

HOUSE BILL No. 2458

AN ACT concerning crimes, punishment and criminal procedure; creating the crime of counterfeiting currency; relating to mistreatment of a dependent adult and mistreatment of an elder person; inherently dangerous felonies; assault and battery; definition of law enforcement officer; controlled substances; possession; escape and aggravated escape from custody; definition of escape; certified drug abuse treatment programs; amending K.S.A. 2017 Supp. 21-5402, 21-5412, 21-5413, 21-5417, 21-5706, 21-5911 and 21-6824 and repealing the existing sections; also repealing K.S.A. 2017 Supp. 21-5417, as amended by section 3 of 2018 Senate Bill No. 217.

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

New Section 1. (a) Counterfeiting currency is, with the intent to defraud:

(1) Making, forging or altering any note, obligation or security of the United States;

(2) distributing, or possessing with the intent to distribute, any obligation or security of the United States knowing such obligation or security has been so made, forged or altered; or

(3) possessing any paper, ink, printer, press, currency plate or other item with the intent to produce any counterfeit note, currency, obligation or security of the United States.

(b) Counterfeiting currency as defined in:

(1) Subsection (a)(1) or (a)(2) is a:

(A) Severity level 7, nonperson felony, if the total face value of the obligations or securities seized is \$25,000 or more; and

(B) severity level 8, nonperson felony, if the total face value of the obligations or securities seized is less than \$25,000; and

(2) subsection (a)(3) is a severity level 9, nonperson felony.

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

Sec. 2. K.S.A. 2017 Supp. 21-5402 is hereby amended to read as follows: 21-5402. (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~~ K.S.A. 2017 Supp. 21-5408(a), and amendments thereto;

(B) aggravated kidnapping, as defined in ~~subsection (b) of~~ K.S.A. 2017 Supp. 21-5408(b), and amendments thereto;

(C) robbery, as defined in ~~subsection (a) of~~ K.S.A. 2017 Supp. 21-5420(a), and amendments thereto;

(D) aggravated robbery, as defined in ~~subsection (b) of~~ K.S.A. 2017 Supp. 21-5420(b), and amendments thereto;

(E) rape, as defined in K.S.A. 2017 Supp. 21-5503, and amendments thereto;

(F) aggravated criminal sodomy, as defined in ~~subsection (b) of~~ K.S.A. 2017 Supp. 21-5504(b), and amendments thereto;

(G) abuse of a child, as defined in K.S.A. 2017 Supp. 21-5602, and amendments thereto;

(H) felony theft of property, as defined in ~~subsection (a)(1) or (a)(3) of~~ K.S.A. 2017 Supp. 21-5801(a)(1) or (a)(3), and amendments thereto;

(I) burglary, as defined in ~~subsection (a) of~~ K.S.A. 2017 Supp. 21-5807(a), and amendments thereto;

(J) aggravated burglary, as defined in ~~subsection (b) of~~ K.S.A. 2017 Supp. 21-5807(b), and amendments thereto;

(K) arson, as defined in ~~subsection (a) of~~ K.S.A. 2017 Supp. 21-5812(a), and amendments thereto;

(L) aggravated arson, as defined in ~~subsection (b) of~~ K.S.A. 2017 Supp. 21-5812(b), and amendments thereto;

(M) treason, as defined in K.S.A. 2017 Supp. 21-5901, and amendments thereto;

(N) any felony offense as provided in K.S.A. 2017 Supp. 21-5703, 21-5705 or 21-5706, and amendments thereto;

(O) any felony offense as provided in ~~subsection (a) or (b) of K.S.A. 2017 Supp. 21-6308(a) or (b)~~, and amendments thereto;

(P) endangering the food supply, as defined in ~~subsection (a) of K.S.A. 2017 Supp. 21-6317(a)~~, and amendments thereto;

(Q) aggravated endangering the food supply, as defined in ~~subsection (b) of K.S.A. 2017 Supp. 21-6317(b)~~, and amendments thereto;

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

(S) aggravated endangering a child, as defined in ~~subsection (b)(1) of K.S.A. 2017 Supp. 21-5601(b)(1)~~, and amendments thereto;

(T) abandonment of a child, as defined in ~~subsection (a) of K.S.A. 2017 Supp. 21-5605(a)~~, and amendments thereto; ~~or~~

(U) aggravated abandonment of a child, as defined in ~~subsection (b) of K.S.A. 2017 Supp. 21-5605(b)~~, and amendments thereto; ~~and or~~

(V) *mistreatment of a dependent adult or mistreatment of an elder person, as defined in K.S.A. 2017 Supp. 21-5417, 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 K.S.A. 2017 Supp. 21-5403(a)(1)~~, and amendments thereto;

(C) voluntary manslaughter, as defined in ~~subsection (a)(1) of K.S.A. 2017 Supp. 21-5404(a)(1)~~, and amendments thereto;

(D) aggravated assault, as defined in ~~subsection (b) of K.S.A. 2017 Supp. 21-5412(b)~~, and amendments thereto;

(E) aggravated assault of a law enforcement officer, as defined in ~~subsection (d) of K.S.A. 2017 Supp. 21-5412(d)~~, and amendments thereto;

(F) aggravated battery, as defined in ~~subsection (b)(1) of K.S.A. 2017 Supp. 21-5413(b)(1)~~, and amendments thereto; or

(G) aggravated battery against a law enforcement officer, as defined in ~~subsection (d) of K.S.A. 2017 Supp. 21-5413(d)~~, and amendments thereto.

(d) Murder in the first degree as defined in subsection (a)(2) is an alternative method of proving murder in the first degree and is not a separate crime from murder in the first degree as defined in subsection (a)(1). The provisions of K.S.A. 2017 Supp. 21-5109, and amendments thereto, are not applicable to murder in the first degree as defined in subsection (a)(2). Murder in the first degree as defined in subsection (a)(2) is not a lesser included offense of murder in the first degree as defined in subsection (a)(1), and is not a lesser included offense of capital murder as defined in K.S.A. 2017 Supp. 21-5401, and amendments thereto. As set forth in subsection (b) of K.S.A. 2017 Supp. 21-5109, and amendments thereto, there are no lesser included offenses of murder in the first degree under subsection (a)(2).

(e) The amendments to this section by ~~this act~~ *chapter 96 of the 2013 Session Laws of Kansas* establish a procedural rule for the conduct of criminal prosecutions and shall be construed and applied retroactively to all cases currently pending.

Sec. 3. K.S.A. 2017 Supp. 21-5412 is hereby amended to read as follows: 21-5412. (a) Assault is knowingly placing another person in reasonable apprehension of immediate bodily harm;

(b) Aggravated assault is assault, as defined 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; or

(3) *a uniformed or properly identified federal law enforcement officer as defined in K.S.A. 2017 Supp. 21-5413, and amendments thereto, 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~~ K.S.A. 2017 Supp. 21-6804(g), and amendments thereto.

Sec. 4. K.S.A. 2017 Supp. 21-5413 is hereby amended to read as follows: 21-5413. (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; or

(3) (A) committing an act described in K.S.A. 8-1567, and amendments thereto, when great bodily harm to another person or disfigurement of another person results from such act; or

(B) committing an act described in K.S.A. 8-1567, and amendments thereto, when bodily harm to another person results from such act under circumstances whereby great bodily harm, disfigurement or death can result from such act.

(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;

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

(C) *uniformed or properly identified federal law enforcement officer while such officer is engaged in the performance of such officer's duty;*

~~(D)~~ judge, while such judge is engaged in the performance of such judge's duty;

~~(E)~~ attorney, while such attorney is engaged in the performance of such attorney's duty; or

~~(F)~~ community corrections officer or court services officer, while such officer is engaged in the performance of such officer's duty;

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

(A) Uniformed or properly identified university or campus police of-

ficer 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 or a juvenile detention facility officer, or employee, while such officer is engaged in the performance of such officer's duty;

(C) *uniformed or properly identified federal law enforcement officer while such officer is engaged in the performance of such officer's duty;*

~~(C)(D)~~ judge, while such judge is engaged in the performance of such judge's duty;

~~(D)(E)~~ attorney, while such attorney is engaged in the performance of such attorney's duty; or

~~(E)(F)~~ community corrections officer or court services officer, 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) state correctional 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 confined 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;

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

(C) *uniformed or properly identified federal law enforcement officer while such officer is engaged in the performance of such officer's duty;*

~~(C)(D)~~ judge, while such judge is engaged in the performance of such judge's duty;

~~(D)(E)~~ attorney, while such attorney is engaged in the performance of such attorney's duty; or

~~(E)(F)~~ community corrections officer or court services 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;

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

(C) *uniformed or properly identified federal law enforcement officer while such officer is engaged in the performance of such officer's duty;*

~~(C)(D)~~ judge, while such judge is engaged in the performance of such judge's duty;

~~(D)(E)~~ attorney, while such attorney is engaged in the performance of such attorney's duty; or

~~(E)(F)~~ community corrections officer or court services 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 of-

ficer while such officer is engaged in the performance of such officer's duty; or

(C) *uniformed or properly identified federal law enforcement 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 for aging and disability 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) or (b)(3)(A) is a severity level 5, person felony; and

(D) subsection (b)(2)(B) or (b)(3)(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, whose duties include working at a correctional institution;

(3) "juvenile detention facility officer or employee" means any officer or employee of a juvenile detention facility as defined in K.S.A. 2017 Supp. 38-2302, and amendments thereto;

(4) "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, whose duties include working at a city holding facility or county jail facility;

(5) "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;

(6) "mental health employee" means: (A) An employee of the Kansas department for aging and disability services working at Larned state hospital, Osawatomie state hospital, 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; and (B) contractors and employees of contractors under contract to provide services to the Kansas department for aging and disability services working at any such institution or facility;

(7) "judge" means a duly elected or appointed justice of the supreme court, judge of the court of appeals, judge of any district court of Kansas, district magistrate judge or municipal court judge;

(8) "attorney" means a: (A) County attorney, assistant county attorney, special assistant county attorney, district attorney, assistant district

attorney, special assistant district attorney, attorney general, assistant attorney general or special assistant attorney general; and (B) public defender, assistant public defender, contract counsel for the state board of indigents' defense services or an attorney who is appointed by the court to perform services for an indigent person as provided by article 45 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto;

(9) "community corrections officer" means an employee of a community correctional services program responsible for supervision of adults or juveniles as assigned by the court to community corrections supervision and any other employee of a community correctional services program that provides enhanced supervision of offenders such as house arrest and surveillance programs; ~~and~~

(10) "court services officer" means an employee of the Kansas judicial branch or local judicial district responsible for supervising, monitoring or writing reports relating to adults or juveniles as assigned by the court, or performing related duties as assigned by the court; *and*

(11) "federal law enforcement officer" means a law enforcement officer employed by the United States federal government who, as part of such officer's duties, is permitted to make arrests and to be armed.

Sec. 5. K.S.A. 2017 Supp. 21-5417 is hereby amended to read as follows: 21-5417. (a) Mistreatment of a dependent adult *or an elder person* is knowingly committing one or more of the following acts:

(1) Infliction of physical injury, unreasonable confinement or unreasonable punishment upon a dependent adult *or an elder person*;

(2) taking the personal property or financial resources of a dependent adult *or an elder person* for the benefit of the defendant or another person by taking control, title, use or management of the personal property or financial resources of a dependent adult *or an elder person* through:

(A) Undue influence, coercion, harassment, duress, deception, false representation, false pretense or without adequate consideration to such dependent adult *or elder person*;

(B) a violation of the Kansas power of attorney act, K.S.A. 58-650 et seq., and amendments thereto; ~~or~~

(C) a violation of the Kansas uniform trust code, K.S.A. 58a-101 et seq., and amendments thereto; or

(D) *a violation of the act for obtaining a guardian or a conservator, or both, K.S.A. 59-3050 et seq., and amendments thereto; or*

(3) omission or deprivation of treatment, goods or services that are necessary to maintain physical or mental health of such dependent adult *or elder person*.

(b) ~~Mistreatment of an elder person is knowingly committing one or more of the following acts:~~

~~(1) —~~

~~taking the personal property or financial resources of an elder person for the benefit of the defendant or another person by taking control, title, use or management of the personal property or financial resources of an elder person through:~~

~~(A) Undue influence, coercion, harassment, duress, deception, false representation, false pretense or without adequate consideration to such elder person;~~

~~(B) a violation of the Kansas power of attorney act, K.S.A. 58-650 et seq., and amendments thereto; or~~

~~(C) a violation of the Kansas uniform trust code, K.S.A. 58a-101 et seq., and amendments thereto; or~~

~~(2) omission or deprivation of treatment, goods or services that are necessary to maintain physical or mental health of such elder person.~~

~~(c) —Mistreatment of a dependent adult *or an elder person* as defined in:~~

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

~~(2) subsection (a)(2) if the aggregate amount of the value of the personal property or financial resources is:~~

~~(A) \$1,000,000 or more is a severity level 2, person felony;~~

~~(B) at least \$250,000 but less than \$1,000,000 is a severity level 3, person felony;~~

~~(C) at least \$100,000 but less than \$250,000 is a severity level 4, person felony;~~

(D) at least \$25,000 but less than \$100,000 is a severity level 5, person felony;

(E) at least ~~\$1,000~~ \$1,500 but less than \$25,000 is a severity level 7, person felony;

(F) less than ~~\$1,000~~ \$1,500 is a class A person misdemeanor, except as provided in subsection ~~(e)~~ (b)(2)(G); and

(G) less than ~~\$1,000~~ \$1,500 and committed by a person who has, within five years immediately preceding commission of the crime, been convicted of ~~mistreatment of a dependent adult~~ a violation of this section two or more times is a severity level 7, person felony; and

(3) subsection (a)(3) is a severity level 8, person felony.

~~(d) Mistreatment of an elder person as defined in:~~

~~(1) —~~

subsection (b)(1) if the aggregate amount of the value of the personal property or financial resources is:

~~(A) \$1,000,000 or more is a severity level 2, person felony;~~

~~(B) at least \$250,000 but less than \$1,000,000 is a severity level 3, person felony;~~

~~(C) at least \$100,000 but less than \$250,000 is a severity level 4, person felony;~~

~~(D) at least \$25,000 but less than \$100,000 is a severity level 5, person felony;~~

~~(E) at least \$5,000 but less than \$25,000 is a severity level 7, person felony;~~

~~(F) less than \$5,000 is a class A person misdemeanor, except as provided in subsection (d)(1)(G); and~~

~~(G) less than \$5,000 and committed by a person who has, within five years immediately preceding commission of the crime, been convicted of mistreatment of an elder person two or more times is a severity level 7, person felony, and~~

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

~~(e)(c)~~ It shall be an affirmative defense to any prosecution for mistreatment of a dependent adult or ~~mistreatment of an elder person~~ as described in ~~subsections (a)(2) and (b)(1)~~ subsection (a)(2) that:

(1) The personal property or financial resources were given as a gift consistent with a pattern of gift giving to the person that existed before the dependent adult or elder person became vulnerable;

(2) the personal property or financial resources were given as a gift consistent with a pattern of gift giving to a class of individuals that existed before the dependent adult or elder person became vulnerable;

(3) the personal property or financial resources were conferred as a gift by the dependent adult or elder person to the benefit of a person or class of persons, and such gift was reasonable under the circumstances; or

(4) a court approved the transaction before the transaction occurred.

~~(d)~~ No dependent adult or elder person is considered to be mistreated under subsection (a)(1); or (a)(3) or ~~(b)(2)~~ for the sole reason that such dependent adult or elder person 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 or elder person is a member or adherent.

~~(e)~~(e) As used in this section:

(1) “Adequate consideration” means the personal property or financial resources were given to the person as payment for bona fide goods or services provided by such person and the payment was at a rate customary for similar goods or services in the community that the dependent adult or elder person resided in at the time of the transaction.

(2) “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:

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

(B) adult cared for in a private residence;

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

(D) individual with intellectual disability or a developmental disability receiving services through a community facility for people with intellec-

tual disability or residential facility licensed under K.S.A. ~~75-3307b~~ 2017 Supp. 39-2001 *et seq.*, and amendments thereto;

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

(F) individual kept, cared for, treated, boarded, confined or otherwise accommodated in a state psychiatric hospital or state institution for people with intellectual disability.

(3) “Elder person” means a person ~~70~~ 60 years of age or older.

~~(h)~~(f) An offender who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any other offense in article 54, 55, 56 or 58 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2017 Supp. 21-6418, and amendments thereto.

Sec. 6. K.S.A. 2017 Supp. 21-5706 is hereby amended to read as follows: 21-5706. (a) It shall be unlawful for any person to possess any opiates, opium or narcotic drugs, or any stimulant designated in K.S.A. 65-4107(d)(1), (d)(3) or (f)(1), and amendments thereto, or a controlled substance analog thereof.

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

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

(2) any stimulant designated in K.S.A. 65-4105(f), K.S.A. 65-4107(d)(2), (d)(4), (d)(5) or (f)(2) or K.S.A. 65-4109(e), and amendments thereto;

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

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

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

(6) any substance designated in K.S.A. 65-4113, and amendments thereto; or

(7) any substance designated in K.S.A. 65-4105(h), and amendments thereto.

(c) (1) Violation of subsection (a) is a drug severity level 5 felony.

(2) Except as provided in subsection (c)(3):

(A) Violation of subsection (b) is a class A nonperson misdemeanor, except as provided in subsection (c)(2)(B); and

(B) violation of subsection (b)(1) through (b)(5) or (b)(7) is a drug severity level 5 felony if that person has a prior conviction under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense if the substance involved was 3, 4-methylenedioxymethamphetamine (MDMA), marijuana as designated in K.S.A. 65-4105(d), and amendments thereto, or any substance designated in K.S.A. 65-4105(h), and amendments thereto, or an analog thereof.

(3) If the substance involved is marijuana, as designated in K.S.A. 65-4105(d), and amendments thereto, or *tetrahydrocannabinols, as designated in K.S.A. 65-4105(h), and amendments thereto*, violation of subsection (b) is a:

(A) Class B nonperson misdemeanor, except as provided in (c)(3)(B) and (c)(3)(C);

(B) class A nonperson misdemeanor if that person has a prior conviction under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense; and

(C) drug severity level 5 felony if that person has two or more prior convictions under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense.

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

party in a transaction involving a controlled substance or controlled substance analog.

Sec. 7. K.S.A. 2017 Supp. 21-5911 is hereby amended to read as follows: 21-5911. (a) Escape from custody is escaping while held in custody on a:

- (1) Charge, conviction of or arrest for a misdemeanor;
- (2) charge, adjudication or arrest 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 an adjudication of a misdemeanor.

(b) Aggravated escape from custody is:

- (1) Escaping while held in custody:
 - (A) Upon a charge, conviction of or arrest for a felony;
 - (B) upon a charge, adjudication or arrest 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 or 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) or (b)(1)(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, person felony; and
- (D) subsection (b)(2)(B) or (b)(2)(G) is a severity level 5, person felony.

(d) As used in this section and K.S.A. 2017 Supp. 21-5912, 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.~~

(A) *Departure from custody without lawful authority; or*

(B) *failure to return to custody following temporary leave lawfully granted by:*

(i) *Express authorization of law;*

(ii) *order of a court; or*

(iii) *a custodial official authorized to grant such leave;*

(3) “juvenile offender” means the same as in K.S.A. 2017 Supp. 38-2302, and amendments thereto; and

(4) “state correctional institution” means the same as in K.S.A. 75-5202, and amendments thereto.

(e) As used in this section, the term “charge” shall not require that the offender was held on a written charge contained in a complaint, information or indictment, if such offender was arrested prior to such offender’s escape from custody.

Sec. 8. K.S.A. 2017 Supp. 21-6824 is hereby amended to read as follows: 21-6824. (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, K.S.A. 2010 Supp. 21-36a06, prior to its transfer, or K.S.A. 2017 Supp. 21-5706, and amendments thereto, whose offense is classified in grid blocks:~~

(1) ~~whose offense is classified in grid blocks 5-C, 5-D, 5-E, 5-F, 5-G, 5-H or 5-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, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 2017 Supp. 21-5703, 21-5705 or 21-5716, and amendments thereto, or any substantially similar offense from another jurisdiction; or~~

(2) ~~whose offense is classified in grid blocks 5-A, or 5-B, 4-E, 4-F, 4-G, 4-H or 4-I 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, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 2017 Supp. 21-5703, 21-5705 or 21-5716, 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 K.S.A. 2017 Supp. 21-6813, and amendments thereto, offenders who meet the requirements of subsection (a), unless otherwise specifically ordered by the court, 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. The criminal risk-need assessment shall assign a high or low risk status to the offender.

(c) If the offender is assigned a high risk status as determined by the drug abuse assessment performed pursuant to subsection (b)(1) and a moderate or high risk status as determined by the criminal risk-need assessment performed pursuant to subsection (b)(2), 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 K.S.A. 2017 Supp. 21-6608(c)(3), and amendments thereto. The term of treatment may not exceed the term of probation.~~

(d) (1) Offenders who are committed to a drug abuse treatment pro-

gram pursuant to subsection (c) shall be supervised by community correctional services.

(2) Offenders who are not committed to a drug abuse treatment program pursuant to subsection (c) shall be supervised by community correctional services or court services based on the result of the criminal risk assessment.

(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 K.S.A. 2017 Supp. 21-6604(n), and amendments thereto.

(g) As used in this section, "mental health professional" includes licensed social workers, persons licensed to practice medicine and surgery, 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. 2017 Supp. 75-52,144, and amendments thereto.

(h) (1) 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, if such offenders:

(A) 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) are not lawfully present in the United States and being detained for deportation; or

(C) do not meet the risk assessment levels provided in subsection (c).

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

(i) The court may order an offender who otherwise does not meet the requirements of subsection (c) to undergo one additional drug abuse assessment while such offender is on probation. Such offender may be ordered to undergo drug abuse treatment pursuant to subsection (a) if such offender is determined to meet the requirements of subsection (c). The cost of such assessment shall be paid by such offender.

Sec. 9. K.S.A. 2017 Supp. 21-5402, 21-5412, 21-5413, 21-5417, 21-5417, as amended by section 3 of 2018 Senate Bill No. 217, 21-5706, 21-5911 and 21-6824 are hereby repealed.

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

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

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.