. 308. This act shall take effect and be in force on and after July 1, 2011, and its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

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HOUSE adopted
Conference Committee Report _____

_____
Speaker of the House.

_____
Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

_____
President of the Senate.

_____
Secretary of the Senate.

APPROVED _____

_____
Governor.