

HOUSE BILL No. 2910

By Committee on Judiciary

2-15

9 AN ACT concerning crimes, punishment and criminal procedure; relat-
10 ing to domestic violence; amending K.S.A. 20-369, 21-3110, 21-3412,
11 21-4603d, 21-4704, 22-3210 and 60-3107 and K.S.A. 2007 Supp. 12-
12 4104, 72-1397, 72-5445 and 74-5602 and repealing the existing sec-
13 tions; also repealing K.S.A. 21-3110b, 21-3412a and 21-4704b.
14

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

16 New Section 1. (a) Cover sheets of all legal criminal documents, be-
17 ginning with the arrest and continuing through disposition, generated in
18 connection with a domestic violence offense shall clearly and specifically
19 contain a domestic violence designation. This requirement is applicable
20 to law enforcement officers, prosecuting attorneys, court officials and any
21 other individual drafting legal documentation in connection with a do-
22 mestic violence offense.

23 (b) The term “domestic violence offense” shall have the meaning
24 ascribed thereto in K.S.A. 21-3110, and amendments thereto.

25 (c) This section shall be a part of and supplemental to the Kansas
26 code for criminal procedure.

27 Sec. 2. K.S.A. 2007 Supp. 12-4104 is hereby amended to read as
28 follows: 12-4104. (a) The municipal court of each city shall have jurisdic-
29 tion to hear and determine cases involving violations of the ordinances of
30 the city, including concurrent jurisdiction to hear and determine a vio-
31 lation of an ordinance when the elements of such ordinance violation are
32 the same as the elements of a violation of one of the following state
33 statutes and would constitute, and be punished as, a felony if charged in
34 district court:

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

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

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

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

42 (5) K.S.A. 65-4162, and amendments thereto, possession of
43 marijuana.

- 1 (b) Search warrants shall not issue out of a municipal court.
- 2 Sec. 3. K.S.A. 20-369 is hereby amended to read as follows: 20-369.
- 3 (a) If a judicial district creates a local fund ~~under this act^(e)~~, the court
4 may impose a fee as provided in this section against any defendant for
5 ~~crimes involving a family or household member as provided in K.S.A. 21-~~
6 ~~3412a~~ *violations of subsection (b)(2) of K.S.A. 21-3412*, and amendments
7 thereto. The chief judge of each judicial district where such fee is imposed
8 shall set the amount of such fee by rules adopted in such judicial district
9 in an amount not to exceed \$100 per case.
- 10 (b) Such fees shall be deposited into the local fund and disbursed
11 pursuant to recommendations of the chief judge under this act. All mon-
12 eys collected by this section shall be paid into the domestic violence spe-
13 cial programs fund in the county where the fee is collected, as established
14 by the judicial district ~~and as authorized by this act.~~
- 15 (c) Expenditures made in each judicial district shall be determined
16 by the chief judge and shall be paid to domestic violence programs ad-
17 ministered by the court and to local programs within the judicial district
18 that enhance a coordinated community justice response to the issue of
19 domestic violence.
- 20 Sec. 4. K.S.A. 21-3110 is hereby amended to read as follows: 21-
21 3110. The following definitions shall apply when the words and phrases
22 defined are used in this code, except when a particular context clearly
23 requires a different meaning.
- 24 (1) “Act” includes a failure or omission to take action.
- 25 (2) “Another” means a person or persons as defined in this code other
26 than the person whose act is claimed to be criminal.
- 27 (3) “Conduct” means an act or a series of acts, and the accompanying
28 mental state.
- 29 (4) “Conviction” includes a judgment of guilt entered upon a plea of
30 guilty.
- 31 (5) “Deception” means knowingly and willfully making a false state-
32 ment or representation, express or implied, pertaining to a present or past
33 existing fact.
- 34 (6) To “deprive permanently” means to:
- 35 (a) Take from the owner the possession, use or benefit of property,
36 without an intent to restore the same; or
- 37 (b) Retain property without intent to restore the same or with intent
38 to restore it to the owner only if the owner purchases or leases it back,
39 or pays a reward or other compensation for its return; or
- 40 (c) Sell, give, pledge or otherwise dispose of any interest in property
41 or subject it to the claim of a person other than the owner.
- 42 (7) “*Domestic Violence*” means *an act or threatened act of violence*
43 *against a person with whom the offender is involved or has been involved*

- 1 *in an intimate relationship. Domestic violence also includes any other*
2 *crime committed against a person or against property, or any municipal*
3 *ordinance violation against a person or against property, when used as a*
4 *method of coercion, control, punishment, intimidation or revenge directed*
5 *against a person with whom the offender is involved or has been involved*
6 *in an intimate relationship. For the purposes of this definition, the of-*
7 *fender shall be 18 years of age or older.*
- 8 (8) “Domestic violence offender” means a person who has been con-
9 victed of or entered into a diversion agreement for any domestic violence
10 offense.
- 11 (9) “Domestic violence offense” means any crime committed whereby
12 the underlying factual basis includes an act of domestic violence.
- 13 ~~(7)~~ (10) “Dwelling” means a building or portion thereof, a tent, a
14 vehicle or other enclosed space which is used or intended for use as a
15 human habitation, home or residence.
- 16 (11) “Firearm” means any weapon designed or having the capacity
17 to propel a projectile by force of an explosion or combustion.
- 18 ~~(8)~~ (12) “Forcible felony” includes any treason, murder, voluntary
19 manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated bat-
20 tery, aggravated sodomy and any other felony which involves the use or
21 threat of physical force or violence against any person.
- 22 ~~(9)~~ (13) “Intent to defraud” means an intention to deceive another
23 person, and to induce such other person, in reliance upon such deception,
24 to assume, create, transfer, alter or terminate a right, obligation or power
25 with reference to property.
- 26 (14) “Intimate relationship” means a relationship between spouses,
27 former spouses, past or present unmarried couples, or persons who share
28 the parentage of a child. Sharing a residence, either past or present, is
29 not required to qualify as an intimate relationship pursuant to this defi-
30 nition.
- 31 ~~(10)~~ (15) “Law enforcement officer” means:
- 32 (a) Any person who by virtue of such person’s office or public em-
33 ployment is vested by law with a duty to maintain public order or to make
34 arrests for crimes, whether that duty extends to all crimes or is limited to
35 specific crimes;
- 36 (b) any officer of the Kansas department of corrections or, for the
37 purposes of K.S.A. 21-3409, 21-3411 and 21-3415, and amendments
38 thereto, any employee of the Kansas department of corrections; or
- 39 (c) any university police officer or campus police officer, as defined
40 in K.S.A. 22-2401a, and amendments thereto.
- 41 ~~(11)~~ (16) “Obtain” means to bring about a transfer of interest in or
42 possession of property, whether to the offender or to another.
- 43 ~~(12)~~ (17) “Obtains or exerts control” over property includes but is not

1 limited to, the taking, carrying away, or the sale, conveyance, or transfer
2 of title to, interest in, or possession of property.

3 ~~(13)~~ (18) “Owner” means a person who has any interest in property.
4 ~~(14)~~ (19) “Person” means an individual, public or private corporation,
5 government, partnership, or unincorporated association.

6 ~~(15)~~ (20) “Personal property” means goods, chattels, effects, evi-
7 dences of rights in action and all written instruments by which any pe-
8 cuniary obligation, or any right or title to property real or personal, shall
9 be created, acknowledged, assigned, transferred, increased, defeated, dis-
10 charged, or dismissed.

11 ~~(16)~~ (21) “Property” means anything of value, tangible or intangible,
12 real or personal.

13 ~~(17)~~ (22) “Prosecution” means all legal proceedings by which a per-
14 son’s liability for a crime is determined.

15 ~~(18)~~ (23) “Public employee” is a person employed by or acting for
16 the state or by or for a county, municipality or other subdivision or gov-
17 ernmental instrumentality of the state for the purpose of exercising their
18 respective powers and performing their respective duties, and who is not
19 a “public officer.”

20 ~~(19)~~ (24) “Public officer” includes the following, whether elected or
21 appointed:

22 (a) An executive or administrative officer of the state, or a county,
23 municipality or other subdivision or governmental instrumentality of or
24 within the state.

25 (b) A member of the legislature or of a governing board of a county,
26 municipality, or other subdivision of or within the state.

27 (c) A judicial officer, which shall include a judge of the district court,
28 juror, master or any other person appointed by a judge or court to hear
29 or determine a cause or controversy.

30 (d) A hearing officer or presiding officer, which shall include any
31 person authorized by law or private agreement, to hear or determine a
32 cause or controversy and who is not a judicial officer.

33 (e) A law enforcement officer.

34 (f) Any other person exercising the functions of a public officer under
35 color of right.

36 ~~(20)~~ (25) “Real property” or “real estate” means every estate, interest,
37 and right in lands, tenements and hereditaments.

38 ~~(21)~~ (26) “Solicit” or “solicitation” means to command, authorize,
39 urge, incite, request, or advise another to commit a crime.

40 ~~(22)~~ (27) “State” or “this state” means the state of Kansas and all land
41 and water in respect to which the state of Kansas has either exclusive or
42 concurrent jurisdiction, and the air space above such land and water.

43 “Other state” means any state or territory of the United States, the Dis-

1 trict of Columbia and the Commonwealth of Puerto Rico.

2 ~~(23)~~ (28) “Stolen property” means property over which control has
3 been obtained by theft.

4 ~~(24)~~ (29) “Threat” means a communicated intent to inflict physical
5 or other harm on any person or on property.

6 ~~(25)~~ (30) “Written instrument” means any paper, document or other
7 instrument containing written or printed matter or the equivalent thereof,
8 used for purposes of reciting, embodying, conveying or recording infor-
9 mation, and any money, token, stamp, seal, badge, trademark, or other
10 evidence or symbol of value, right, privilege or identification, which is
11 capable of being used to the advantage or disadvantage of some person.

12 Sec. 5. K.S.A. 21-3412 is hereby amended to read as follows: 21-
13 3412. (a) Battery is:

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

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

18 (b) (1) *Except as provided in paragraph (2), battery is a class B per-
19 son misdemeanor.*

20 (2) (A) *Upon a first conviction of a violation of battery that includes
21 the domestic violence designation, a person shall be guilty of a class B
22 person misdemeanor and sentenced to not less than 48 consecutive hours
23 nor more than six months’ imprisonment, fined not less than \$200 nor
24 more than \$500, and shall be ordered to undergo a domestic violence
25 offender assessment and complete all recommendations.*

26 (B) *If, within five years immediately preceding commission of the
27 crime, a person is convicted of a violation of battery that includes the
28 domestic violence designation a second time, such person shall be guilty
29 of a class A person misdemeanor and sentenced to not less than 90 days
30 nor more than one year’s imprisonment and fined not less than \$500 nor
31 more than \$1,000. The five days’ imprisonment mandated by this subsec-
32 tion may be served in a work release program only after such person has
33 served 48 consecutive hours’ imprisonment, provided such work release
34 program requires such person to return to confinement at the end of each
35 day in the work release program. The person convicted must serve at least
36 five consecutive days’ imprisonment before the person is granted proba-
37 tion, suspension or reduction of sentence or parole or is otherwise re-
38 leased. As a condition of any grant of probation, suspension of sentence
39 or parole or of any other release, the person shall be ordered to undergo
40 a domestic violence offender assessment and complete all
41 recommendations.*

42 (C) *If, within five years immediately preceding commission of the
43 crime, a person is convicted of a violation of battery that includes the*

1 *domestic violence designation, a third or subsequent time, such person*
2 *shall be guilty of a person felony and sentenced to not less than 90 days*
3 *nor more than one year's imprisonment and fined not less than \$1,000*
4 *nor more than \$2,500. The person convicted shall not be eligible for release*
5 *on probation, suspension or reduction of sentence or parole until the per-*
6 *son has served at least 90 days' imprisonment. The court shall require as*
7 *a condition of parole that such person be ordered to undergo a domestic*
8 *violence offender assessment and complete all recommendations. If a per-*
9 *son refuses the assessment or refuses or fails to follow the recommenda-*
10 *tions, the person shall serve not less than 180 days nor more than one*
11 *year's imprisonment. The 90 days' imprisonment mandated by this sub-*
12 *section may be served in a work release program only after such person*
13 *has served 48 consecutive hours' imprisonment, provided such work re-*
14 *lease program requires such person to return to confinement at the end*
15 *of each day in the work release program.*

16 Sec. 6. K.S.A. 21-4603d is hereby amended to read as follows: 21-
17 4603d. (a) Whenever any person has been found guilty of a crime, the
18 court may adjudge any of the following:

19 (1) Commit the defendant to the custody of the secretary of correc-
20 tions if the current crime of conviction is a felony and the sentence pre-
21 sumes imprisonment, or the sentence imposed is a dispositional departure
22 to imprisonment; or, if confinement is for a misdemeanor, to jail for the
23 term provided by law;

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

25 (3) release the defendant on probation if the current crime of con-
26 viction and criminal history fall within a presumptive nonprison category
27 or through a departure for substantial and compelling reasons subject to
28 such conditions as the court may deem appropriate. In felony cases except
29 for violations of K.S.A. 8-1567, and amendments thereto, the court may
30 include confinement in a county jail not to exceed 60 days, which need
31 not be served consecutively, as a condition of an original probation sen-
32 tence and up to 60 days in a county jail upon each revocation of the
33 probation sentence, or community corrections placement;

34 (4) assign the defendant to a community correctional services pro-
35 gram as provided in K.S.A. 75-5291, and amendments thereto, or through
36 a departure for substantial and compelling reasons subject to such con-
37 ditions as the court may deem appropriate, including orders requiring full
38 or partial restitution;

39 (5) assign the defendant to a conservation camp for a period not to
40 exceed six months as a condition of probation followed by a six-month
41 period of follow-up through adult intensive supervision by a community
42 correctional services program, if the offender successfully completes the
43 conservation camp program;

- 1 (6) assign the defendant to a house arrest program pursuant to K.S.A.
2 21-4603b and amendments thereto;
- 3 (7) order the defendant to attend and satisfactorily complete an al-
4cohol or drug education or training program as provided by subsection
5 (3) of K.S.A. 21-4502, and amendments thereto;
- 6 (8) order the defendant to repay the amount of any reward paid by
7 any crime stoppers chapter, individual, corporation or public entity which
8 materially aided in the apprehension or conviction of the defendant; repay
9 the amount of any costs and expenses incurred by any law enforcement
10 agency in the apprehension of the defendant, if one of the current crimes
11 of conviction of the defendant includes escape, as defined in K.S.A. 21-
12 3809, and amendments thereto, or aggravated escape, as defined in K.S.A.
13 21-3810, and amendments thereto; repay expenses incurred by a fire dis-
14 trict, fire department or fire company responding to a fire which has been
15 determined to be arson under K.S.A. 21-3718 or 21-3719, and amend-
16 ments thereto, if the defendant is convicted of such crime; repay the
17 amount of any public funds utilized by a law enforcement agency to pur-
18 chase controlled substances from the defendant during the investigation
19 which leads to the defendant's conviction; or repay the amount of any
20 medical costs and expenses incurred by any law enforcement agency or
21 county. Such repayment of the amount of any such costs and expenses
22 incurred by a county, law enforcement agency, fire district, fire depart-
23 ment or fire company or any public funds utilized by a law enforcement
24 agency shall be deposited and credited to the same fund from which the
25 public funds were credited to prior to use by the county, law enforcement
26 agency, fire district, fire department or fire company;
- 27 (9) order the defendant to pay the administrative fee authorized by
28 K.S.A. 22-4529, and amendments thereto, unless waived by the court;
- 29 (10) order the defendant to pay a domestic violence special program
30 fee authorized by K.S.A. 20-369, and amendments thereto;
- 31 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6),
32 (7), (8), (9) and (10); or
- 33 (12) suspend imposition of sentence in misdemeanor cases.
- 34 (b) (1) In addition to or in lieu of any of the above, the court shall
35 order the defendant to pay restitution, which shall include, but not be
36 limited to, damage or loss caused by the defendant's crime, unless the
37 court finds compelling circumstances which would render a plan of res-
38 titution unworkable. In regard to a violation of K.S.A. 21-4018, and
39 amendments thereto, such damage or loss shall include, but not be limited
40 to, attorney fees and costs incurred to repair the credit history or rating
41 of the person whose personal identification documents were obtained and
42 used in violation of such section, and to satisfy a debt, lien or other ob-
43 ligation incurred by the person whose personal identification documents

1 were obtained and used in violation of such section. If the court finds a
2 plan of restitution unworkable, the court shall state on the record in detail
3 the reasons therefor.

4 (2) If the court orders restitution, the restitution shall be a judgment
5 against the defendant which may be collected by the court by garnishment
6 or other execution as on judgments in civil cases. If, after 60 days from
7 the date restitution is ordered by the court, a defendant is found to be in
8 noncompliance with the plan established by the court for payment of
9 restitution, and the victim to whom restitution is ordered paid has not
10 initiated proceedings in accordance with K.S.A. 60-4301 et seq., and
11 amendments thereto, the court shall assign an agent procured by the
12 attorney general pursuant to K.S.A. 75-719, and amendments thereto, to
13 collect the restitution on behalf of the victim. The administrative judge
14 of each judicial district may assign such cases to an appropriate division
15 of the court for the conduct of civil collection proceedings.

16 (c) In addition to or in lieu of any of the above, the court shall order
17 the defendant to submit to and complete an alcohol and drug evaluation,
18 and pay a fee therefor, when required by subsection (4) of K.S.A. 21-
19 4502, and amendments thereto.

20 (d) In addition to any of the above, the court shall order the defend-
21 ant to reimburse the county general fund for all or a part of the expend-
22 itures by the county to provide counsel and other defense services to the
23 defendant. Any such reimbursement to the county shall be paid only after
24 any order for restitution has been paid in full. In determining the amount
25 and method of payment of such sum, the court shall take account of the
26 financial resources of the defendant and the nature of the burden that
27 payment of such sum will impose. A defendant who has been required
28 to pay such sum and who is not willfully in default in the payment thereof
29 may at any time petition the court which sentenced the defendant to
30 waive payment of such sum or any unpaid portion thereof. If it appears
31 to the satisfaction of the court that payment of the amount due will im-
32 pose manifest hardship on the defendant or the defendant's immediate
33 family, the court may waive payment of all or part of the amount due or
34 modify the method of payment.

35 (e) In imposing a fine the court may authorize the payment thereof
36 in installments. In releasing a defendant on probation, the court shall
37 direct that the defendant be under the supervision of a court services
38 officer. If the court commits the defendant to the custody of the secretary
39 of corrections or to jail, the court may specify in its order the amount of
40 restitution to be paid and the person to whom it shall be paid if restitution
41 is later ordered as a condition of parole, conditional release or postrelease
42 supervision.

43 (f) (1) When a new felony is committed while the offender is incar-

1 cerated and serving a sentence for a felony, or while the offender is on
2 probation, assignment to a community correctional services program, pa-
3 role, conditional release, or postrelease supervision for a felony, a new
4 sentence shall be imposed pursuant to the consecutive sentencing
5 requirements of K.S.A. 21-4608, and amendments thereto, and the court
6 may sentence the offender to imprisonment for the new conviction, even
7 when the new crime of conviction otherwise presumes a nonprison sen-
8 tence. In this event, imposition of a prison sentence for the new crime
9 does not constitute a departure.

10 (2) When a new felony is committed while the offender is incarcer-
11 ated in a juvenile correctional facility pursuant to K.S.A. 38-1671 prior to
12 its repeal or K.S.A. 2007 Supp. 38-2373, and amendments thereto, for an
13 offense, which if committed by an adult would constitute the commission
14 of a felony, upon conviction, the court shall sentence the offender to
15 imprisonment for the new conviction, even when the new crime of con-
16 viction otherwise presumes a nonprison sentence. In this event, imposi-
17 tion of a prison sentence for the new crime does not constitute a depart-
18 ure. The conviction shall operate as a full and complete discharge from
19 any obligations, except for an order of restitution, imposed on the of-
20 fender arising from the offense for which the offender was committed to
21 a juvenile correctional facility.

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

31 (g) Prior to imposing a dispositional departure for a defendant whose
32 offense is classified in the presumptive nonprison grid block of either
33 sentencing guideline grid, prior to sentencing a defendant to incarceration
34 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing
35 guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H
36 or 3-I of the sentencing guidelines grid for drug crimes, prior to sen-
37 tencing a defendant to incarceration whose offense is classified in grid
38 blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and
39 whose offense does not meet the requirements of K.S.A. 21-4729, and
40 amendments thereto, prior to revocation of a nonprison sanction of a
41 defendant whose offense is classified in grid blocks 4-E or 4-F of the
42 sentencing guideline grid for drug crimes and whose offense does not
43 meet the requirements of K.S.A. 21-4729, and amendments thereto, or

1 prior to revocation of a nonprison sanction of a defendant whose offense
2 is classified in the presumptive nonprison grid block of either sentencing
3 guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines
4 grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the
5 sentencing guidelines grid for drug crimes, the court shall consider place-
6 ment of the defendant in the Labette correctional conservation camp,
7 conservation camps established by the secretary of corrections pursuant
8 to K.S.A. 75-52,127, and amendment thereto or a community interme-
9 diate sanction center. Pursuant to this paragraph the defendant shall not
10 be sentenced to imprisonment if space is available in a conservation camp
11 or a community intermediate sanction center and the defendant meets
12 all of the conservation camp's or a community intermediate sanction cen-
13 ter's placement criteria unless the court states on the record the reasons
14 for not placing the defendant in a conservation camp or a community
15 intermediate sanction center.

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

21 (i) In addition to any of the above, the court shall order the defendant
22 to reimburse the state general fund for all or a part of the expenditures
23 by the state board of indigents' defense services to provide counsel and
24 other defense services to the defendant. In determining the amount and
25 method of payment of such sum, the court shall take account of the
26 financial resources of the defendant and the nature of the burden that
27 payment of such sum will impose. A defendant who has been required
28 to pay such sum and who is not willfully in default in the payment thereof
29 may at any time petition the court which sentenced the defendant to
30 waive payment of such sum or any unpaid portion thereof. If it appears
31 to the satisfaction of the court that payment of the amount due will im-
32 pose manifest hardship on the defendant or the defendant's immediate
33 family, the court may waive payment of all or part of the amount due or
34 modify the method of payment. The amount of attorney fees to be in-
35 cluded in the court order for reimbursement shall be the amount claimed
36 by appointed counsel on the payment voucher for indigents' defense serv-
37 ices or the amount prescribed by the board of indigents' defense services
38 reimbursement tables as provided in K.S.A. 22-4522, and amendments
39 thereto, whichever is less.

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

- 1 (k) An application for or acceptance of probation or assignment to a
2 community correctional services program shall not constitute an acqui-
3 escence in the judgment for purpose of appeal, and any convicted person
4 may appeal from such conviction, as provided by law, without regard to
5 whether such person has applied for probation, suspended sentence or
6 assignment to a community correctional services program.
- 7 (l) The secretary of corrections is authorized to make direct place-
8 ment to the Labette correctional conservation camp or a conservation
9 camp established by the secretary pursuant to K.S.A. 75-52,127, and
10 amendments thereto, of an inmate sentenced to the secretary's custody
11 if the inmate: (1) Has been sentenced to the secretary for a probation
12 revocation, as a departure from the presumptive nonimprisonment grid
13 block of either sentencing grid, for an offense which is classified in grid
14 blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug
15 crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing
16 guidelines grid for drug crimes, or for an offense which is classified in
17 gridblocks 4-E or 4-F of the sentencing guidelines grid for drug crimes
18 and such offense does not meet the requirements of K.S.A. 21-4729, and
19 amendments thereto, and (2) otherwise meets admission criteria of the
20 camp. If the inmate successfully completes a conservation camp program,
21 the secretary of corrections shall report such completion to the sentencing
22 court and the county or district attorney. The inmate shall then be as-
23 signed by the court to six months of follow-up supervision conducted by
24 the appropriate community corrections services program. The court may
25 also order that supervision continue thereafter for the length of time
26 authorized by K.S.A. 21-4611 and amendments thereto.
- 27 (m) When it is provided by law that a person shall be sentenced pur-
28 suant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of
29 this section shall not apply.
- 30 (n) Except as provided by subsection (f) of K.S.A. 21-4705, and
31 amendments thereto, in addition to any of the above, for felony violations
32 of K.S.A. 65-4160 or 65-4162, and amendments thereto, the court shall
33 require the defendant who meets the requirements established in K.S.A.
34 21-4729, and amendments thereto, to participate in a certified drug abuse
35 treatment program, as provided in K.S.A. 2007 Supp. 75-52,144, and
36 amendments thereto, including but not limited to, an approved after-care
37 plan. If the defendant fails to participate in or has a pattern of intentional
38 conduct that demonstrates the offender's refusal to comply with or par-
39 ticipate in the treatment program, as established by judicial finding, the
40 defendant shall be subject to revocation of probation and the defendant
41 shall serve the underlying prison sentence as established in K.S.A. 21-
42 4705, and amendments thereto. For those offenders who are convicted
43 on or after the effective date of this act, upon completion of the under-

1 lying prison sentence, the defendant shall not be subject to a period of
2 postrelease supervision. The amount of time spent participating in such
3 program shall not be credited as service on the underlying prison
4 sentence.

5 *(o) In addition to any adjudications imposed upon an offender for*
6 *violation of any criminal offense that includes the domestic violence des-*
7 *ignation, pursuant to section 1, and amendments thereto, an offender shall*
8 *also be ordered to undergo a domestic violence offender assessment and*
9 *complete all recommendations. The court may order an assessment prior*
10 *to sentencing if an assessment would assist the court in determining an*
11 *appropriate sentence. The court may order a domestic violence offender*
12 *assessment and recommendations to be followed in any appropriate case.*
13 *An offender ordered to undergo a domestic violence offender assessment*
14 *and recommendations shall be required to pay for such assessment and*
15 *recommendations.*

16 Sec. 7. K.S.A. 21-4704 is hereby amended to read as follows: 21-
17 4704. (a) For purposes of sentencing, the following sentencing guidelines
18 grid for nondrug crimes shall be applied in felony cases for crimes com-
19 mitted on or after July 1, 1993:

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SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	6 5 5

LEGEND
Presumptive Probation
6 Months
Presumptive Imprisonment

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

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

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

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

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

26 (3) In presumptive nonprison cases, the sentencing court shall pro-
27 nounce the prison sentence as well as the duration of the nonprison sanc-
28 tion at the sentencing hearing.

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

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

40 (2) the recommended treatment program is available and the of-
41 fender can be admitted to such program within a reasonable period of
42 time; or

43 (3) the nonprison sanction will serve community safety interests by

1 promoting offender reformation.

2 Any decision made by the court regarding the imposition of an optional
3 nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or
4 6-G shall not be considered a departure and shall not be subject to appeal.

5 (g) The sentence for the violation of K.S.A. 21-3415, and amend-
6 ments thereto, aggravated battery against a law enforcement officer com-
7 mitted prior to July 1, 2006, or K.S.A. 21-3411, and amendments thereto,
8 aggravated assault against a law enforcement officer, which places the
9 defendant's sentence in grid block 6-H or 6-I shall be presumed impris-
10 onment. The court may impose an optional nonprison sentence upon
11 making a finding on the record that the nonprison sanction will serve
12 community safety interests by promoting offender reformation. Any deci-
13 sion made by the court regarding the imposition of the optional non-
14 prison sentence, if the offense is classified in grid block 6-H or 6-I, shall
15 not be considered departure and shall not be subject to appeal.

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

23 (i) The sentence for the violation of the felony provision of K.S.A. 8-
24 1567, subsection ~~(b)(3) of K.S.A. 21-3412a~~ (b)(2)(C) of K.S.A. 21-3412,
25 subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and
26 K.S.A. 21-4318, and amendments thereto, shall be as provided by the
27 specific mandatory sentencing requirements of that section and shall not
28 be subject to the provisions of this section or K.S.A. 21-4707 and amend-
29 ments thereto. If because of the offender's criminal history classification
30 the offender is subject to presumptive imprisonment or if the judge de-
31 parts from a presumptive probation sentence and the offender is subject
32 to imprisonment, the provisions of this section and K.S.A. 21-4707, and
33 amendments thereto, shall apply and the offender shall not be subject to
34 the mandatory sentence as provided in K.S.A. 21-3710, and amendments
35 thereto. Notwithstanding the provisions of any other section, the term of
36 imprisonment imposed for the violation of the felony provision of K.S.A.
37 8-1567, subsection ~~(b)(3) of K.S.A. 21-3412a~~ (b)(2)(C) of K.S.A. 21-3412,
38 subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and
39 K.S.A. 21-4318, and amendments thereto, shall not be served in a state
40 facility in the custody of the secretary of corrections, *except that the term*
41 *of imprisonment for felony violations of K.S.A. 8-1567, and amendments*
42 *thereto, may be served in a state correctional facility designated by the*
43 *secretary of corrections if the secretary determines that substance abuse*

1 *treatment resources and facility capacity is available. The secretary's de-*
2 *termination regarding the availability of treatment resources and facility*
3 *capacity shall not be subject to review.*

4 (j) (1) The sentence for any persistent sex offender whose current
5 convicted crime carries a presumptive term of imprisonment shall be
6 double the maximum duration of the presumptive imprisonment term.
7 The sentence for any persistent sex offender whose current conviction
8 carries a presumptive nonprison term shall be presumed imprisonment
9 and shall be double the maximum duration of the presumptive impris-
10 onment term.

11 (2) Except as otherwise provided in this subsection, as used in this
12 subsection, "persistent sex offender" means a person who: (A) (i) Has
13 been convicted in this state of a sexually violent crime, as defined in K.S.A.
14 22-3717 and amendments thereto; and (ii) at the time of the conviction
15 under paragraph (A) (i) has at least one conviction for a sexually violent
16 crime, as defined in K.S.A. 22-3717 and amendments thereto in this state
17 or comparable felony under the laws of another state, the federal gov-
18 ernment or a foreign government; or (B) (i) has been convicted of rape,
19 K.S.A. 21-3502, and amendments thereto; and (ii) at the time of the
20 conviction under paragraph (B) (i) has at least one conviction for rape in
21 this state or comparable felony under the laws of another state, the federal
22 government or a foreign government.

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

26 (k) If it is shown at sentencing that the offender committed any felony
27 violation for the benefit of, at the direction of, or in association with any
28 criminal street gang, with the specific intent to promote, further or assist
29 in any criminal conduct by gang members, the offender's sentence shall
30 be presumed imprisonment. Any decision made by the court regarding
31 the imposition of the optional nonprison sentence shall not be considered
32 a departure and shall not be subject to appeal. As used in this subsection,
33 "criminal street gang" means any organization, association or group of
34 three or more persons, whether formal or informal, having as one of its
35 primary activities the commission of one or more person felonies or felony
36 violations of the uniform controlled substances act, K.S.A. 65-4101 et seq.,
37 and amendments thereto, which has a common name or common iden-
38 tifying sign or symbol, whose members, individually or collectively engage
39 in or have engaged in the commission, attempted commission, conspiracy
40 to commit or solicitation of two or more person felonies or felony viola-
41 tions of the uniform controlled substances act, K.S.A. 65-4101 et seq.,
42 and amendments thereto, or any substantially similar offense from an-
43 other jurisdiction.

1 (l) (1) The sentence for a violation of subsection (a) of K.S.A. 21-
2 3715 and amendments thereto when such person being sentenced has a
3 prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715
4 or 21-3716 and amendments thereto shall be presumed imprisonment.

5 (2) The sentence for a violation of K.S.A. 21-3715, and amendments
6 thereto, when such person being sentenced has two or more prior con-
7 victions for violations of K.S.A. 21-3715, and amendments thereto, or a
8 prior conviction of K.S.A. 21-3715 and 21-3716, and amendments thereto,
9 shall be presumed imprisonment and the defendant shall be sentenced
10 to prison as provided by this section. Such sentence shall not be consid-
11 ered a departure and shall not be subject to appeal.

12 (m) The sentence for a violation of K.S.A. 22-4903 or subsection (d)
13 of K.S.A. 21-3812, and amendments thereto, shall be presumptive im-
14 prisonment. If an offense under such sections is classified in grid blocks
15 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison
16 sentence upon making the following findings on the record:

17 (1) An appropriate treatment program exists which is likely to be
18 more effective than the presumptive prison term in reducing the risk of
19 offender recidivism, such program is available and the offender can be
20 admitted to such program within a reasonable period of time; or

21 (2) the nonprison sanction will serve community safety interests by
22 promoting offender reformation.

23 Any decision made by the court regarding the imposition of an optional
24 nonprison sentence pursuant to this section shall not be considered a
25 departure and shall not be subject to appeal.

26 Sec. 8. K.S.A. 22-3210 is hereby amended to read as follows: 22-
27 3210. (a) Before or during trial a plea of guilty or *nolo contendere* may
28 be accepted when:

29 (1) The defendant or counsel for the defendant enters such plea in
30 open court; and

31 (2) in felony cases the court has informed the defendant of the con-
32 sequences of the plea, including the specific sentencing guidelines level
33 of any crime committed on or after July 1, 1993, and of the maximum
34 penalty provided by law which may be imposed upon acceptance of such
35 plea; and

36 (3) in felony cases the court has addressed the defendant personally
37 and determined that the plea is made voluntarily with understanding of
38 the nature of the charge and the consequences of the plea; and

39 (4) the court is satisfied that there is a factual basis for the plea.

40 (b) In felony cases the defendant must appear and plead personally
41 and a verbatim record of all proceedings at the plea and entry of judgment
42 thereon shall be made.

43 (c) In traffic infraction, cigarette or tobacco infraction and misde-

1 meanor cases the court may allow the defendant to appear and plead by
2 counsel.

3 (d) A plea of guilty or *nolo contendere*, for good cause shown and
4 within the discretion of the court, may be withdrawn at any time before
5 sentence is adjudged. To correct manifest injustice the court after sen-
6 tence may set aside the judgment of conviction and permit the defendant
7 to withdraw the plea.

8 (e) *A defendant charged with committing a crime, the underlying fac-*
9 *tual basis of which includes an act of domestic violence, as defined in*
10 *K.S.A. 21-3110, and amendments thereto, shall not be allowed to plead*
11 *guilty or nolo contendere to an offense that does not include the domestic*
12 *violence designation, pursuant to section 1, and amendments thereto, un-*
13 *less the prosecuting attorney, in good faith, cannot establish a prima facie*
14 *case that an intimate relationship currently exists or previously existed*
15 *between the defendant and the complaining witness. The prosecuting at-*
16 *torney shall state such assertion on the record. The court's findings shall*
17 *specify the relationship between the defendant and the complaining*
18 *witness.*

19 (f) *A court shall not accept a plea of guilty or nolo contendere to an*
20 *offense that does not include the domestic violence designation when the*
21 *underlying factual basis of the original offense includes an act of domestic*
22 *violence unless there is a good faith representation by the prosecuting*
23 *attorney to the court that the prosecuting attorney is unable to establish*
24 *a prima facie case if the defendant charged were brought to trial on the*
25 *original offense.*

26 Sec. 9. K.S.A. 60-3107 is hereby amended to read as follows: 60-
27 3107. (a) The court may approve any consent agreement to bring about
28 a cessation of abuse of the plaintiff or minor children or grant any of the
29 following orders:

30 (1) Restraining the defendant from abusing, molesting or interfering
31 with the privacy or rights of the plaintiff or of any minor children of the
32 parties. Such order shall contain a statement that if such order is violated,
33 such violation may constitute assault as provided in K.S.A. 21-3408, and
34 amendments thereto, battery as provided in K.S.A. 21-3412, and amend-
35 ments thereto, ~~domestic battery as provided in K.S.A. 2005 Supp. 21-~~
36 ~~3412a, and amendments thereto~~ and violation of a protective order as
37 provided in K.S.A. ~~2005 Supp. 21-~~ 21-3843, and amendments thereto.

38 (2) Granting possession of the residence or household to the plaintiff
39 to the exclusion of the defendant, and further restraining the defendant
40 from entering or remaining upon or in such residence or household, sub-
41 ject to the limitation of subsection (d). Such order shall contain a state-
42 ment that if such order is violated, such violation shall constitute criminal
43 trespass as provided in subsection (c) of K.S.A. 21-3721, and amendments

1 thereto, and violation of a protective order as provided in K.S.A. ~~2005~~
2 ~~Supp.~~ 21-3843, and amendments thereto. The court may grant an order,
3 which shall expire 60 days following the date of issuance, restraining the
4 defendant from cancelling utility service to the residence or household.

5 (3) Requiring defendant to provide suitable, alternate housing for the
6 plaintiff and any minor children of the parties.

7 (4) Awarding temporary custody and residency and establishing tem-
8 porary parenting time with regard to minor children.

9 (5) Ordering a law enforcement officer to evict the defendant from
10 the residence or household.

11 (6) Ordering support payments by a party for the support of a party's
12 minor child, if the party is the father or mother of the child, or the plain-
13 tiff, if the plaintiff is married to the defendant. Such support orders shall
14 remain in effect until modified or dismissed by the court or until expi-
15 ration and shall be for a fixed period of time not to exceed one year. On
16 the motion of the plaintiff, the court may extend the effect of such order
17 for 12 months.

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

19 (8) Making provision for the possession of personal property of the
20 parties and ordering a law enforcement officer to assist in securing pos-
21 session of that property, if necessary.

22 (9) Requiring any person against whom an order is issued to seek
23 counseling to aid in the cessation of abuse.

24 (10) Ordering or restraining any other acts deemed necessary to pro-
25 mote the safety of the plaintiff or of any minor children of the parties.

26 (b) No protection from abuse order shall be entered against the plain-
27 tiff unless:

28 (1) The defendant properly files a written cross or counter petition
29 seeking such a protection order;

30 (2) the plaintiff had reasonable notice of the written cross or counter
31 petition by personal service as provided in subsection (d) of K.S.A. 60-
32 3104, and amendments thereto; and

33 (3) the issuing court made specific findings of abuse against both the
34 plaintiff and the defendant and determined that both parties acted pri-
35 marily as aggressors and neither party acted primarily in self-defense.

36 (c) Any order entered under the protection from abuse act shall not
37 be subject to modification on ex parte application or on motion for tem-
38 porary orders in any action filed pursuant to K.S.A. 60-1601 et seq., or
39 K.S.A. 38-1101 et seq., and amendments thereto. Orders previously is-
40 sued in an action filed pursuant to K.S.A. 60-1601 et seq., or K.S.A. 38-
41 1101 et seq., and amendments thereto, shall be subject to modification
42 under the protection from abuse act only as to those matters subject to
43 modification by the terms of K.S.A. 60-1610 et seq., and amendments

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

15 (d) If the parties to an action under the protection from abuse act
16 are not married to each other and one party owns the residence or house-
17 hold, the court shall not have the authority to grant possession of the
18 residence or household under subsection (a)(2) to the exclusion of the
19 party who owns it.

20 (e) Subject to the provisions of subsections (b), (c) and (d), a protec-
21 tive order or approved consent agreement shall remain in effect until
22 modified or dismissed by the court and shall be for a fixed period of time
23 not to exceed one year, except that, on motion of the plaintiff, such period
24 may be extended for one additional year.

25 (f) The court may amend its order or agreement at any time upon
26 motion filed by either party.

27 (g) No order or agreement under the protection from abuse act shall
28 in any manner affect title to any real property.

29 (h) If a person enters or remains on premises or property violating
30 an order issued pursuant to subsection (a)(2), such violation shall consti-
31 tute criminal trespass as provided in subsection (c) of K.S.A. 21-3721, and
32 amendments thereto, and violation of a protective order as provided in
33 ~~K.S.A. 2005 Supp. 21-3843~~, and amendments thereto. If a person abuses,
34 molests or interferes with the privacy or rights of another violating an
35 order issued pursuant to subsection (a)(1), such violation may constitute
36 assault as provided in K.S.A. 21-3408, and amendments thereto, battery
37 as provided in K.S.A. 21-3412, and amendments thereto, ~~domestic battery~~
38 ~~as provided in K.S.A. 2005 Supp. 21-3412a~~, and amendments thereto,
39 and violation of a protective order as provided in K.S.A. ~~2005 Supp. 21-~~
40 ~~3843~~, and amendments thereto.

41 Sec. 10. K.S.A. 2007 Supp. 72-1397 is hereby amended to read as
42 follows: 72-1397. (a) The state board of education shall not knowingly
43 issue a license to or renew the license of any person who has been con-

1 victed of any offense or attempt to commit any offense specified in sub-
2 section (c) of K.S.A. 21-4619 and amendments thereto.

3 (b) Except as provided in subsection (c), the state board of education
4 shall not knowingly issue a license to or renew the license of any person
5 who:

6 (1) Has been convicted of a felony under the uniform controlled sub-
7 stances act; (2) has been convicted of a felony described in any section of
8 article 34 of chapter 21 of the Kansas Statutes Annotated or an act de-
9 scribed in K.S.A. 21-3412 ~~or K.S.A. 21-3412a~~, and amendments thereto,
10 if the victim is a minor or student; (3) has been convicted of a felony
11 described in any section of article 35 of chapter 21 of the Kansas Statutes
12 Annotated, other than an act specified in subsection (c) of K.S.A. 21-4619
13 and amendments thereto, or has been convicted of an act described in
14 K.S.A. 21-3517 and amendments thereto, if the victim is a minor or stu-
15 dent; (4) has been convicted of any act described in any section of article
16 36 of chapter 21 of the Kansas Statutes Annotated, other than an act
17 specified in subsection (c) of K.S.A. 21-4619 and amendments thereto;
18 (5) has been convicted of a felony described in article 37 of chapter 21
19 of the Kansas Statutes Annotated; (6) has been convicted of an attempt
20 under K.S.A. 21-3301, and amendments thereto, to commit any act spec-
21 ified in this subsection; (7) has been convicted of any act which is de-
22 scribed in K.S.A. 21-4301, 21-4301a or 21-4301c, and amendments
23 thereto; (8) has been convicted in another state or by the federal govern-
24 ment of an act similar to any act described in this subsection; or (9) has
25 entered into a criminal diversion agreement after having been charged
26 with any offense described in this subsection.

27 (c) The state board of education may issue a license to or renew the
28 license of a person who has been convicted of committing an offense or
29 act described in subsection (b) or who has entered into a criminal diver-
30 sion agreement after having been charged with an offense or act described
31 in subsection (b) if the state board determines, following a hearing, that
32 the person has been rehabilitated for a period of at least five years from
33 the date of conviction of the offense or commission of the act or, in the
34 case of a person who has entered into a criminal diversion agreement,
35 that the person has satisfied the terms and conditions of the agreement.
36 The state board of education may consider factors including, but not
37 limited to, the following in determining whether to grant a certificate:

38 (1) The nature and seriousness of the offense or act;
39 (2) the conduct of the person subsequent to commission of the of-
40 fense or act;
41 (3) the time elapsed since the commission of the offense or act;
42 (4) the age of the person at the time of the offense or act;
43 (5) whether the offense or act was an isolated or recurring incident;

1 and

2 (6) discharge from probation, pardon or expungement.

3 (d) Before any license is denied by the state board of education for
4 any of the offenses or acts specified in subsections (a) and (b), the person
5 shall be given notice and an opportunity for a hearing in accordance with
6 the provisions of the Kansas administrative procedure act.

7 (e) The county or district attorney shall file a report with the state
8 board of education indicating the name, address and social security num-
9 ber of any person who has been determined to have committed any of-
10 fense or act specified in subsection (a) or (b) or to have entered into a
11 criminal diversion agreement after having been charged with any offense
12 or act specified in subsection (b). Such report shall be filed within 30
13 days of the date of the determination that the person has committed any
14 such act or entered into any such diversion agreement.

15 (f) The state board of education shall not be liable for civil damages
16 to any person refused issuance or renewal of a license by reason of the
17 state board's compliance, in good faith, with the provisions of this section.

18 Sec. 11. K.S.A. 2007 Supp. 72-5445 is hereby amended to read as
19 follows: 72-5445. (a) (1) Subject to the provisions of subsection (b), the
20 provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto,
21 apply only to: (A) Teachers who have completed not less than three con-
22 secutive years of employment, and been offered a fourth contract, in the
23 school district, area vocational-technical school or community college by
24 which any such teacher is currently employed; and (B) teachers who have
25 completed not less than two consecutive years of employment, and been
26 offered a third contract, in the school district, area vocational-technical
27 school or community college by which any such teacher is currently em-
28 ployed if at any time prior to the current employment the teacher has
29 completed the years of employment requirement of subpart (A) in any
30 school district, area vocational-technical school or community college in
31 this state.

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

34 (3) The provisions of this subsection are subject to the provisions of
35 K.S.A. 72-5446, and amendments thereto.

36 (b) The provisions of K.S.A. 72-5438 through 72-5443, and amend-
37 ments thereto, do not apply to any teacher whose license has been non-
38 renewed or revoked by the state board of education for the reason that
39 the teacher: (1) Has been convicted of a felony under the uniform con-
40 trolled substances act; (2) has been convicted of a felony described in any
41 section of article 34 of chapter 21 of the Kansas Statutes Annotated or an
42 act described in K.S.A. 21-3412 ~~or K.S.A. 21-3412a~~, and amendments
43 thereto, if the victim is a minor or student; (3) has been convicted of a

1 felony described in any section of article 35 of chapter 21 of the Kansas
2 Statutes Annotated, or has been convicted of an act described in K.S.A.
3 21-3517 and amendments thereto, if the victim is a minor or student; (4)
4 has been convicted of any act described in any section of article 36 of
5 chapter 21 of the Kansas Statutes Annotated; (5) has been convicted of a
6 felony described in article 37 of chapter 21 of the Kansas Statutes An-
7 notated; (6) has been convicted of an attempt under K.S.A. 21-3301, and
8 amendments thereto, to commit any act specified in this subsection; (7)
9 has been convicted of any act which is described in K.S.A. 21-4301, 21-
10 4301a or 21-4301c, and amendments thereto; (8) has been convicted in
11 another state or by the federal government of an act similar to any act
12 described in this subsection; or (9) has entered into a criminal diversion
13 agreement after having been charged with any offense described in this
14 subsection.

15 Sec. 12. K.S.A. 2007 Supp. 74-5602 is hereby amended to read as
16 follows: 74-5602. As used in the Kansas law enforcement training act:

17 (a) "Training center" means the law enforcement training center
18 within the division of continuing education of the university of Kansas,
19 created by K.S.A. 74-5603 and amendments thereto.

20 (b) "Commission" means the Kansas commission on peace officers'
21 standards and training, created by K.S.A. 74-5606 and amendments
22 thereto.

23 (c) "Dean" means the dean of continuing education of the university
24 of Kansas.

25 (d) "Director of police training" means the director of police training
26 at the law enforcement training center.

27 (e) "Director" means the executive director of the Kansas commis-
28 sion on peace officers' standards and training.

29 (f) "Law enforcement" means the prevention or detection of crime
30 and the enforcement of the criminal or traffic laws of this state or of any
31 municipality thereof.

32 (g) "Police officer" or "law enforcement officer" means a full-time or
33 part-time salaried officer or employee of the state, a county or a city,
34 whose duties include the prevention or detection of crime and the en-
35 forcement of the criminal or traffic laws of this state or of any municipality
36 thereof. Such terms shall include, but not be limited to, the sheriff, un-
37 dersheriff and full-time or part-time salaried deputies in the sheriff's of-
38 fice in each county; deputy sheriffs deputized pursuant to K.S.A. 19-2858
39 and amendments thereto; conservation officers of the Kansas department
40 of wildlife and parks; university police officers, as defined in K.S.A. 22-
41 2401a, and amendments thereto; campus police officers, as defined in
42 K.S.A. 22-2401a, and amendments thereto; law enforcement agents of
43 the director of alcoholic beverage control; law enforcement agents des-

1 ignated by the secretary of revenue pursuant to K.S.A. 2007 Supp. 75-
2 5157, and amendments thereto; law enforcement agents of the Kansas
3 lottery; law enforcement agents of the Kansas racing commission; depu-
4 ties and assistants of the state fire marshal having law enforcement au-
5 thority; capitol police, existing under the authority of K.S.A. 75-4503 and
6 amendments thereto; and law enforcement officers appointed by the ad-
7 jutant general pursuant to K.S.A. 48-204, and amendments thereto. Such
8 terms shall also include railroad policemen appointed pursuant to K.S.A.
9 66-524 and amendments thereto; school security officers designated as
10 school law enforcement officers pursuant to K.S.A. 72-8222 and amend-
11 ments thereto; and the director of the Kansas commission on peace of-
12 ficers' standards and training and any other employee of such commission
13 designated by the director pursuant to K.S.A. 74-5603, and amendments
14 thereto, as a law enforcement officer. Such terms shall not include any
15 elected official, other than a sheriff, serving in the capacity of a law en-
16 forcement or police officer solely by virtue of such official's elected po-
17 sition; any attorney-at-law having responsibility for law enforcement and
18 discharging such responsibility solely in the capacity of an attorney; any
19 employee of the commissioner of juvenile justice, the secretary of cor-
20 rections or the secretary of social and rehabilitation services; any deputy
21 conservation officer of the Kansas department of wildlife and parks; or
22 any employee of a city or county who is employed solely to perform
23 correctional duties related to jail inmates and the administration and op-
24 eration of a jail; or any full-time or part-time salaried officer or employee
25 whose duties include the issuance of a citation or notice to appear pro-
26 vided such officer or employee is not vested by law with the authority to
27 make an arrest for violation of the laws of this state or any municipality
28 thereof, and is not authorized to carry firearms when discharging the
29 duties of such person's office or employment. Such term shall include
30 any officer appointed or elected on a provisional basis.

31 (h) "Full-time" means employment requiring at least 1,000 hours of
32 law enforcement related work per year.

33 (i) "Part-time" means employment on a regular schedule or employ-
34 ment which requires a minimum number of hours each payroll period,
35 but in any case requiring less than 1,000 hours of law enforcement related
36 work per year.

37 (j) "Misdemeanor crime of domestic violence" means a violation of
38 ~~domestic battery as provided by K.S.A. 21-3412a~~ subsection (b)(2) of
39 K.S.A. 21-3412, and amendments thereto, or any other misdemeanor un-
40 der federal, municipal or state law that has as an element the use or
41 attempted use of physical force, or the threatened use of a deadly weapon,
42 committed by a current or former spouse, parent, or guardian of the
43 victim, by a person with whom the victim shares a child in common, by

1 a person who is cohabiting with or has cohabited with the victim as a
2 spouse, parent or guardian, or by a person similarly situated to a spouse,
3 parent or guardian of the victim.

4 (k) "Auxiliary personnel" means members of organized nonsalaried
5 groups which operate as an adjunct to a police or sheriff's department,
6 including reserve officers, posses and search and rescue groups.

7 (l) "Active law enforcement certificate" means a certificate which at-
8 tests to the qualification of a person to perform the duties of a law en-
9 forcement officer and which has not been suspended or revoked by action
10 of the Kansas commission on peace officers' standards and training and
11 has not lapsed by operation of law as provided in K.S.A. 74-5622, and
12 amendments thereto.

13 Sec. 13. K.S.A. 20-369, 21-3110, 21-3110b, 21-3412, 21-3412a, 21-
14 4603d, 21-4704, 21-4704b, 22-3210 and 60-3107 and K.S.A. 2007 Supp.
15 12-4104, 72-1397, 72-5445 and 74-5602 are hereby repealed.

16 Sec. 14. This act shall take effect and be in force from and after its
17 publication in the statute book.