

HOUSE Substitute for SENATE BILL No. 431

AN ACT concerning crimes, punishment and criminal procedure; amending K.S.A. 8-262, 8-287, 21-3719, 21-4301 and 65-4151 and K.S.A. 2005 Supp. 8-1012, as amended by section 2 of 2006 House Bill No. 2916, 21-3413, 21-3415, 21-3436, 21-3608a, 21-4714 and 21-4729 and repealing the existing sections; reviving and amending K.S.A. 22-2501, as repealed by 2006 Senate Bill No. 366, and repealing the revived section.

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

Section 1. K.S.A. 2005 Supp. 8-1012, as amended by section 2 of 2006 House Bill No. 2916, is hereby amended to read as follows: 8-1012.

(a) Any person who operates or attempts to operate a vehicle within this state is deemed to have given consent to submit to a preliminary screening test of the person's breath subject to the provisions set out in subsection (b).

(b) A law enforcement officer may request a person who is operating or attempting to operate a vehicle within this state to submit to a preliminary screening test of the person's breath to determine the alcohol concentration of the person's breath if the officer has reasonable ~~grounds~~ *suspicion* to believe the person has been operating or attempting to operate a vehicle while under the influence of alcohol or drugs or both alcohol and drugs.

(c) At the time the test is requested, the person shall be given oral notice that: (1) There is no right to consult with an attorney regarding whether to submit to testing; (2) refusal to submit to testing is a traffic infraction; and (3) further testing may be required after the preliminary screening test. Failure to provide the notice shall not be an issue or defense in any action. The law enforcement officer then shall request the person to submit to the test.

(d) Refusal to take and complete the test as requested is a traffic infraction. If the person submits to the test, the results shall be used for the purpose of assisting law enforcement officers in determining whether an arrest should be made and whether to request the tests authorized by K.S.A. 8-1001 and amendments thereto. A law enforcement officer may arrest a person based in whole or in part upon the results of a preliminary screening test. Such results shall not be admissible in any civil or criminal action concerning the operation of or attempted operation of a vehicle except to aid the court or hearing officer in determining a challenge to the validity of the arrest or the validity of the request to submit to a test pursuant to K.S.A. 8-1001 and amendments thereto. Following the preliminary screening test, additional tests may be requested pursuant to K.S.A. 8-1001 and amendments thereto.

Sec. 2. K.S.A. 2005 Supp. 21-3436 is hereby amended to read as follows: 21-3436. (a) Any of the following felonies shall be deemed an inherently dangerous felony whether or not such felony is so distinct from the homicide alleged to be a violation of subsection (b) of K.S.A. 21-3401, and amendments thereto, as not to be an ingredient of the homicide alleged to be a violation of subsection (b) of K.S.A. 21-3401, and amendments thereto:

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

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

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

(4) aggravated robbery, as defined in K.S.A. 21-3427, and amendments thereto;

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

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

(7) abuse of a child, as defined in K.S.A. 21-3609, and amendments thereto;

(8) felony theft under subsection (a) or (c) of K.S.A. 21-3701, and amendments thereto;

(9) burglary, as defined in K.S.A. 21-3715, and amendments thereto;

(10) aggravated burglary, as defined in K.S.A. 21-3716, and amendments thereto;

(11) arson, as defined in K.S.A. 21-3718, and amendments thereto;

(12) aggravated arson, as defined in K.S.A. 21-3719, and amendments thereto;

(13) treason, as defined in K.S.A. 21-3801, and amendments thereto;

(14) any felony offense as provided in K.S.A. 65-4127a, 65-4127b or 65-4159 or 65-4160 through 65-4164, and amendments thereto;

(15) any felony offense as provided in K.S.A. 21-4219, and amendments thereto;

(16) endangering the food supply as defined in K.S.A. 2005 Supp. 21-4221, and amendments thereto;

(17) aggravated endangering the food supply as defined in K.S.A. 2005 Supp. 21-4222, and amendments thereto; ~~or~~

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

(19) *aggravated endangering a child, as defined in subsection (a)(1) of K.S.A. 2005 Supp. 21-3608a, and amendments thereto.*

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

(1) Murder in the first degree, as defined in subsection (a) of K.S.A. 21-3401, and amendments thereto;

(2) murder in the second degree, as defined in subsection (a) of K.S.A. 21-3402, and amendments thereto;

(3) voluntary manslaughter, as defined in subsection (a) of K.S.A. 21-3403, and amendments thereto;

(4) aggravated assault, as defined in K.S.A. 21-3410, and amendments thereto;

(5) aggravated assault of a law enforcement officer, as defined in K.S.A. 21-3411, and amendments thereto;

(6) aggravated battery, as defined in subsection (a)(1) of K.S.A. 21-3414, and amendments thereto; *or*

(7) aggravated battery against a law enforcement officer, as defined in K.S.A. 21-3415, and amendments thereto.

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

Sec. 3. K.S.A. 2005 Supp. 21-3608a is hereby amended to read as follows: 21-3608a. ~~On and after July 1, 2004.~~ (a) Aggravated endangering a child is:

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

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

~~(2)~~ (3) causing or permitting such child to be in an environment where a person is selling, offering for sale or having in such person's possession with intent to sell, deliver, distribute, prescribe, administer, dispense, manufacture or attempt to manufacture any methamphetamine as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto; *or*

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

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

(c) As used in this section:

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

(2) "drug paraphernalia" shall have the meaning ascribed to that term in K.S.A. 65-4150, and amendments thereto.

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

Sec. 4. K.S.A. 21-3719 is hereby amended to read as follows: 21-3719. (a) Aggravated arson is arson, as defined in K.S.A. 21-3718 and amendments thereto, ~~and:~~

(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.*

(b) (1) Aggravated arson *as described in subsection (a)(1)* resulting in a substantial risk of bodily harm is a severity level 3, person felony.

(2) Aggravated arson *as described in subsection (a)(1)* resulting in no substantial risk of bodily harm is a severity level 6, person felony.

(3) Aggravated arson *as described in subsection (a)(2)* is a severity level 3, person felony.

Sec. 5. K.S.A. 21-4301 is hereby amended to read as follows: 21-4301. (a) Promoting obscenity is knowingly or recklessly:

(1) Manufacturing, issuing, selling, giving, providing, lending, mailing, delivering, transmitting, publishing, distributing, circulating, disseminating, presenting, exhibiting or advertising any obscene material or obscene device;

(2) possessing any obscene material or obscene device with intent to issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise such material or device;

(3) offering or agreeing to manufacture, issue, sell, give, provide, lend, mail, deliver, transmit, publish, distribute, circulate, disseminate, 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) Evidence that materials or devices were promoted to emphasize their prurient appeal ~~or sexually provocative aspect~~ shall be relevant in determining the question of the obscenity of such materials or devices. There shall be a 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 sexually provocative aspect~~; or

(2) the person is not a wholesaler and promotes the materials or devices in the course of the person's business.

(c) (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" have the meanings provided by K.S.A. 21-3501 and amendments thereto.

(6) "Wholesaler" means a person who sells, distributes or offers for sale or 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.

(d) It is a defense to a prosecution for obscenity that:

(1) The persons to whom the allegedly obscene material 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) the 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) the 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 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.

(e) 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.

(f) (1) Promoting obscenity is a class A nonperson misdemeanor on conviction of a first offense.

(2) Promoting obscenity is a severity level 9, person felony on conviction of a second or subsequent offense.

(3) Conviction of a violation of a municipal ordinance prohibiting acts which constitute promoting obscenity shall be considered a conviction of promoting obscenity for the purpose of determining the number of prior convictions and the classification of the crime under this section.

(g) Upon any conviction of promoting obscenity, 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.

Sec. 6. K.S.A. 2005 Supp. 21-4714 is hereby amended to read as follows: 21-4714. (a) The court shall order the preparation of the presentence investigation report by the court services officer as soon as possible after conviction of the defendant.

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

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

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

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

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

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

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

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

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

(9) For defendants who are being sentenced for a conviction of a felony violation of K.S.A. 65-4160 or 65-4162, and amendments thereto, and meet the requirements of K.S.A. 2005 Supp. 21-4729, and amendments thereto, the drug ~~and alcohol~~ *abuse* assessment as provided in K.S.A. 2005 Supp. 21-4729, and amendments thereto.

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

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

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

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

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

Sec. 7. K.S.A. 2005 Supp. 21-4729 is hereby amended to read as follows: 21-4729. ~~On and after November 1, 2003.~~ (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, 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, and amendments thereto or any substantially similar offense from another jurisdiction; or

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

(b) ~~(1)~~ As a part of the presentence investigation pursuant to K.S.A. 21-4714, and amendments thereto, offenders who meet the requirements of subsection (a) shall be subject to:

(1) A drug abuse assessment:

~~(2) The drug abuse assessment shall include a statewide, mandatory, standardized risk assessment tool and an instrument validated for drug abuse treatment program placements and which shall include a clinical~~

interview with a mental health professional. ~~Such assessment shall assign a high or low risk status to the offender and include~~ and a recommendation concerning drug abuse treatment for the offender; and

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

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

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

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

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

(A) ~~Is convicted of a new felony, other than a felony conviction of K.S.A. 65-4160 or 65-4162, and amendments thereto; or~~

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

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

(g) As used in this section, "mental health professional" includes licensed social workers, licensed psychiatrists, licensed psychologists, licensed professional counselors or registered alcohol and other drug abuse counselors licensed or certified as addiction counselors who have been certified by the secretary of corrections to treat offenders pursuant to K.S.A. 2005 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. 8. K.S.A. 22-2501, as repealed by 2006 Senate Bill No. 366, is hereby revived and amended to read as follows: 22-2501. When a lawful arrest is effected a law enforcement officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of

(a) Protecting the officer from attack;

(b) Preventing the person from escaping; or

(c) Discovering the fruits, instrumentalities, or evidence of ~~the~~ a crime.

Sec. 9. K.S.A. 65-4151 is hereby amended to read as follows: 65-4151. In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:

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

(b) Prior convictions, if any, of an owner or person in control of the object, under any state or federal law relating to any controlled substance.

(c) The proximity of the object, in time and space, to a direct violation of the uniform controlled substances act.

(d) The proximity of the object to controlled substances.

(e) The existence of any residue of controlled substances on the object.

(f) Direct or circumstantial evidence of the intent of an owner or person in control of the object, to deliver it to a person the owner or person in control of the object knows, or should reasonably know, intends to use the object to facilitate a violation of the uniform controlled substances act. The innocence of an owner or person in control of the object

as to a direct violation of the uniform controlled substances act shall not prevent a finding that the object is intended for use as drug paraphernalia.

(g) Oral or written instructions provided with the object concerning its use.

(h) Descriptive materials accompanying the object which explain or depict its use.

(i) National and local advertising concerning the object's use.

(j) The manner in which the object is displayed for sale.

(k) Whether the owner or person in control of the object is a legitimate supplier of similar or related items to the community, such as a distributor or dealer of tobacco products.

(l) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.

(m) The existence and scope of legitimate uses for the object in the community.

(n) Expert testimony concerning the object's use.

(o) *Any evidence that alleged paraphernalia can or has been used to store a controlled substance or to introduce a controlled substance into the human body as opposed to any legitimate use for the alleged paraphernalia.*

Sec. 10. K.S.A. 8-262 is hereby amended to read as follows: 8-262.

(a) (1) Any person who drives a motor vehicle on any highway of this state at a time when such person's privilege so to do is canceled, suspended or revoked or while such person's privilege to obtain a driver's license is suspended or revoked pursuant to K.S.A. 8-252a, and amendments thereto, shall be guilty of a: ~~(A)~~ Class B nonperson misdemeanor on the first conviction, ~~and (B)~~ and a class A nonperson misdemeanor on the second ~~conviction~~ or subsequent conviction.

(2) No person shall be convicted under this section if such person was entitled at the time of arrest under K.S.A. 8-257, and amendments thereto, to the return of such person's driver's license.

(3) Except as otherwise provided by subsection (a)(4) or (c), every person convicted under this section shall be sentenced to at least five days' imprisonment and fined at least \$100 and upon a second ~~or subsequent~~ conviction shall not be eligible for parole until completion of five days' imprisonment.

(4) *Except as otherwise provided by subsection (c), if a person: (A) Is convicted of a violation of this section, committed while the person's privilege to drive or privilege to obtain a driver's license was suspended or revoked for a violation of K.S.A. 8-1567, and amendments thereto, or any ordinance of any city or resolution of any county or a law of another state, which ordinance or law prohibits the acts prohibited by that statute; and (B) is or has been also convicted of a violation of K.S.A. 8-1567, and amendments thereto, or of a municipal ordinance or law of another state, which ordinance or law prohibits the acts prohibited by that statute, committed while the person's privilege to drive or privilege to obtain a driver's license was so suspended or revoked, the person shall not be eligible for suspension of sentence, probation or parole until the person has served at least 90 days' imprisonment, and any fine imposed on such person shall be in addition to such a term of imprisonment.*

(b) The division, upon receiving a record of the conviction of any person under this section, or any ordinance of any city or resolution of any county or a law of another state which is in substantial conformity with this section, upon a charge of driving a vehicle while the license of such person is revoked or suspended, shall extend the period of such suspension or revocation for an additional period of 90 days.

(c) *The person found guilty of a class A nonperson misdemeanor on a third or subsequent conviction of this section shall be sentenced to not less than 90 days imprisonment and fined not less than \$1,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b,*

and amendments thereto, or any municipal ordinance to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

~~(e)~~ (d) For the purposes of determining whether a conviction is a first, second, *third* or subsequent conviction in sentencing under this section, "conviction" includes a conviction of a violation of any ordinance of any city or resolution of any county or a law of another state which is in substantial conformity with this section.

Sec. 11. K.S.A. 8-287 is hereby amended to read as follows: 8-287. Operation of a motor vehicle in this state while one's driving privileges are revoked pursuant to K.S.A. 8-286 and amendments thereto is a class A nonperson misdemeanor. *The person found guilty of a third or subsequent conviction of this section shall be sentenced to not less than 90 days imprisonment and fined not less than \$1,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, or any municipal ordinance to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.*

Sec. 12. K.S.A. 2005 Supp. 21-3413 is hereby amended to read as follows: 21-3413. ~~(a) Battery against a law enforcement officer is a battery, as defined in K.S.A. 21-3412 and amendments thereto:~~

~~(a) (1) Committed against (1) Battery, as defined in subsection (a)(2) of K.S.A. 21-3412, and amendments thereto, 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) a 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 officer or employee, while such officer is engaged in the performance of such officer's duty; or~~

~~(2) committed against a battery, as defined in subsection (a)(1) of K.S.A. 21-3412, and amendments thereto, 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) a 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 officer or employee, while such officer is engaged in the performance of such officer's duty; or~~

~~(3) battery, as defined in K.S.A. 21-3412, and amendments thereto, 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;~~

~~(3) (B) committed against a 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;~~

~~(4) (C) committed against a 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;~~

~~(5) (D) committed against a 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; or~~

~~(6) committed against a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty.~~

(b) Battery against a law enforcement officer as defined in subsection ~~(a)(1)~~ is a class A person misdemeanor. Battery against a law enforcement

~~officer as defined in subsection (a)(2), (a)(3), (a)(4) or (a)(5) as defined in subsection (a)(1) is a class A person misdemeanor. Battery against a law enforcement officer as defined in subsection (a)(2) is a severity level 7, person felony. Battery against a law enforcement officer as defined in subsection (a)(3) is a severity level 5, person felony.~~

(c) 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. 38-1602 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. 38-1602 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.

Sec. 13. K.S.A. 2005 Supp. 21-3415 is hereby amended to read as follows: 21-3415. (a) Aggravated battery against a law enforcement officer is:

(1) An aggravated battery, as defined in subsection (a)(1)(A) of K.S.A. 21-3414 and amendments thereto, 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) a 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 (a)(1)(B) or (a)(1)(C) of K.S.A. 21-3414 and amendments thereto, 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) 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) intentionally 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) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer’s duty.

(b) (1) Aggravated battery against a law enforcement officer as described in subsection (a)(1) or (a)(3) is a severity level 3, person felony.

(2) Aggravated battery against a law enforcement officer as described in subsection (a)(2) is a severity level ~~6~~ 4, person felony.

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

New Sec. 14. (a) Battery against a mental health employee is a battery, as defined in K.S.A. 21-3412, and amendments thereto, 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.

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

(c) As used in this section “mental health employee” means an employee of the department of social and rehabilitation services working in the state security program located at Larned state hospital and the treatment staff as defined in K.S.A. 59-29a02, and amendments thereto, at the sexually violent predator program located in Larned.

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

Sec. 15. K.S.A. 8-262, 8-287, 21-3719, 21-4301 and 65-4151 and K.S.A. 2005 Supp. 8-1012, as amended by section 2 of 2006 House Bill No. 2916, 21-3413, 21-3415, 21-3436, 21-3608a, 21-4714 and 21-4729 and K.S.A. 22-2501, as repealed by 2006 Senate Bill No. 366 and revived by this act are hereby repealed.

Sec. 16. 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 SENATE, and passed that body

\_\_\_\_\_

SENATE adopted

Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE

as amended \_\_\_\_\_

HOUSE adopted

Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*