

SENATE BILL No. 484

By Committee on Judiciary

1-28

9 AN ACT concerning crimes and punishment; relating to substance abuse
10 treatment for certain offenders; amending K.S.A. 21-4704 and K.S.A.
11 2007 Supp. 8-1567, 75-5206, 75-5210 and 75-5220 and repealing the
12 existing sections; also repealing K.S.A. 21-4704b and K.S.A. 2007
13 Supp. 8-1567b.

14

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

16 Section 1. K.S.A. 2007 Supp. 8-1567 is hereby amended to read as
17 follows: 8-1567. (a) No person shall operate or attempt to operate any
18 vehicle within this state while:

19 (1) The alcohol concentration in the person's blood or breath as
20 shown by any competent evidence, including other competent evidence,
21 as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amend-
22 ments thereto, is .08 or more;

23 (2) the alcohol concentration in the person's blood or breath, as meas-
24 ured within two hours of the time of operating or attempting to operate
25 a vehicle, is .08 or more;

26 (3) under the influence of alcohol to a degree that renders the person
27 incapable of safely driving a vehicle;

28 (4) under the influence of any drug or combination of drugs to a
29 degree that renders the person incapable of safely driving a vehicle; or

30 (5) under the influence of a combination of alcohol and any drug or
31 drugs to a degree that renders the person incapable of safely driving a
32 vehicle.

33 (b) No person shall operate or attempt to operate any vehicle within
34 this state if the person is a habitual user of any narcotic, hypnotic, som-
35 nifacient or stimulating drug.

36 (c) If a person is charged with a violation of this section involving
37 drugs, the fact that the person is or has been entitled to use the drug
38 under the laws of this state shall not constitute a defense against the
39 charge.

40 (d) Upon a first conviction of a violation of this section, a person shall
41 be guilty of a class B, nonperson misdemeanor and sentenced to not less
42 than 48 consecutive hours nor more than six months' imprisonment, or
43 in the court's discretion 100 hours of public service, and fined not less

1 than \$500 nor more than \$1,000. The person convicted must serve at
2 least 48 consecutive hours' imprisonment or 100 hours of public service
3 either before or as a condition of any grant of probation or suspension,
4 reduction of sentence or parole.

5 In addition, the court shall enter an order which requires that the
6 person enroll in and successfully complete an alcohol and drug safety
7 action education program or treatment program as provided in K.S.A. 8-
8 1008, and amendments thereto, or both the education and treatment
9 programs.

10 (e) On a second conviction of a violation of this section, a person shall
11 be guilty of a class A, nonperson misdemeanor and sentenced to not less
12 than 90 days nor more than one year's imprisonment and fined not less
13 than \$1,000 nor more than \$1,500. The person convicted must serve at
14 least five consecutive days' imprisonment before the person is granted
15 probation, suspension or reduction of sentence or parole or is otherwise
16 released. The five days' imprisonment mandated by this subsection may
17 be served in a work release program only after such person has served
18 48 consecutive hours' imprisonment, provided such work release program
19 requires such person to return to confinement at the end of each day in
20 the work release program. The court may place the person convicted
21 under a house arrest program pursuant to K.S.A. 21-4603b, and amend-
22 ments thereto, to serve the remainder of the minimum sentence only
23 after such person has served 48 consecutive hours' imprisonment.

24 As a condition of any grant of probation, suspension of sentence or
25 parole or of any other release, the person shall be required to enter into
26 and complete a treatment program for alcohol and drug abuse as provided
27 in K.S.A. 8-1008, and amendments thereto.

28 (f) (1) On the third conviction of a violation of this section, a person
29 shall be guilty of a nonperson felony and sentenced to not less than 90
30 days nor more than one year's imprisonment and fined not less than
31 \$1,500 nor more than \$2,500. The person convicted shall not be eligible
32 for release on probation, suspension or reduction of sentence or parole
33 until the person has served at least 90 days' imprisonment. The 90 days'
34 imprisonment mandated by this paragraph may be served in a work re-
35 lease program only after such person has served 48 consecutive hours'
36 imprisonment, provided such work release program requires such person
37 to return to confinement at the end of each day in the work release
38 program. The court may place the person convicted under a house arrest
39 program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve
40 the remainder of the minimum sentence only after such person has served
41 48 consecutive hours' imprisonment.

42 (2) The court may order that the term of imprisonment imposed pur-
43 suant to paragraph (1) be served in *the custody of the secretary of cor-*

1 ~~rections in a state facility in the custody of the secretary of corrections~~
2 ~~substance abuse treatment facility established by the department of cor-~~
3 ~~rections or, if space is not available at such facility,~~ in a facility designated
4 by the secretary for the provision of substance abuse treatment pursuant
5 to the provisions of K.S.A. 21-4704, and amendments thereto. The person
6 shall remain imprisoned at the state facility only while participating in the
7 substance abuse treatment program designated by the secretary and shall
8 be returned to the custody of the sheriff for execution of the balance of
9 the term of imprisonment upon completion of or the person's discharge
10 from the substance abuse treatment program. Custody of the person shall
11 be returned to the sheriff for execution of the sentence imposed in the
12 event the secretary of corrections determines: (A) That substance abuse
13 treatment resources or the capacity of the facility designated by the sec-
14 retary for the incarceration and treatment of the person is not available;
15 (B) the person fails to meaningfully participate in the treatment program
16 of the designated facility; (C) the person is disruptive to the security or
17 operation of the designated facility; or (D) the medical or mental health
18 condition of the person renders the person unsuitable for confinement
19 at the designated facility. The determination by the secretary that the
20 person either is not to be admitted into the designated facility or is to be
21 transferred from the designated facility is not subject to review. The sher-
22 iff shall be responsible for all transportation expenses to and from the
23 state correctional facility.

24 The court shall also require as a condition of parole that such person
25 enter into and complete a treatment program for alcohol and drug abuse
26 as provided by K.S.A. 8-1008, and amendments thereto.

27 (g) (1) On the fourth or subsequent conviction of a violation of this
28 section, a person shall be guilty of a nonperson felony and sentenced to
29 not less than 90 days nor more than one year's imprisonment and fined
30 \$2,500. The person convicted shall not be eligible for release on proba-
31 tion, suspension or reduction of sentence or parole until the person has
32 served at least 90 days' imprisonment. The 90 days' imprisonment man-
33 dated by this paragraph may be served in a work release program only
34 after such person has served 72 consecutive hours' imprisonment, pro-
35 vided such work release program requires such person to return to con-
36 finement at the end of each day in the work release program.

37 (2) The court may order that the term of imprisonment imposed pur-
38 suant to paragraph (1) be served in ~~the custody of the secretary of cor-~~
39 ~~rections in a state facility in the custody of the secretary of corrections~~
40 ~~substance abuse treatment facility established by the department of cor-~~
41 ~~rections or, if space is not available at such facility,~~ in a facility designated
42 by the secretary for the provision of substance abuse treatment pursuant
43 to the provisions of K.S.A. 21-4704, and amendments thereto. The person

1 shall remain imprisoned at the state facility only while participating in the
2 substance abuse treatment program designated by the secretary and shall
3 be returned to the custody of the sheriff for execution of the balance of
4 the term of imprisonment upon completion of or the person's discharge
5 from the substance abuse treatment program. Custody of the person shall
6 be returned to the sheriff for execution of the sentence imposed in the
7 event the secretary of corrections determines: (A) That substance abuse
8 treatment resources or the capacity of the facility designated by the sec-
9 retary for the incarceration and treatment of the person is not available;
10 (B) the person fails to meaningfully participate in the treatment program
11 of the designated facility; (C) the person is disruptive to the security or
12 operation of the designated facility; or (D) the medical or mental health
13 condition of the person renders the person unsuitable for confinement
14 at the designated facility. The determination by the secretary that the
15 person either is not to be admitted into the designated facility or is to be
16 transferred from the designated facility is not subject to review. The sher-
17 iff shall be responsible for all transportation expenses to and from the
18 state correctional facility.

19 ~~At the time of the filing of the judgment form or journal entry as~~
20 ~~required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the~~
21 ~~court shall cause a certified copy to be sent to the officer having the~~
22 ~~offender in charge. The law enforcement agency maintaining custody and~~
23 ~~control of a defendant for imprisonment shall cause a certified copy of~~
24 ~~the judgment form or journal entry to be sent to the secretary of correc-~~
25 ~~tions within three business days of receipt of the judgment form or journal~~
26 ~~entry from the court and notify the secretary of corrections when the~~
27 ~~term of imprisonment expires and upon expiration of the term of impris-~~
28 ~~onment shall deliver the defendant to a location designated by the sec-~~
29 ~~retary. After the term of imprisonment imposed by the court, the person~~
30 ~~shall be placed in the custody of the secretary of corrections supervised~~
31 ~~by community correctional services for a mandatory one-year period of~~
32 ~~postrelease supervision, which such period of postrelease supervision~~
33 ~~shall not be reduced. During such postrelease supervision, the person~~
34 ~~shall be required to participate in an inpatient or outpatient program for~~
35 ~~alcohol and drug abuse, including, but not limited to, an approved after-~~
36 ~~care plan or mental health counseling, as determined by the secretary~~
37 ~~and satisfy conditions imposed by the Kansas parole board as provided~~
38 ~~by K.S.A. 22-3717, and amendments thereto court. Any violation of the~~
39 ~~conditions of such postrelease supervision may subject such person to~~
40 ~~revocation of postrelease supervision pursuant to K.S.A. 75-5217 et seq.,~~
41 ~~K.S.A. 22-3716, and amendments thereto and as otherwise provided by~~
42 ~~law.~~

43 (h) Any person convicted of violating this section or an ordinance

1 which prohibits the acts that this section prohibits who had one or more
2 children under the age of 14 years in the vehicle at the time of the offense
3 shall have such person's punishment enhanced by one month of impris-
4 onment. This imprisonment must be served consecutively to any other
5 minimum mandatory penalty imposed for a violation of this section or an
6 ordinance which prohibits the acts that this section prohibits. Any en-
7 hanced penalty imposed shall not exceed the maximum sentence allow-
8 able by law. During the service of the enhanced penalty, the judge may
9 order the person on house arrest, work release or other conditional
10 release.

11 (i) The court may establish the terms and time for payment of any
12 fines, fees, assessments and costs imposed pursuant to this section. Any
13 assessment and costs shall be required to be paid not later than 90 days
14 after imposed, and any remainder of the fine shall be paid prior to the
15 final release of the defendant by the court.

16 (j) In lieu of payment of a fine imposed pursuant to this section, the
17 court may order that the person perform community service specified by
18 the court. The person shall receive a credit on the fine imposed in an
19 amount equal to \$5 for each full hour spent by the person in the specified
20 community service. The community service ordered by the court shall be
21 required to be performed not later than one year after the fine is imposed
22 or by an earlier date specified by the court. If by the required date the
23 person performs an insufficient amount of community service to reduce
24 to zero the portion of the fine required to be paid by the person, the
25 remaining balance of the fine shall become due on that date.

26 (k) (1) Except as provided in paragraph (5), in addition to any other
27 penalty which may be imposed upon a first conviction of a violation of
28 this section, the court may order that the convicted person's motor vehicle
29 or vehicles be impounded or immobilized for a period not to exceed one
30 year and that the convicted person pay all towing, impoundment and
31 storage fees or other immobilization costs.

32 (2) The court shall not order the impoundment or immobilization of
33 a motor vehicle driven by a person convicted of a violation of this section
34 if the motor vehicle had been stolen or converted at the time it was driven
35 in violation of this section.

36 (3) Prior to ordering the impoundment or immobilization of a motor
37 vehicle or vehicles owned by a person convicted of a violation of this
38 section, the court shall consider, but not be limited to, the following:

39 (A) Whether the impoundment or immobilization of the motor ve-
40 hicle would result in the loss of employment by the convicted person or
41 a member of such person's family; and

42 (B) whether the ability of the convicted person or a member of such
43 person's family to attend school or obtain medical care would be impaired.

- 1 (4) Any personal property in a vehicle impounded or immobilized
2 pursuant to this subsection may be retrieved prior to or during the period
3 of such impoundment or immobilization.
- 4 (5) As used in this subsection, the convicted person's motor vehicle
5 or vehicles shall include any vehicle leased by such person. If the lease
6 on the convicted person's motor vehicle subject to impoundment or im-
7 mobilization expires in less than one year from the date of the impound-
8 ment or immobilization, the time of impoundment or immobilization of
9 such vehicle shall be the amount of time remaining on the lease.
- 10 (l) (1) Except as provided in paragraph (3), in addition to any other
11 penalty which may be imposed upon a second or subsequent conviction
12 of a violation of this section, the court shall order that each motor vehicle
13 owned or leased by the convicted person shall either be equipped with
14 an ignition interlock device or be impounded or immobilized for a period
15 of two years. The convicted person shall pay all costs associated with the
16 installation, maintenance and removal of the ignition interlock device and
17 all towing, impoundment and storage fees or other immobilization costs.
- 18 (2) Any personal property in a vehicle impounded or immobilized
19 pursuant to this subsection may be retrieved prior to or during the period
20 of such impoundment or immobilization.
- 21 (3) As used in this subsection, the convicted person's motor vehicle
22 or vehicles shall include any vehicle leased by such person. If the lease
23 on the convicted person's motor vehicle subject to impoundment or im-
24 mobilization expires in less than two years from the date of the impound-
25 ment or immobilization, the time of impoundment or immobilization of
26 such vehicle shall be the amount of time remaining on the lease.
- 27 (m) The court shall report every conviction of a violation of this sec-
28 tion and every diversion agreement entered into in lieu of further criminal
29 proceedings or a complaint alleging a violation of this section to the di-
30 vision. Prior to sentencing under the provisions of this section, the court
31 shall request and shall receive from the division a record of all prior
32 convictions obtained against such person for any violations of any of the
33 motor vehicle laws of this state.
- 34 (n) For the purpose of determining whether a conviction is a first,
35 second, third, fourth or subsequent conviction in sentencing under this
36 section:
- 37 (1) "Conviction" includes being convicted of a violation of this section
38 or entering into a diversion agreement in lieu of further criminal pro-
39 ceedings on a complaint alleging a violation of this section;
- 40 (2) "conviction" includes being convicted of a violation of a law of
41 another state or an ordinance of any city, or resolution of any county,
42 which prohibits the acts that this section prohibits or entering into a di-
43 version agreement in lieu of further criminal proceedings in a case alleg-

1 ing a violation of such law, ordinance or resolution;

2 (3) any convictions occurring during a person's lifetime shall be taken
3 into account when determining the sentence to be imposed for a first,
4 second, third, fourth or subsequent offender;

5 (4) it is irrelevant whether an offense occurred before or after con-
6 viction for a previous offense; and

7 (5) a person may enter into a diversion agreement in lieu of further
8 criminal proceedings for a violation of this section, and amendments
9 thereto, or an ordinance which prohibits the acts of this section, and
10 amendments thereto, only once during the person's lifetime.

11 (o) Upon conviction of a person of a violation of this section or a
12 violation of a city ordinance or county resolution prohibiting the acts
13 prohibited by this section, the division, upon receiving a report of con-
14 viction, shall suspend, restrict or suspend and restrict the person's driving
15 privileges as provided by K.S.A. 8-1014, and amendments thereto.

16 (p) (1) Nothing contained in this section shall be construed as pre-
17 venting any city from enacting ordinances, or any county from adopting
18 resolutions, declaring acts prohibited or made unlawful by this act as
19 unlawful or prohibited in such city or county and prescribing penalties
20 for violation thereof. Except as specifically provided by this subsection,
21 the minimum penalty prescribed by any such ordinance or resolution shall
22 not be less than the minimum penalty prescribed by this act for the same
23 violation, and the maximum penalty in any such ordinance or resolution
24 shall not exceed the maximum penalty prescribed for the same violation.
25 *On and after the effective date of this act and retroactive for ordinance*
26 *violations committed on or after July 1, 2006, an ordinance may grant to*
27 *a municipal court jurisdiction over a violation of such ordinance which*
28 *is concurrent with the jurisdiction of the district court over a violation of*
29 *this section, notwithstanding that the elements of such ordinance violation*
30 *are the same as the elements of a violation of this section that would*
31 *constitute, and be punished as, a felony.*

32 Any such ordinance or resolution shall authorize the court to order that
33 the convicted person pay restitution to any victim who suffered loss due
34 to the violation for which the person was convicted. Except as provided
35 in paragraph (5), any such ordinance or resolution may require or au-
36 thorize the court to order that the convicted person's motor vehicle or
37 vehicles be impounded or immobilized for a period not to exceed one
38 year and that the convicted person pay all towing, impoundment and
39 storage fees or other immobilization costs.

40 (2) The court shall not order the impoundment or immobilization of
41 a motor vehicle driven by a person convicted of a violation of this section
42 if the motor vehicle had been stolen or converted at the time it was driven
43 in violation of this section.

- 1 (3) Prior to ordering the impoundment or immobilization of a motor
2 vehicle or vehicles owned by a person convicted of a violation of this
3 section, the court shall consider, but not be limited to, the following:
- 4 (A) Whether the impoundment or immobilization of the motor ve-
5 hicle would result in the loss of employment by the convicted person or
6 a member of such person's family; and
- 7 (B) whether the ability of the convicted person or a member of such
8 person's family to attend school or obtain medical care would be impaired.
- 9 (4) Any personal property in a vehicle impounded or immobilized
10 pursuant to this subsection may be retrieved prior to or during the period
11 of such impoundment or immobilization.
- 12 (5) As used in this subsection, the convicted person's motor vehicle
13 or vehicles shall include any vehicle leased by such person. If the lease
14 on the convicted person's motor vehicle subject to impoundment or im-
15 mobilization expires in less than one year from the date of the impound-
16 ment or immobilization, the time of impoundment or immobilization of
17 such vehicle shall be the amount of time remaining on the lease.
- 18 (q) No plea bargaining agreement shall be entered into nor shall any
19 judge approve a plea bargaining agreement entered into for the purpose
20 of permitting a person charged with a violation of this section, or a vio-
21 lation of any ordinance of a city or resolution of any county in this state
22 which prohibits the acts prohibited by this section, to avoid the mandatory
23 penalties established by this section or by the ordinance. For the purpose
24 of this subsection, entering into a diversion agreement pursuant to K.S.A.
25 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not
26 constitute plea bargaining.
- 27 (r) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may
28 be pleaded in the alternative, and the state, city or county, but shall not
29 be required to, may elect one or two of the three prior to submission of
30 the case to the fact finder.
- 31 (s) Upon a fourth or subsequent conviction, the judge of any court in
32 which any person is convicted of violating this section, may revoke the
33 person's license plate or temporary registration certificate of the motor
34 vehicle driven during the violation of this section for a period of one year.
35 Upon revoking any license plate or temporary registration certificate pur-
36 suant to this subsection, the court shall require that such license plate or
37 temporary registration certificate be surrendered to the court.
- 38 (t) For the purpose of this section: (1) "Alcohol concentration" means
39 the number of grams of alcohol per 100 milliliters of blood or per 210
40 liters of breath.
- 41 (2) "Imprisonment" shall include any restrained environment in
42 which the court and law enforcement agency intend to retain custody and
43 control of a defendant and such environment has been approved by the

1 board of county commissioners or the governing body of a city.
2 (3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-
3 4165, and amendments thereto.
4 (u) The amount of the increase in fines as specified in this section
5 shall be remitted by the clerk of the district court to the state treasurer
6 in accordance with the provisions of K.S.A. 75-4215, and amendments
7 thereto. Upon receipt of remittance of the increase provided in this act,
8 the state treasurer shall deposit the entire amount in the state treasury
9 and the state treasurer shall credit 50% to the community alcoholism and
10 intoxication programs fund and 50% to the department of corrections
11 alcohol and drug abuse treatment fund, which is hereby created in the
12 state treasury.
13 (v) Upon every conviction of a violation of this section, the court shall
14 order such person to submit to a pre-sentence alcohol and drug abuse
15 evaluation pursuant to K.S.A. 8-1008, and amendments thereto. Such pre-
16 sentence evaluation shall be made available, and shall be considered by
17 the sentencing court.
18 Sec. 2. K.S.A. 21-4704 is hereby amended to read as follows: 21-
19 4704. (a) For purposes of sentencing, the following sentencing guidelines
20 grid for nondrug crimes shall be applied in felony cases for crimes com-
21 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 35	34 33 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

LEGEND
Presumptive Probation
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, subsections (b)(3) and (b)(4)
25 of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments
26 thereto, shall be as provided by the specific mandatory sentencing
27 requirements of that section and shall not be subject to the provisions of
28 this section or K.S.A. 21-4707 and amendments thereto. If because of the
29 offender's criminal history classification the offender is subject to pre-
30 sumptive imprisonment or if the judge departs from a presumptive pro-
31 bation sentence and the offender is subject to imprisonment, the provi-
32 sions of this section and K.S.A. 21-4707, and amendments thereto, shall
33 apply and the offender shall not be subject to the mandatory sentence as
34 provided in K.S.A. 21-3710, and amendments thereto. Notwithstanding
35 the provisions of any other section, the term of imprisonment imposed
36 for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3)
37 of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710,
38 K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall not
39 be served in a state facility in the custody of the secretary of corrections,
40 *except that the term of imprisonment for felony violations of K.S.A. 8-*
41 *1567, and amendments thereto, may be served in a state substance abuse*
42 *treatment facility established by the department of corrections, or if space*
43 *is not available at such facility, in a state correctional facility designated*

1 *by the secretary of corrections if the secretary determines that substance*
2 *abuse treatment resources and facility capacity is available. The secre-*
3 *tary's determination regarding the availability of treatment resources and*
4 *facility capacity shall not be subject to review.*

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

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

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

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

1 other jurisdiction.

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

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

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

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

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

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

27 Sec. 3. K.S.A. 2007 Supp. 75-5206 is hereby amended to read as
28 follows: 75-5206. (a) Except as provided in subsection ~~(c)~~ or (d) or (e), to
29 carry out the purposes of this act, the secretary shall have authority to
30 order the housing and confinement of any person sentenced to the sec-
31 retary's custody to any institution or facility herein placed under the sec-
32 retary's supervision and management or to any contract facility, including
33 a conservation camp.

34 (b) All institutions of the department of corrections shall be institu-
35 tions for the incarceration of felons sentenced to the custody of the sec-
36 retary of corrections. The secretary may enter into interagency agree-
37 ments authorizing the use of department of corrections' institutions for
38 the temporary housing of pretrial detainees, misdemeanor offenders and
39 other persons confined in local detention facilities or jails when the local
40 facility cannot be used to house those persons due to a natural disaster
41 or other emergency. Authorization shall not be given for the temporary
42 housing of juveniles under 16 years of age.

43 (c) *The secretary shall have the authority to order the housing and*

1 *confinement of any person sentenced to the secretary's custody to a state*
2 *substance abuse treatment facility for the purpose of receiving substance*
3 *abuse treatment, if the secretary makes a determination that such person*
4 *would benefit from such assignment.*

5 ~~(c)~~ (d) No person under 16 years of age sentenced to the secretary's
6 custody shall be placed in the Lansing correctional facility or the Hutch-
7 inson correctional facility.

8 ~~(d)~~ (e) The secretary shall have the authority to order the placement
9 of a juvenile, as described in K.S.A. 2007 Supp. 38-2366, and amendments
10 thereto, in a juvenile correctional facility. Such juvenile shall be allowed
11 to be in a juvenile correctional facility only until such juvenile reaches
12 the age of 23 years.

13 Sec. 4. K.S.A. 2007 Supp. 75-5210 is hereby amended to read as
14 follows: 75-5210. (a) Persons committed to the institutional care of the
15 secretary of corrections shall be dealt with humanely, with efforts directed
16 to their rehabilitation and return to the community as safely and promptly
17 as practicable. For these purposes, the secretary shall establish programs
18 of classification and diagnosis, education, casework, mental health, coun-
19 seling and psychotherapy, chemical dependency counseling and treat-
20 ment, sexual offender counseling, prerelease programs which emphasize
21 re-entry skills, adjustment counseling and job placement, vocational train-
22 ing and guidance, work, library, physical education and other rehabilita-
23 tion and recreation services; the secretary may establish facilities for re-
24 ligious worship; and the secretary shall institute procedures for the study
25 and classification of inmates. The secretary shall maintain a comprehen-
26 sive record of the behavior of each inmate reflecting accomplishments
27 and progress toward rehabilitation as well as charges of infractions of rules
28 and regulations, punishments imposed and medical inspections made.

29 (b) Programs of work, education or training shall include a system of
30 promotional rewards entitling inmates to progressive transfer from high
31 security status to a lesser security status. The secretary shall have authority
32 at any time to transfer an inmate from one level of status to another level
33 of status. Inmates may apply to the secretary for such status privileges.
34 The secretary shall adopt a custody classification manual establishing stan-
35 dards relating to the transfer of an inmate from one status to another,
36 and in developing such standards the secretary shall take into consider-
37 ation progress made by the inmate toward attaining the educational, vo-
38 cational and behavioral goals set by the secretary for the individual in-
39 mate. In order to facilitate the reintegration into the community of some
40 inmates who are scheduled for release within the next 90 days, there shall
41 be a presumption of minimum security status for those offenders who
42 have been returned to prison for violating conditions of their postrelease
43 supervision not involving a new criminal conviction and whose last facility

1 security custody status was not either special management or maximum.
2 ~~This presumption shall be applied to the initial security custody status~~
3 ~~assigned to the offender upon readmission into a correctional facility. In-~~
4 ~~mates sentenced to a state substance abuse treatment facility established~~
5 ~~by the department of corrections shall have a presumption of minimum~~
6 ~~security status. These presumptions of minimum security status shall be~~
7 ~~applied to the initial security custody upon readmission into a correctional~~
8 ~~facility or admission into a state substance abuse treatment facility, unless~~
9 the security custody status is increased pursuant to policies adopted by
10 the secretary. The security custody status designated by the department
11 shall not be subject to judicial review.

12 (c) The secretary, with the cooperation of the department of health
13 and environment, shall adopt rules and regulations establishing and pre-
14 scribing standards for health, medical and dental services for each insti-
15 tution, including preventive, diagnostic and therapeutic measures on both
16 an outpatient and a hospital basis, for all types of patients. An inmate may
17 be taken, when necessary, to a medical facility outside the institution.

18 (d) Under rules and regulations adopted by the secretary, directors
19 of institutions may authorize visits, correspondence and communication,
20 under reasonable conditions, between inmates and appropriate friends,
21 relatives and others.

22 (e) The secretary shall adopt rules and regulations under which in-
23 mates, as part of a program anticipating their release from minimum
24 security status, may be granted temporary furloughs from a correctional
25 institution or contract facility to visit their families or to be interviewed
26 by prospective employers.

27 (f) The secretary shall adopt rules and regulations for the mainte-
28 nance of good order and discipline in the correctional institutions, in-
29 cluding procedures for dealing with violations. Disciplinary rules and reg-
30 ulations may provide a system of punishment including segregation,
31 forfeitures of good time earned, fines, extra work, loss of privileges, re-
32 strictions and payment of restitution.

33 The secretary and any persons designated by rules and regulations of
34 the secretary may administer oaths for the purpose of conducting inves-
35 tigations and disciplinary proceedings pursuant to rules and regulations
36 adopted by the secretary under this subsection and under K.S.A. 75-5251
37 and amendments thereto. For this purpose, the secretary shall adopt rules
38 and regulations designating those persons who may administer oaths in
39 such investigations and proceedings and the form and manner of admin-
40 istration of the oaths.

41 (g) A copy of the rules and regulations adopted pursuant to subsec-
42 tion (f) shall be provided to each inmate. Other rules and regulations of
43 the secretary which are required to be published pursuant to K.S.A. 77-

1 415 through 77-437, and amendments thereto, shall be made available to
2 inmates by placing a copy in the inmate library at the institution or by
3 some other means providing reasonable accessibility to inmates.

4 (h) Any inmate participating in work and educational release pro-
5 grams under the provisions of K.S.A. 75-5267 and amendments thereto
6 shall continue to be in the legal custody of the secretary of corrections,
7 notwithstanding the inmate's absence from a correctional institution by
8 reason of employment, education or for any other purpose related to such
9 work and educational release programs, and any employer or educator of
10 that person shall be considered the representative or agent for the
11 secretary.

12 (i) The secretary shall establish administrative and fiscal procedures
13 to permit the use of regional or community institutions, local govern-
14 mental or private facilities or halfway houses for the placement of inmates
15 released for the purposes of this act and for the work and educational
16 release programs under K.S.A. 75-5267 and amendments thereto.

17 (j) The secretary may establish correctional work facilities and select
18 inmates to be assigned to such facilities.

19 (k) The secretary may acquire, in the name of the state, by lease,
20 purchase or contract additional facilities as may be needed for the housing
21 of persons in the secretary's custody.

22 (l) The secretary is hereby authorized to use any of the inmates as-
23 signed to the secretary's custody in the construction and repair of build-
24 ings or property on state owned or leased grounds.

25 (m) For the purposes of establishing and carrying out the programs
26 provided for by subsection (a) and by K.S.A. 75-5267 and amendments
27 thereto, the secretary may contract with qualified individuals, partner-
28 ships, corporations or organizations; with agencies of the state; or with
29 the United States or any political subdivision of the state, or any agency
30 thereof.

31 Sec. 5. K.S.A. 2007 Supp. 75-5220 is hereby amended to read as
32 follows: 75-5220. (a) Except as provided in subsection (d), within three
33 business days of receipt of the notice provided for in K.S.A. 75-5218 and
34 amendments thereto, the secretary of corrections shall notify the sheriff
35 having such offender in custody to convey such offender immediately to
36 the department of corrections reception and diagnostic unit or if space is
37 not available at such facility, then to some other state correctional insti-
38 tution until space at the facility is available, except that, in the case of
39 first offenders who are conveyed to a state correctional institution other
40 than the reception and diagnostic unit, such offenders shall be segregated
41 from the inmates of such correctional institution who are not being held
42 in custody at such institution pending transfer to the reception and di-
43 agnostic unit when space is available therein. The expenses of any such

1 conveyance shall be charged against and paid out of the general fund of
2 the county whose sheriff conveys the offender to the institution as pro-
3 vided in this subsection.

4 (b) Any female offender sentenced according to the provisions of
5 K.S.A. 75-5229 and amendments thereto shall be conveyed by the sheriff
6 having such offender in custody directly to a correctional institution des-
7 ignated by the secretary of corrections, subject to the provisions of K.S.A.
8 75-52,134 and amendments thereto. The expenses of such conveyance to
9 the designated institution shall be charged against and paid out of the
10 general fund of the county whose sheriff conveys such female offender
11 to such institution.

12 (c) Each offender conveyed to a state correctional institution pursu-
13 ant to this section shall be accompanied by the record of the offender's
14 trial and conviction as prepared by the clerk of the district court in ac-
15 cordance with K.S.A. 75-5218 and amendments thereto.

16 (d) If the offender in the custody of the secretary is a juvenile, as
17 described in K.S.A. 2007 Supp. 38-2366, and amendments thereto, such
18 juvenile shall not be transferred to the state reception and diagnostic
19 center until such time as such juvenile is to be transferred from a juvenile
20 correctional facility to a department of corrections institution or facility.

21 (e) *Any offender sentenced to a state substance abuse treatment fa-*
22 *cility established by the department of corrections shall not be transferred*
23 *to the state reception and diagnostic center but directly to such state*
24 *substance abuse treatment facility.*

25 Sec. 6. K.S.A. 21-4704 and 21-4704b and K.S.A. 2007 Supp. 8-1567,
26 8-1567b, 75-5206, 75-5210 and 75-5220 are hereby repealed.

27 Sec. 7. This act shall take effect and be in force on and after July 1,
28 2010, and its publication in the statute book.