

3
4 **SENATE BILL No. 235**

5
6 By Committee on Judiciary

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8 2-5

9
10 AN ACT concerning crimes and punishment; relating to domestic bat-
11 tery; amending **K.S.A. 21-3440** and K.S.A. 2000 Supp. 21-3412, **21-**
12 **4704, 60-3107, 72-1397, 72-5445 and 74-5602** and repealing the
13 existing ~~section~~ **sections**.

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

16 New Section 1. (a) Domestic battery is:

17 (1) intentionally or recklessly causing bodily harm by a family or
18 household member against a family or household member; or

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

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

28 (2) If, within five years immediately preceding commission of the
29 crime, a person is convicted of a violation of domestic battery a second
30 time, such person shall be guilty of a class A person misdemeanor and
31 sentenced to not less than 90 days nor more than one year's imprisonment
32 and fined not less than \$500 nor more than \$1,000. The five days' im-
33 prisonment mandated by this subsection may be served in a work release
34 program only after such person has served 48 consecutive hours' impris-
35 onment, provided such work release program requires such person to
36 return to confinement at the end of each day in the work release program.
37 The person convicted must serve at least five consecutive days' impris-
38 onment before the person is granted probation, suspension or reduction
39 of sentence or parole or is otherwise released. As a condition of any grant
40 of probation, suspension of sentence or parole or of any other release,
41 the person shall be required to enter into and complete a treatment pro-
42 gram for domestic violence prevention.

43 (3) If, within five years immediately preceding commission of the

1 crime, a person is convicted of a violation of domestic battery a third or
2 subsequent time, such person shall be guilty of a person felony and sen-
3 tenced to not less than 90 days nor more than one year's imprisonment
4 and fined not less than \$1,000 nor more than \$2,500. The person con-
5 victed shall not be eligible for release on probation, suspension or reduc-
6 tion of sentence or parole until the person has served at least 90 days'
7 imprisonment. The court may also require as a condition of parole that
8 such person enter into and complete a treatment program for domestic
9 violence. The 90 days' imprisonment mandated by this subsection may
10 be served in a work release program only after such person has served
11 48 consecutive hours' imprisonment, provided such work release program
12 requires such person to return to confinement at the end of each day in
13 the work release program.

14 (c) As used in this section:

15 (1) Family or household member means persons 18 years of age or
16 older who are spouses, former spouses, parents or stepparents and chil-
17 dren or stepchildren, and persons who are presently residing together or
18 who have resided together in the past, and persons who have a child in
19 common regardless of whether they have been married or who have lived
20 together at any time. Family or household member also includes a man
21 and woman if the woman is pregnant and the man is alleged to be the
22 father, regardless of whether they have been married or have lived to-
23 gether at any time; and

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

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

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

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

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

42 Sec. 2. K.S.A. 2000 Supp. 21-3412 is hereby amended to read as
43 follows: 21-3412. (a) Battery is:

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

3 (2) intentionally causing physical contact with another person when
4 done in a rude, insulting or angry manner.

5 (b) Except as provided in subsection (c), Battery is a class B person
6 misdemeanor.

7 ~~(c) (1) Upon a first conviction of a violation of this section under
8 circumstances which constitute a domestic battery, a person shall be guilty
9 of a class B person misdemeanor and sentenced to not less than 48 con-
10 secutive hours nor more than six months' imprisonment and fined not
11 less than \$200, nor more than \$500 or in the court's discretion the court
12 may enter an order which requires the person enroll in and successfully
13 complete a domestic violence prevention program.~~

14 ~~—(2) If, within five years immediately preceding commission of the
15 crime, a person is convicted of a violation of this section a second time
16 under circumstances which constitute a domestic battery, such person
17 shall be guilty of a class A person misdemeanor and sentenced to not less
18 than 90 days nor more than one year's imprisonment and fined not less
19 than \$500 nor more than \$1,000. The five days' imprisonment mandated
20 by this subsection may be served in a work release program only after
21 such person has served 48 consecutive hours' imprisonment, provided
22 such work release program requires such person to return to confinement
23 at the end of each day in the work release program. The person convicted
24 must serve at least five consecutive days' imprisonment before the person
25 is granted probation, suspension or reduction of sentence or parole or is
26 otherwise released. As a condition of any grant of probation, suspension
27 of sentence or parole or of any other release, the person shall be required
28 to enter into and complete a treatment program for domestic violence
29 prevention.~~

30 ~~—(3) If, within five years immediately preceding commission of the
31 crime, a person is convicted of a violation of this crime a third or subse-
32 quent time under circumstances which constitute a domestic battery,
33 such person shall be guilty of a person felony and sentenced to not less
34 than 90 days nor more than one year's imprisonment and fined not less
35 than \$1,000 nor more than \$2,500. The person convicted shall not be
36 eligible for release on probation, suspension or reduction of sentence or
37 parole until the person has served at least 90 days' imprisonment. The
38 court may also require as a condition of parole that such person enter
39 into and complete a treatment program for domestic violence. The 90
40 days' imprisonment mandated by this subsection may be served in a work
41 release program only after such person has served 48 consecutive hours'
42 imprisonment, provided such work release program requires such person
43 to return to confinement at the end of each day in the work release~~

1 program.

2 ~~—(4) As used in this section: (A) Domestic battery means a battery~~
3 ~~against a family or household member by a family or household member;~~

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

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

15 ~~—(i) “Conviction” includes being convicted of a violation of this section~~
16 ~~or entering into a diversion or deferred judgment agreement in lieu of~~
17 ~~further criminal proceedings on a complaint alleging a violation of this~~
18 ~~section;~~

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

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

29 ~~—(iv) it is irrelevant whether an offense occurred before or after con-~~
30 ~~viction for a previous offense.~~

31 **Sec. 3. K.S.A. 21-3440 is hereby amended to read as follows:**
32 **21-3440. (a) Injury to a pregnant woman is injury to a pregnant**
33 **woman by a person other than the pregnant woman in the commis-**
34 **sion of a felony or misdemeanor causing the pregnant woman to**
35 **suffer a miscarriage as a result of that injury.**

36 **(b) As used in this section, “miscarriage” means the interrup-**
37 **tion of the normal development of the fetus, other than by a live**
38 **birth, resulting in the complete expulsion or extraction from a preg-**
39 **nant woman of a product of human conception.**

40 **(c) Injury to a pregnant woman in the commission of a felony**
41 **is a severity level 4, person felony. Injury to a pregnant woman in**
42 **the commission of a violation of K.S.A. 21-3412, subsection (a)(1)**
43 **of K.S.A. 21-3413, subsections (b)(1) and (b)(2) of section 1 or K.S.A.**

1 **21-3517, and amendments thereto, is a severity level 5, person fel-**
2 **ony. Injury to a pregnant woman in the commission of a misde-**
3 **meanor other than a violation of K.S.A. 21-3412, subsection (a)(1)**
4 **of K.S.A. 21-3413, subsections (b)(1) and (b)(2) of section 1 or K.S.A.**
5 **21-3517, and amendments thereto, is a class A person misdemeanor.**

6 **(d) The provisions of this section shall be part of and supple-**
7 **mental to the Kansas criminal code.**

8 **Sec. 4. K.S.A. 2000 Supp. 21-4704 is hereby amended to read**
9 **as follows: 21-4704. (a) For purposes of sentencing, the following**
10 **sentencing guidelines grid for nondrug crimes shall be applied in**
11 **felony cases for crimes committed on or after July 1, 1993:**

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

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

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

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

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

29 **(3) In presumptive nonprison cases, the sentencing court shall**
30 **pronounce the prison sentence as well as the duration of the non-**
31 **prison sanction at the sentencing hearing.**

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

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

1 **(2) the recommended treatment program is available and the**
2 **offender can be admitted to such program within a reasonable pe-**
3 **riod of time; or**

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

6 **Any decision made by the court regarding the imposition of an**
7 **optional nonprison sentence if the offense is classified in grid blocks**
8 **5-H, 5-I or 6-G shall not be considered a departure and shall not**
9 **be subject to appeal.**

10 **(g) The sentence for the violation of K.S.A. 21-3411, and amend-**
11 **ments thereto, aggravated assault against a law enforcement officer**
12 **or K.S.A. 21-3415, and amendments thereto, aggravated battery**
13 **against a law enforcement officer and amendments thereto which**
14 **places the defendant's sentence in grid block 6-H or 6-I shall be**
15 **presumed imprisonment. The court may impose an optional non-**
16 **prison sentence upon making a finding on the record that the non-**
17 **prison sanction will serve community safety interests by promoting**
18 **offender reformation. Any decision made by the court regarding the**
19 **imposition of the optional nonprison sentence, if the offense is clas-**
20 **sified in grid block 6-H or 6-I, shall not be considered departure**
21 **and shall not be subject to appeal.**

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

30 **(i) The sentence for the violation of the felony provision of**
31 **K.S.A. 8-1567 and subsection ~~(c)(3)~~ of K.S.A. 21-3412 (b)(3) of section**
32 **1 and amendments thereto shall be as provided by the specific man-**
33 **datory sentencing requirements of that section and shall not be sub-**
34 **ject to the provisions of this section or K.S.A. 21-4707 and amend-**
35 **ments thereto. Notwithstanding the provisions of any other section,**
36 **the term of imprisonment imposed for the violation of the felony**
37 **provision of K.S.A. 8-1567 and subsection ~~(c)(3)~~ of K.S.A. 21-3412**
38 **(b)(3) of section 1 and amendments thereto shall not be served in a**
39 **state facility in the custody of the secretary of corrections.**

40 **(j) The sentence for any persistent sex offender whose current**
41 **convicted crime carries a presumptive term of imprisonment shall**
42 **be double the maximum duration of the presumptive imprisonment**
43 **term. The sentence for any persistent sex offender whose current**

1 **conviction carries a presumptive nonprison term shall be presumed**
2 **imprisonment and shall be double the maximum duration of the**
3 **presumptive imprisonment term. Except as otherwise provided in**
4 **this subsection, as used in this subsection, “persistent sex offender”**
5 **means a person who: (1) Has been convicted in this state of a sex-**
6 **ually violent crime, as defined in K.S.A. 22-3717 and amendments**
7 **thereto; and (2) at the time of the conviction under subsection (1)**
8 **has at least one conviction for a sexually violent crime, as defined**
9 **in K.S.A. 22-3717 and amendments thereto in this state or compa-**
10 **erable felony under the laws of another state, the federal government**
11 **or a foreign government. The provisions of this subsection shall not**
12 **apply to any person whose current convicted crime is a severity**
13 **level 1 or 2 felony.**

14 **(k) If it is shown at sentencing that the offender committed any**
15 **felony violation for the benefit of, at the direction of, or in associ-**
16 **ation with any criminal street gang, with the specific intent to pro-**
17 **moté, further or assist in any criminal conduct by gang members,**
18 **the offender’s sentence shall be presumed imprisonment. Any deci-**
19 **sion made by the court regarding the imposition of the optional**
20 **nonprison sentence shall not be considered a departure and shall**
21 **not be subject to appeal. As used in this subsection, “criminal street**
22 **gang” means any organization, association or group of three or**
23 **more persons, whether formal or informal, having as one of its pri-**
24 **mary activities the commission of one or more person felonies or**
25 **felony violations of the uniform controlled substances act, K.S.A.**
26 **65-4101 et seq., and amendments thereto, which has a common name**
27 **or common identifying sign or symbol, whose members, individu-**
28 **ally or collectively engage in or have engaged in the commission,**
29 **attempted commission, conspiracy to commit or solicitation of two**
30 **or more person felonies or felony violations of the uniform con-**
31 **trolled substances act, K.S.A. 65-4101 et seq., and amendments**
32 **thereto, or any substantially similar offense from another**
33 **jurisdiction.**

34 **(l) The sentence for a violation of subsection (a) of K.S.A. 21-**
35 **3715 and amendments thereto when such person being sentenced**
36 **has a prior conviction for a violation of subsection (a) or (b) of**
37 **K.S.A. 21-3715 or 21-3716 and amendments thereto shall be pre-**
38 **sumed imprisonment.**

39 **Sec. 5. K.S.A. 2000 Supp. 60-3107 is hereby amended to read**
40 **as follows: 60-3107. (a) The court shall be empowered to approve**
41 **any consent agreement to bring about a cessation of abuse of the**
42 **plaintiff or minor children or grant any of the following orders:**

43 **(1) Restraining the parties from abusing, molesting or interfer-**

1 *ing with the privacy or rights of each other or of any minor children*
2 *of the parties. Such order shall contain a statement that if such*
3 *order is violated, such violation may constitute assault as provided*
4 *in K.S.A. 21-3408, and amendments thereto, battery as provided in*
5 *K.S.A. 21-3412, and amendments thereto, domestic battery as pro-*
6 *vided in section 1, and amendments thereto and violation of a protec-*
7 *tive order as provided in K.S.A. 2000 Supp. 21-3843, and amend-*
8 *ments thereto.*

9 (2) *Granting possession of the residence or household to a party*
10 *to the exclusion of the other party, and further restraining the party*
11 *not granted possession from entering or remaining upon or in such*
12 *residence or household, subject to the limitation of subsection (c).*
13 *Such order shall contain a statement that if such order is violated,*
14 *such violation shall constitute criminal trespass as provided in sub-*
15 *section (c) of K.S.A. 21-3721, and amendments thereto, and viola-*
16 *tion of a protective order as provided in K.S.A. 2000 Supp. 21-3843,*
17 *and amendments thereto. The court may grant an order, which shall*
18 *expire 60 days following the date of issuance, restraining the party*
19 *not granted possession from cancelling utility service to the resi-*
20 *dence or household.*

21 (3) *Requiring a party to provide suitable, alternate housing for*
22 *such party's spouse and any minor children of the parties.*

23 (4) *Awarding temporary custody and residency and establish-*
24 *ing temporary parenting time with regard to minor children.*

25 (5) *Ordering a law enforcement officer to evict a party from the*
26 *residence or household.*

27 (6) *Ordering support payments by a party for the support of a*
28 *party's minor child or a party's spouse. Such support orders shall*
29 *remain in effect until modified or dismissed by the court or until*
30 *expiration and shall be for a fixed period of time not to exceed one*
31 *year. On the motion of the plaintiff, the court may extend the effect*
32 *of such order for 12 months.*

33 (7) *Awarding costs and attorney fees to either party.*

34 (8) *Making provision for the possession of personal property of*
35 *the parties and ordering a law enforcement officer to assist in se-*
36 *curing possession of that property, if necessary.*

37 (9) *Requiring the person against whom the order is issued to*
38 *seek counseling to aid in the cessation of abuse.*

39 (b) *Any order entered under the protection from abuse act shall*
40 *not be subject to modification on ex parte application or on motion*
41 *for temporary orders in any action filed pursuant to K.S.A. 60-1601*
42 *et seq., or K.S.A. 38-1101 et seq., and amendments thereto. Orders*
43 *previously issued in an action filed pursuant to K.S.A. 60-1601 et*

1 *seq., or K.S.A. 38-1101 et seq., and amendments thereto, shall be*
2 *subject to modification under the protection from abuse act only as*
3 *to those matters subject to modification by the terms of K.S.A. 60-*
4 *1610 et seq., and amendments thereto, and on sworn testimony to*
5 *support a showing of good cause. Immediate and present danger of*
6 *abuse to the plaintiff or minor children shall constitute good cause.*
7 *If an action is filed pursuant to K.S.A. 60-1610 et seq., or K.S.A. 38-*
8 *1101 et seq., and amendments thereto, during the pendency of a*
9 *proceeding filed under the protection from abuse act or while an*
10 *order issued under the protection from abuse act is in effect, the*
11 *court, on final hearing or on agreement of the parties, may issue*
12 *final orders authorized by K.S.A. 60-1610 and amendments thereto,*
13 *that are inconsistent with orders entered under the protection from*
14 *abuse act. Any inconsistent order entered pursuant to this subsec-*
15 *tion shall be specific in its terms, reference the protection from*
16 *abuse order and parts thereof being modified and a copy thereof*
17 *shall be filed in both actions. The court shall consider whether the*
18 *actions should be consolidated in accordance with K.S.A. 60-242*
19 *and amendments thereto.*

20 (c) *If the parties to an action under the protection from abuse*
21 *act are not married to each other and one party owns the residence*
22 *or household, the court shall not have the authority to grant pos-*
23 *session of the residence or household under subsection (a)(2) to the*
24 *exclusion of the party who owns it.*

25 (d) *Subject to the provisions of subsections (b) and (c), a pro-*
26 *TECTIVE order or approved consent agreement shall remain in effect*
27 *until modified or dismissed by the court and shall be for a fixed*
28 *period of time not to exceed one year, except that, on motion of the*
29 *plaintiff, such period may be extended for one additional year.*

30 (e) *The court may amend its order or agreement at any time*
31 *upon motion filed by either party.*

32 (f) *No order or agreement under the protection from abuse act*
33 *shall in any manner affect title to any real property.*

34 (g) *If a person enters or remains on premises or property vio-*
35 *lating an order issued pursuant to subsection (a)(2), such violation*
36 *shall constitute criminal trespass as provided in subsection (c) of*
37 *K.S.A. 21-3721, and amendments thereto, and violation of a protec-*
38 *tive order as provided in K.S.A. 2000 Supp. 21-3843, and amend-*
39 *ments thereto. If a person abuses, molests or interferes with the*
40 *privacy or rights of another violating an order issued pursuant to*
41 *subsection (a)(1), such violation may constitute assault as provided*
42 *in K.S.A. 21-3408, and amendments thereto, battery as provided in*
43 *K.S.A. 21-3412, and amendments thereto, domestic battery as pro-*

1 *vided in section 1, and amendments thereto, and violation of a protec-*
2 *tive order as provided in K.S.A. 2000 Supp. 21-3843, and amend-*
3 *ments thereto.*

4 **Sec. 6. K.S.A. 2000 Supp. 72-1397 is hereby amended to read**
5 **as follows: 72-1397. (a) The state board of education shall not know-**
6 **ingly issue a certificate to or renew the certificate of any person**
7 **who has been convicted of any offense or attempt to commit any**
8 **offense specified in subsection (c) of K.S.A. 21-4619 and amend-**
9 **ments thereto.**

10 **(b) Except as provided in subsection (c), the state board of ed-**
11 **ucation shall not knowingly issue a certificate to or renew the cer-**
12 **tificate of any person who:**

13 **(1) Has been convicted of a felony under the uniform controlled**
14 **substances act; (2) has been convicted of a felony described in any**
15 **section of article 34 of chapter 21 of the Kansas Statutes Annotated**
16 **or an act described in K.S.A. 21-3412 or section 1, and amendments**
17 **thereto, if the victim is a minor or student; (3) has been convicted**
18 **of a felony described in any section of article 35 of chapter 21 of**
19 **the Kansas Statutes Annotated, other than an act specified in sub-**
20 **section (c) of K.S.A. 21-4619 and amendments thereto, or has been**
21 **convicted of an act described in K.S.A. 21-3517 and amendments**
22 **thereto, if the victim is a minor or student; (4) has been convicted**
23 **of any act described in any section of article 36 of chapter 21 of the**
24 **Kansas Statutes Annotated, other than an act specified in subsection**
25 **(c) of K.S.A. 21-4619 and amendments thereto; (5) has been con-**
26 **vinced of a felony described in article 37 of chapter 21 of the Kansas**
27 **Statutes Annotated; (6) has been convicted of an attempt under**
28 **K.S.A. 21-3301, and amendments thereto, to commit any act speci-**
29 **fied in this subsection; (7) has been convicted of any act which is**
30 **described in K.S.A. 21-4301, 21-4301a or 21-4301c, and amend-**
31 **ments thereto; (8) has been convicted in another state or by the**
32 **federal government of an act similar to any act described in this**
33 **subsection; or (9) has entered into a criminal diversion agreement**
34 **after having been charged with any offense described in this**
35 **subsection.**

36 **(c) The state board of education may issue a certificate to or**
37 **renew the certificate of a person who has been convicted of com-**
38 **mitting an offense or act described in subsection (b) or who has**
39 **entered into a criminal diversion agreement after having been**
40 **charged with an offense or act described in subsection (b) if the**
41 **state board determines, following a hearing, that the person has**
42 **been rehabilitated for a period of at least five years from the date**
43 **of conviction of the offense or commission of the act or, in the case**

1 *of a person who has entered into a criminal diversion agreement,*
2 *that the person has satisfied the terms and conditions of the agree-*
3 *ment. The state board of education may consider factors including,*
4 *but not limited to, the following in determining whether to grant a*
5 *certificate:*

6 *(1) The nature and seriousness of the offense or act;*

7 *(2) the conduct of the person subsequent to commission of the*
8 *offense or act;*

9 *(3) the time elapsed since the commission of the offense or act;*

10 *(4) the age of the person at the time of the offense or act;*

11 *(5) whether the offense or act was an isolated or recurring in-*
12 *cident; and*

13 *(6) discharge from probation, pardon or expungement.*

14 *(d) Before any certificate is denied by the state board of edu-*
15 *cation for any of the offenses or acts specified in subsections (a) and*
16 *(b), the person shall be given notice and an opportunity for a hear-*
17 *ing in accordance with the provisions of the Kansas administrative*
18 *procedure act.*

19 *(e) The county or district attorney shall file a report with the*
20 *state board of education indicating the name, address and social*
21 *security number of any person who has been determined to have*
22 *committed any offense or act specified in subsection (a) or (b) or to*
23 *have entered into a criminal diversion agreement after having been*
24 *charged with any offense or act specified in subsection (b). Such*
25 *report shall be filed within 30 days of the date of the determination*
26 *that the person has committed any such act or entered into any such*
27 *diversion agreement.*

28 *(f) The state board of education shall not be liable for civil dam-*
29 *ages to any person refused issuance or renewal of a certificate by*
30 *reason of the state board's compliance, in good faith, with the pro-*
31 *visions of this section.*

32 *Sec. 7. K.S.A. 2000 Supp. 72-5445 is hereby amended to read*
33 *as follows: 72-5445. (a) (1) Subject to the provisions of subsection*
34 *(b), the provisions of K.S.A. 72-5438 through 72-5443, and amend-*
35 *ments thereto, apply only to: (A) Teachers who have completed not*
36 *less than three consecutive years of employment, and been offered*
37 *a fourth contract, in the school district, area vocational-technical*
38 *school or community college by which any such teacher is currently*
39 *employed; and (B) teachers who have completed not less than two*
40 *consecutive years of employment, and been offered a third contract,*
41 *in the school district, area vocational-technical school or commu-*
42 *nity college by which any such teacher is currently employed if at*
43 *any time prior to the current employment the teacher has completed*

1 *the years of employment requirement of subpart (A) in any school*
2 *district, area vocational-technical school or community college in*
3 *this state.*

4 *(2) Any board may waive, at any time, the years of employment*
5 *requirements of provision (1) for any teachers employed by it.*

6 *(3) The provisions of this subsection are subject to the provi-*
7 *sions of K.S.A. 72-5446, and amendments thereto.*

8 *(b) The provisions of K.S.A. 72-5438 through 72-5443, and*
9 *amendments thereto, do not apply to any teacher whose certificate*
10 *has been nonrenewed or revoked by the state board of education*
11 *for the reason that the teacher: (1) Has been convicted of a felony*
12 *under the uniform controlled substances act; (2) has been convicted*
13 *of a felony described in any section of article 34 of chapter 21 of*
14 *the Kansas Statutes Annotated or an act described in K.S.A. 21-3412*
15 *or section 1, and amendments thereto, if the victim is a minor or*
16 *student; (3) has been convicted of a felony described in any section*
17 *of article 35 of chapter 21 of the Kansas Statutes Annotated, or has*
18 *been convicted of an act described in K.S.A. 21-3517 and amend-*
19 *ments thereto, if the victim is a minor or student; (4) has been con-*
20 *vinced of any act described in any section of article 36 of chapter*
21 *21 of the Kansas Statutes Annotated; (5) has been convicted of a*
22 *felony described in article 37 of chapter 21 of the Kansas Statutes*
23 *Annotated; (6) has been convicted of an attempt under K.S.A. 21-*
24 *3301, and amendments thereto, to commit any act specified in this*
25 *subsection; (7) has been convicted of any act which is described in*
26 *K.S.A. 21-4301, 21-4301a or 21-4301c, and amendments thereto; (8)*
27 *has been convicted in another state or by the federal government*
28 *of an act similar to any act described in this subsection; or (9) has*
29 *entered into a criminal diversion agreement after having been*
30 *charged with any offense described in this subsection.*

31 *Sec. 8. K.S.A. 2000 Supp. 74-5602 is hereby amended to read*
32 *as follows: 74-5602. As used in the Kansas law enforcement training*
33 *act:*

34 *(a) "Training center" means the law enforcement training cen-*
35 *ter within the division of continuing education of the university of*
36 *Kansas, created by K.S.A. 74-5603 and amendments thereto.*

37 *(b) "Commission" means the Kansas law enforcement training*
38 *commission, created by K.S.A. 74-5606 and amendments thereto.*

39 *(c) "Dean" means the dean of the division of continuing edu-*
40 *cation of the university of Kansas.*

41 *(d) "Director," as created in K.S.A. 74-5603 and amendments*
42 *thereto, means the director of police training at the law enforcement*
43 *training center.*

1 **(e) “Police officer” or “law enforcement officer” means a full-**
2 **time or part-time salaried officer or employee of the state, a county**
3 **or a city, whose duties include the prevention or detection of crime**
4 **and the enforcement of the criminal or traffic laws of this state or**
5 **of any municipality thereof. Such terms shall include, but not be**
6 **limited to, the sheriff, undersheriff and full-time or part-time sala-**
7 **ried deputies in the sheriff’s office in each county; deputy sheriffs**
8 **deputized pursuant to K.S.A. 19-2858 and amendments thereto; con-**
9 **servation officers of the Kansas department of wildlife and parks;**
10 **campus police officers at all state educational institutions or a mu-**
11 **nicipal university; law enforcement agents of the director of alco-**
12 **holic beverage control; law enforcement agents of the Kansas lot-**
13 **tery; law enforcement agents of the Kansas racing commission;**
14 **deputies and assistants of the state fire marshal having law enforce-**
15 **ment authority; capitol area security guards, existing under the au-**
16 **thority of K.S.A. 75-4503 and amendments thereto. Such terms shall**
17 **also include railroad policemen appointed pursuant to K.S.A. 66-**
18 **524 and amendments thereto; and school security officers desig-**
19 **nated as school law enforcement officers pursuant to K.S.A. 72-8222**
20 **and amendments thereto. Such terms shall not include any elected**
21 **official, other than a sheriff, serving in the capacity of a law en-**
22 **forcement or police officer solely by virtue of such official’s elected**
23 **position; any attorney-at-law having responsibility for law enforce-**
24 **ment and discharging such responsibility solely in the capacity of**
25 **an attorney; any employee of the secretary of corrections or the**
26 **secretary of social and rehabilitation services; any deputy conser-**
27 **vation officer of the Kansas department of wildlife and parks; or**
28 **any employee of a city or county who is employed solely to perform**
29 **correctional duties related to jail inmates and the administration**
30 **and operation of a jail; or any full-time or part-time salaried officer**
31 **or employee whose duties include the issuance of a citation or notice**
32 **to appear provided such officer or employee is not vested by law**
33 **with the authority to make an arrest for violation of the laws of this**
34 **state or any municipality thereof, and is not authorized to carry**
35 **firearms when discharging the duties of such person’s office or em-**
36 **ployment. Such term shall include any officer appointed or elected**
37 **on a provisional basis.**

38 **(f) “Full-time” means employment requiring at least 1,000**
39 **hours of work per year.**

40 **(g) “Part-time” means employment on a regular schedule or em-**
41 **ployment which requires a minimum number of hours each payroll**
42 **period, but in any case requiring less than 1,000 hours of work per**
43 **year.**

1 **(h) “Misdemeanor crime of domestic violence” means a viola-**
2 **tion of domestic battery as defined by subsection (c)(4) of K.S.A. 21-**
3 **3412 provided by subsections (b)(1) and (b)(2) of section 1 and amend-**
4 **ments thereto, or any other misdemeanor under federal, municipal**
5 **or state law that has as an element the use or attempted use of**
6 **physical force, or the threatened use of a deadly weapon, committed**
7 **by a current or former spouse, parent, or guardian of the victim,**
8 **by a person with whom the victim shares a child in common, by a**
9 **person who is cohabiting with or has cohabited with the victim as**
10 **a spouse, parent or guardian, or by a person similarly situated to a**
11 **spouse, parent or guardian of the victim.**

12 **(i) “Auxiliary personnel” means members of organized nonsa-**
13 **laried groups which operate as an adjunct to a police or sheriff’s**
14 **department, including reserve officers, posses and search and res-**
15 **cue groups.**

16 Sec. ~~3~~ **9. K.S.A. 21-3440 and K.S.A. 2000 Supp. 21-3412 is, 21-**
17 **4704, 60-3107, 72-1397, 72-5445 and 74-5602 are hereby repealed.**

18 Sec. ~~4~~ **10.** This act shall take effect and be in force from and after
19 its publication in the statute book.

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