

SENATE BILL No. 640

By Committee on Federal and State Affairs

2-19

9 AN ACT relating to crimes, criminal procedure and punishments; con-
10 cerning drug crimes; recodification of certain statutes; amending
11 K.S.A. 12-4419, 12-4509, 21-3436, 21-3608a, 21-3718, 21-3826, 21-
12 4203, 21-4204, 21-4226, 21-4502, 21-4603d, 21-4704, 21-4705, 21-
13 4708, 21-4713, 21-4714, 21-4717, 21-4729, 22-2909, 22-3901, 22-4902,
14 36-601, 36-604, 65-4102 and 65-4127c and K.S.A. 2007 Supp. 8-1567,
15 12-4104, 60-4104, 72-89c01 and 75-52,144 and repealing the existing
16 sections; also repealing K.S.A. 21-3445, 21-4214, 21-4215, 65-4105a,
17 65-4141, 65-4142, 65-4155, 65-4158, 65-4162, 65-4163, 65-4164 and
18 65-4165 and K.S.A. 2007 Supp. 8-1567b, 21-4704b, 65-4150, 65-4151,
19 65-4152, 65-4153, 65-4159, 65-4159a, 65-4160, 65-4161 and 65-4166.
20

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

22 New Section 1. As used in sections 1 through 18, and amendments
23 thereto:

24 (a) “Controlled substance” means any drug, substance or immediate
25 precursor included in any of the schedules designated in K.S.A. 65-4105,
26 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

27 (b) (1) “Controlled substance analog” means a substance that is in-
28 tended for human consumption, and:

29 (A) The chemical structure of which is substantially similar to the
30 chemical structure of a controlled substance listed in or added to the
31 schedules designated in K.S.A. 65-4105 or 65-4107, and amendments
32 thereto;

33 (B) which has a stimulant, depressant or hallucinogenic effect on the
34 central nervous system substantially similar to the stimulant, depressant
35 or hallucinogenic effect on the central nervous system of a controlled
36 substance included in the schedules designated in K.S.A. 65-4105 or 65-
37 4107, and amendments thereto; or

38 (C) with respect to a particular individual, which the individual rep-
39 represents or intends to have a stimulant, depressant or hallucinogenic effect
40 on the central nervous system substantially similar to the stimulant, de-
41 pressant or hallucinogenic effect on the central nervous system of a con-
42 trolled substance included in the schedules designated in K.S.A. 65-4105
43 or 65-4107, and amendments thereto.

- 1 (2) “Controlled substance analog” does not include:
2 (A) A controlled substance;
3 (B) a substance for which there is an approved new drug application;
4 or
5 (C) a substance with respect to which an exemption is in effect for
6 investigational use by a particular person under section 505 of the federal
7 food, drug, and cosmetic act (21 U.S.C. 355) to the extent conduct with
8 respect to the substance is permitted by the exemption.
- 9 (c) “Cultivate” means the planting or promotion of growth of five or
10 more plants which contain or can produce controlled substances.
- 11 (d) “Distribute” means the actual, constructive or attempted transfer
12 from one person to another of some item whether or not there is an
13 agency relationship. “Distribute” includes, but is not limited to, sale, offer
14 for sale or any act that causes some item to be transferred from one person
15 to another. “Distribute” does not include acts of administering, dispens-
16 ing or prescribing a controlled substance as authorized by the pharmacy
17 act, the uniform controlled substances act, or otherwise authorized by
18 law.
- 19 (e) “Drug” means:
20 (1) Substances recognized as drugs in the official United States phar-
21 macopoeia, official homeopathic pharmacopoeia of the United States or
22 official national formulary or any supplement to any of them;
23 (2) substances intended for use in the diagnosis, cure, mitigation,
24 treatment or prevention of disease in man or animals;
25 (3) substances, other than food, intended to affect the structure or
26 any function of the body of man or animals; and
27 (4) substances intended for use as a component of any article speci-
28 fied in paragraph (1), (2) or (3) of this subsection. It does not include
29 devices or their components, parts or accessories.
- 30 (f) “Drug paraphernalia” means all equipment and materials of any
31 kind which are used, or primarily intended or designed for use in planting,
32 propagating, cultivating, growing, harvesting, manufacturing, compound-
33 ing, converting, producing, processing, preparing, testing, analyzing,
34 packaging, repackaging, storing, containing, concealing, injecting, ingest-
35 ing, inhaling or otherwise introducing into the human body a controlled
36 substance and in violation of this act. “Drug paraphernalia” shall include,
37 but is not limited to:
38 (1) Kits used or intended for use in planting, propagating, cultivating,
39 growing or harvesting any species of plant which is a controlled substance
40 or from which a controlled substance can be derived;
41 (2) kits used or intended for use in manufacturing, compounding,
42 converting, producing, processing or preparing controlled substances;
43 (3) isomerization devices used or intended for use in increasing the

- 1 potency of any species of plant which is a controlled substance;
- 2 (4) testing equipment used or intended for use in identifying or in
- 3 analyzing the strength, effectiveness or purity of controlled substances;
- 4 (5) scales and balances used or intended for use in weighing or meas-
- 5 uring controlled substances;
- 6 (6) diluents and adulterants, including, but not limited to, quinine
- 7 hydrochloride, mannitol, mannite, dextrose and lactose, which are used
- 8 or intended for use in cutting controlled substances;
- 9 (7) separation gins and sifters used or intended for use in removing
- 10 twigs and seeds from or otherwise cleaning or refining marijuana;
- 11 (8) blenders, bowls, containers, spoons and mixing devices used or
- 12 intended for use in compounding controlled substances;
- 13 (9) capsules, balloons, envelopes, bags and other containers used or
- 14 intended for use in packaging small quantities of controlled substances;
- 15 (10) containers and other objects used or intended for use in storing
- 16 or concealing controlled substances;
- 17 (11) hypodermic syringes, needles and other objects used or intended
- 18 for use in parenterally injecting controlled substances into the human
- 19 body;
- 20 (12) objects used or primarily intended or designed for use in in-
- 21 gesting, inhaling or otherwise introducing marijuana, cocaine, hashish,
- 22 hashish oil, phenylacetone (PCP), methamphetamine or amphetamine
- 23 into the human body, such as:
 - 24 (A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with
 - 25 or without screens, permanent screens, hashish heads or punctured metal
 - 26 bowls;
 - 27 (B) water pipes, bongs or smoking pipes designed to draw smoke
 - 28 through water or another cooling device;
 - 29 (C) carburetion pipes, glass or other heat resistant tubes or any other
 - 30 device used or intended to be used, designed to be used to cause vapor-
 - 31 ization of a controlled substance for inhalation;
 - 32 (D) smoking and carburetion masks;
 - 33 (E) roach clips, objects used to hold burning material, such as a ma-
 - 34 rijuana cigarette, that has become too small or too short to be held in the
 - 35 hand;
 - 36 (F) miniature cocaine spoons and cocaine vials;
 - 37 (G) chamber smoking pipes;
 - 38 (H) carburetor smoking pipes;
 - 39 (I) electric smoking pipes;
 - 40 (J) air-driven smoking pipes;
 - 41 (K) chillums;
 - 42 (L) bongs;
 - 43 (M) ice pipes or chillers;

- 1 (N) any smoking pipe manufactured to disguise its intended purpose;
2 (O) wired cigarette papers; or
3 (P) cocaine freebase kits.
- 4 (g) “Immediate precursor” means a substance which the board of
5 pharmacy has found to be and by rule and regulation designates as being
6 the principal compound commonly used or produced primarily for use
7 and which is an immediate chemical intermediary used or likely to be
8 used in the manufacture of a controlled substance, the control of which
9 is necessary to prevent, curtail or limit manufacture.
- 10 (h) “Isomer” means all enantiomers and diastereomers.
- 11 (i) “Manufacture” means the production, preparation, propagation,
12 compounding, conversion or processing of a controlled substance either
13 directly or indirectly or by extraction from substances of natural origin or
14 independently by means of chemical synthesis or by a combination of
15 extraction and chemical synthesis and includes any packaging or repack-
16 aging of the substance or labeling or relabeling of its container, except
17 that this term does not include the preparation or compounding of a
18 controlled substance by an individual for the individual’s own lawful use
19 or the preparation, compounding, packaging or labeling of a controlled
20 substance:
- 21 (1) By a practitioner or the practitioner’s agent pursuant to a lawful
22 order of a practitioner as an incident to the practitioner’s administering
23 or dispensing of a controlled substance in the course of the practitioner’s
24 professional practice; or
- 25 (2) by a practitioner or by the practitioner’s authorized agent under
26 such practitioner’s supervision for the purpose of or as an incident to
27 research, teaching or chemical analysis or by a pharmacist or medical care
28 facility as an incident to dispensing of a controlled substance.
- 29 (j) “Marijuana” means all parts of all varieties of the plant Cannabis
30 whether growing or not, the seeds thereof, the resin extracted from any
31 part of the plant and every compound, manufacture, salt, derivative, mix-
32 ture or preparation of the plant, its seeds or resin. It does not include the
33 mature stalks of the plant, fiber produced from the stalks, oil or cake
34 made from the seeds of the plant, any other compound, manufacture,
35 salt, derivative, mixture or preparation of the mature stalks, except the
36 resin extracted therefrom, fiber, oil or cake or the sterilized seed of the
37 plant which is incapable of germination.
- 38 (k) “Narcotic drug” means any of the following whether produced
39 directly or indirectly by extraction from substances of vegetable origin or
40 independently by means of chemical synthesis or by a combination of
41 extraction and chemical synthesis:
- 42 (1) Opium and opiate and any salt, compound, derivative or prepa-
43 ration of opium or opiate;

- 1 (2) any salt, compound, isomer, derivative or preparation thereof
2 which is chemically equivalent or identical with any of the substances
3 referred to in paragraph (1) but not including the isoquinoline alkaloids
4 of opium;
- 5 (3) opium poppy and poppy straw;
- 6 (4) coca leaves and any salt, compound, derivative or preparation of
7 coca leaves and any salt, compound, isomer, derivative or preparation
8 thereof which is chemically equivalent or identical with any of these sub-
9 stances, but not including decocainized coca leaves or extractions of coca
10 leaves which do not contain cocaine or ecgonine.
- 11 (l) "Opiate" means any substance having an addiction-forming or ad-
12 diction-sustaining liability similar to morphine or being capable of con-
13 version into a drug having addiction-forming or addiction-sustaining li-
14 ability. It does not include, unless specifically designated as controlled
15 under K.S.A. 65-4102, and amendments thereto, the dextrorotatory iso-
16 mer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).
17 It does include its racemic and levorotatory forms.
- 18 (m) "Opium poppy" means the plant of the species *Papaver somni-*
19 *ferum* L. except its seeds.
- 20 (n) "Person" means individual, corporation, government or govern-
21 mental subdivision or agency, business trust, estate, trust, partnership,
22 association or any other legal entity.
- 23 (o) "Poppy straw" means all parts, except the seeds, of the opium
24 poppy, after mowing.
- 25 (p) "Possession" means having joint or exclusive control over an item
26 with knowledge of and intent to have such control or knowingly keeping
27 some item in a place where the person has some measure of access and
28 right of control.
- 29 (q) "School property" means property upon which is located a struc-
30 ture used by a unified school district or an accredited nonpublic school
31 for student instruction or attendance or extracurricular activities of pupils
32 enrolled in kindergarten or any of the grades one through 12. This defi-
33 nition shall not be construed as requiring that school be in session or that
34 classes are actually being held at the time of the offense or that children
35 must be present within the structure or on the property during the time
36 of any alleged criminal act. If the structure or property meets the above
37 definition, the actual use of that structure or property at the time alleged
38 shall not be a defense to the crime charged or the sentence imposed.
- 39 (r) "Simulated controlled substance" means any product which iden-
40 tifies itself by a common name or slang term associated with a controlled
41 substance and which indicates on its label or accompanying promotional
42 material that the product simulates the effect of a controlled substance.
- 43 New Sec. 2. (a) Prosecutions for crimes committed prior to the July

1 1, 2008, act shall be governed by the law in effect at the time the crime
2 was committed. For purposes of this section, a crime was committed prior
3 to the July 1, 2008, act if any element of the crime occurred prior thereto.

4 (b) The prohibitions of this act shall apply unless the conduct pro-
5 hibited is authorized by the pharmacy act, the uniform controlled sub-
6 stances act or otherwise authorized by law.

7 New Sec. 3. (a) It shall be unlawful for any person to manufacture
8 any controlled substance or controlled substance analog.

9 (b) Violation or attempted violation of subsection (a) shall be a drug
10 severity level 1 felony. The provisions of subsection (d) of K.S.A. 21-3301,
11 and amendments thereto, shall not apply to a violation of attempting to
12 unlawfully manufacture any controlled substance pursuant to this section.

13 (c) For persons arrested and charged under this section, bail shall be
14 at least \$50,000 cash or surety, unless the court determines, on the record,
15 that the defendant is not likely to re-offend, the court imposes pretrial
16 supervision, or the defendant agrees to participate in a licensed or cer-
17 tified drug treatment program.

18 (d) The sentence of a person who violates this section shall not be
19 subject to statutory provisions for suspended sentence, community serv-
20 ice work or probation.

21 (e) The sentence of a person who violates this section or K.S.A. 65-
22 4159, which was applicable before the effective date of this act, shall not
23 be reduced because these sections prohibit conduct identical to that pro-
24 hibited by K.S.A. 65-4161 or 65-4163, and amendments thereto or section
25 5, and amendments thereto.

26 New Sec. 4. All costs and expenses resulting from the seizure, dis-
27 position and decontamination of an unlawful manufacturing site shall be
28 assessed as costs against the defendant.

29 New Sec. 5. (a) It shall be unlawful for any person to cultivate, dis-
30 tribute or possess with the intent to distribute any of the following con-
31 trolled substances or controlled substance analogs thereof:

32 (1) Opiates, opium or narcotic drugs, or any stimulant designated in
33 subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments
34 thereto;

35 (2) any depressant designated in subsection (e) of K.S.A. 65-4105,
36 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109
37 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

38 (3) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
39 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.
40 65-4109, and amendments thereto;

41 (4) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
42 4105, and amendments thereto, or designated in subsection (g) of K.S.A.
43 65-4107, and amendments thereto, or designated in subsection (g) of

1 K.S.A. 65-4109, and amendments thereto;

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

5 (6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
6 4109, and amendments thereto.

7 (b) It shall be unlawful for any person to distribute or possess with
8 the intent to distribute a controlled substance or a controlled substance
9 analog designated in K.S.A. 65-4113, and amendments thereto.

10 (c) (1) Violation of subsection (a) shall be a drug severity level 3 fel-
11 ony; except that:

12 (A) Violation of subsection (a) on or within 1,000 feet of any school
13 property shall be a drug severity level 2 felony;

14 (B) violation of subsection (a)(1) shall be a drug severity level 2 felony
15 if that person has one prior conviction under subsection (a)(1), under
16 K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense
17 from another jurisdiction; and violation of subsection (a)(1) shall be a drug
18 severity level 1 felony if that person has two prior convictions under sub-
19 section (a)(1), under K.S.A. 65-4161 prior to its repeal, or under a sub-
20 stantially similar offense from another jurisdiction;

21 (2) violation of subsection (b) shall be a class A nonperson misde-
22 meanor; except that violation of subsection (b) shall be a drug severity
23 level 4 felony if the substance was distributed to or possessed with the
24 intent to distribute to a child under 18 years of age.

25 (d) It shall not be a defense to charges arising under this section that
26 the defendant was acting in an agency relationship on behalf of any other
27 party in a transaction involving a controlled substance.

28 New Sec. 6. (a) It shall be unlawful for any person to possess any
29 opiates, opium or narcotic drugs, or any stimulant designated in subsec-
30 tion (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto,
31 or a controlled substance analog thereof.

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

34 (1) Any depressant designated in subsection (e) of K.S.A. 65-4105,
35 and amendments thereto, subsection (e) of K.S.A. 65-4107, and amend-
36 ments thereto, subsection (b) or (c) of K.S.A. 65-4109, and amendments
37 thereto, or subsection (b) of K.S.A. 65-4111, and amendments thereto;

38 (2) any stimulant designated in subsection (f) of K.S.A. 65-4105, and
39 amendments thereto, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107,
40 and amendments thereto, or subsection (e) of K.S.A. 65-4109, and
41 amendments thereto;

42 (3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
43 4105, and amendments thereto, or designated in subsection (g) of K.S.A.

- 1 65-4107, and amendments thereto, or designated in subsection (g) of
2 K.S.A. 65-4109, and amendments thereto;
- 3 (4) any substance designated in subsection (g) of K.S.A. 65-4105, and
4 amendments thereto, and designated in subsection (c), (d), (e), (f) or (g)
5 of K.S.A. 65-4111, and amendments thereto; or
- 6 (5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
7 4109, and amendments thereto.
- 8 (c) (1) Violation of subsection (a) shall be a drug severity level 4
9 felony;
- 10 (2) violation of subsection (b) shall be a class A nonperson misde-
11 meanor; except that violation of subsection (b) shall be a drug severity
12 level 4 felony if that person has a prior conviction under that subsection,
13 under K.S.A. 65-4162, prior to its repeal, under a substantially similar
14 offense from another jurisdiction, or under any city ordinance or county
15 resolution for a substantially similar offense if the substance involved was
16 marijuana or tetrahydrocannabinol as designated in subsection (d) of
17 K.S.A. 65-4105, and amendments thereto.
- 18 (d) It shall not be a defense to charges arising under this section that
19 the defendant was acting in an agency relationship on behalf of any other
20 party in a transaction involving a controlled substance.
- 21 New Sec. 7. (a) It shall be unlawful for any person to knowingly or
22 intentionally use any communication facility:
- 23 (1) In committing, causing, or facilitating the commission of any fel-
24 ony under section 3, 5 or 6, and amendments thereto; or
- 25 (2) in any attempt to commit, any conspiracy to commit, or any crim-
26 inal solicitation of any felony under section 3, 5 or 6, and amendments
27 thereto. Each separate use of a communication facility may be charged
28 as a separate offense under this subsection.
- 29 (b) Violation of subsection (a) shall be a nondrug severity level 8,
30 nonperson felony.
- 31 (c) As used in this section, "communication facility" means any and
32 all public and private instrumentalities used or useful in the transmission
33 of writing, signs, signals, pictures or sounds of all kinds and includes tel-
34 ephone, wire, radio, computer, computer networks, beepers, pagers and
35 all other means of communication.
- 36 New Sec. 8. (a) It shall be unlawful for any person to obtain a pre-
37 scription-only drug by:
- 38 (1) Making, altering or signing of a prescription order by a person
39 other than a practitioner or a mid-level practitioner;
- 40 (2) distribution of a prescription order, knowing it to have been made,
41 altered or signed by a person other than a practitioner or a mid-level
42 practitioner;
- 43 (3) possession of a prescription order with intent to distribute it and

- 1 knowing it to have been made, altered or signed by a person other than
2 a practitioner or a mid-level practitioner;
- 3 (4) possession of a prescription-only drug knowing it to have been
4 obtained pursuant to a prescription order made, altered or signed by a
5 person other than a practitioner or a mid-level practitioner; or
6 (5) providing false information to a practitioner or mid-level practi-
7 tioner for the purpose of obtaining a prescription-only drug.
- 8 (b) (1) Violation of subsection (a) shall be a class A nonperson mis-
9 demeanor; except that:
- 10 (A) Violation of subsection (a) shall be a nondrug severity level 6,
11 nonperson felony if that person sells, possesses with the intent to sell, or
12 offers for sale the prescription-only drug so obtained; and
- 13 (B) violation of subsection (a) shall be a nondrug severity level 9 non-
14 person felony if that person has a prior conviction under that subsection
15 or under K.S.A. 21-4214 prior to its repeal.
- 16 (c) As used in this section:
- 17 (1) "Pharmacist," "practitioner," "mid-level practitioner" and "pre-
18 scription-only drug" shall have the meanings ascribed thereto by K.S.A.
19 65-1626, and amendments thereto.
- 20 (2) "Prescription order" means a written, oral or telephonic order for
21 a prescription-only drug to be filled by a pharmacist. "Prescription order"
22 does not mean a drug dispensed pursuant to such an order.
- 23 (d) The provisions of this section shall not be applicable to prosecu-
24 tions involving prescription-only drugs which could be bought under sec-
25 tion 3, 5 or 6, and amendments thereto.
- 26 New Sec. 9. (a) It shall be unlawful for any person to possess ephed-
27 rine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, io-
28 dine, anhydrous ammonia, pressurized ammonia or phenylpropanolam-
29 ine, or their salts, isomers or salts of isomers with an intent to use the
30 product to manufacture a controlled substance.
- 31 (b) It shall be unlawful for any person to use or possess with intent
32 to use any drug paraphernalia to:
- 33 (1) Manufacture, cultivate, plant, propagate, harvest, test, analyze or
34 distribute a controlled substance; or
- 35 (2) store, contain, conceal, inject, ingest, inhale or otherwise intro-
36 duce a controlled substance into the human body.
- 37 (c) It shall be unlawful for any person to use or possess with intent
38 to use anhydrous ammonia or pressurized ammonia in a container not
39 approved for that chemical by the Kansas department of agriculture.
- 40 (d) It shall be unlawful for any person to purchase, receive or oth-
41 erwise acquire at retail any compound, mixture or preparation containing
42 more than 3.6 grams of pseudoephedrine base or ephedrine base in any
43 single transaction or any compound, mixture or preparation containing

1 more than nine grams of pseudoephedrine base or ephedrine base within
2 any 30-day period.

3 (e) (1) Violation of subsection (a) shall be a drug severity level 2
4 felony;

5 (2) violation of subsection (b)(1) shall be a drug severity level 4 felony,
6 except that violation of subsection (b)(1) shall be a class A nonperson
7 misdemeanor if the drug paraphernalia was used to cultivate fewer than
8 five marijuana plants;

9 (3) violation of subsection (b)(2) shall be a class A nonperson
10 misdemeanor;

11 (4) violation of subsection (c) shall be a drug severity level 4 felony;

12 (5) violation of subsection (d) shall be a class A nonperson
13 misdemeanor.

14 (f) For persons arrested and charged under subsection (a) or (c), bail
15 shall be at least \$50,000 cash or surety, unless the court determines, on
16 the record, that the defendant is not likely to reoffend, the court imposes
17 pretrial supervision or the defendant agrees to participate in a licensed
18 or certified drug treatment program.

19 New Sec. 10. (a) It shall be unlawful for any person to advertise,
20 market, label, distribute or possess with the intent to distribute:

21 (1) Any drug product containing ephedrine, pseudoephedrine, red
22 phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia,
23 pressurized ammonia or phenylpropanolamine or their salts, isomers or
24 salts of isomers if the person knows or reasonably should know that the
25 purchaser will use the product to manufacture a controlled substance; or

26 (2) any drug product containing ephedrine, pseudoephedrine or
27 phenylpropanolamine, or their salts, isomers or salts of isomers for indi-
28 cation of stimulation, mental alertness, weight loss, appetite control, en-
29 ergy or other indications not approved pursuant to the pertinent federal
30 over-the-counter drug final monograph or tentative final monograph or
31 approved new drug application.

32 (b) It shall be unlawful for any person to market, distribute or man-
33 ufacture with intent to distribute any drug paraphernalia, knowing or
34 under circumstances where one reasonably should know that it will be
35 used to manufacture or distribute a controlled substance in violation of
36 this act.

37 (c) It shall be unlawful for any person to distribute, possess with in-
38 tent to distribute or manufacture with intent to distribute any drug par-
39 aphernalia, knowing or under circumstances where one reasonably should
40 know, that it will be used as such in violation of this act except subsection
41 (b) of section 6, and amendments thereto.

42 (d) It shall be unlawful for any person to distribute, possess with
43 intent to distribute or manufacture with intent to distribute any drug

- 1 paraphernalia, knowing, or under circumstances where one reasonably
2 should know, that it will be used as such in violation of subsection (b) of
3 section 6, and amendments thereto.
- 4 (e) It shall be unlawful for any person to purchase, receive or oth-
5 erwise acquire at retail any compound, mixture or preparation containing
6 more than 3.6 grams of pseudoephedrine base or ephedrine base in any
7 single transaction or any compound, mixture or preparation containing
8 more than nine grams of pseudoephedrine base or ephedrine base within
9 any 30-day period.
- 10 (f) (1) Violation of subsection (a) shall be a drug severity level 2
11 felony;
- 12 (2) violation of subsection (b) shall be a drug severity level 4 felony;
- 13 (3) violation of subsection (c) shall be a level 9, nonperson felony,
14 except that violation of subsection (c) shall be a drug severity level 4 felony
15 if that person distributes or causes drug paraphernalia to be distributed
16 to a person under 18 years of age or within 1,000 feet of any school
17 property;
- 18 (4) violation of subsection (d) shall be a class A nonperson misde-
19 meanor, except that violation of subsection (d) shall be a nondrug severity
20 level 9, nonperson felony if that person distributes or causes drug para-
21 phernalia to be distributed to a person under 18 years of age or within
22 1,000 feet of any school property;
- 23 (5) violation of subsection (e) shall be a class A nonperson
24 misdemeanor.
- 25 (g) For persons arrested and charged under subsection (a), bail shall
26 be at least \$50,000 cash or surety, unless the court determines, on the
27 record, that the defendant is not likely to re-offend, the court imposes
28 pretrial supervision or the defendant agrees to participate in a licensed
29 or certified drug treatment program.
- 30 (h) As used in this section, “or under circumstances where one rea-
31 sonably should know” that an item will be used in violation of this section,
32 shall include, but not be limited to, the following:
- 33 (1) Actual knowledge from prior experience or statements by
34 customers;
- 35 (2) inappropriate or impractical design for alleged legitimate use;
- 36 (3) receipt of packaging material, advertising information or other
37 manufacturer supplied information regarding the item’s use as drug par-
38 aphernalia; or
- 39 (4) receipt of a written warning from a law enforcement or prose-
40 cutorial agency having jurisdiction that the item has been previously de-
41 termined to have been designed specifically for use as drug paraphernalia.
- 42 New Sec. 11. (a) In determining whether an object is drug para-
43 phernalia, a court or other authority shall consider, in addition to all other

1 logically relevant factors, the following:

- 2 (1) Statements by an owner or person in control of the object con-
3 cerning its use;
 - 4 (2) prior convictions, if any, of an owner or person in control of the
5 object, under any state or federal law relating to any controlled substance;
 - 6 (3) the proximity of the object, in time and space, to a direct violation
7 of this act;
 - 8 (4) the proximity of the object to controlled substances;
 - 9 (5) the existence of any residue of controlled substances on the
10 object;
 - 11 (6) direct or circumstantial evidence of the intent of an owner or
12 person in control of the object, to deliver it to a person the owner or
13 person in control of the object knows, or should reasonably know, intends
14 to use the object to facilitate a violation of the uniform controlled sub-
15 stances act. The innocence of an owner or person in control of the object
16 as to a direct violation of this act shall not prevent a finding that the object
17 is intended for use as drug paraphernalia;
 - 18 (7) oral or written instructions provided with the object concerning
19 its use;
 - 20 (8) descriptive materials accompanying the object which explain or
21 depict its use;
 - 22 (9) national and local advertising concerning the object's use;
 - 23 (10) the manner in which the object is displayed for sale;
 - 24 (11) whether the owner or person in control of the object is a legit-
25 imate supplier of similar or related items to the community, such as a
26 distributor or dealer of tobacco products;
 - 27 (12) direct or circumstantial evidence of the ratio of sales of the object
28 or objects to the total sales of the business enterprise;
 - 29 (13) the existence and scope of legitimate uses for the object in the
30 community;
 - 31 (14) expert testimony concerning the object's use;
 - 32 (15) any evidence that alleged paraphernalia can or has been used to
33 store a controlled substance or to introduce a controlled substance into
34 the human body as opposed to any legitimate use for the alleged para-
35 phernalia; or
 - 36 (16) advertising of the item in magazines or other means which spe-
37 cifically glorify, encourage or espouse the illegal use, manufacture, sale
38 or cultivation of controlled substances.
- 39 (b) The fact that an item has not yet been used or did not contain a
40 controlled substance at the time of the seizure is not a defense to a charge
41 that the item was possessed with the intention for use as drug
42 paraphernalia.
- 43 New Sec. 12. (a) It shall be unlawful for any person to possess, buy,

- 1 use, smell or inhale toxic vapors with the intent of causing a condition of
2 euphoria, excitement, exhilaration, stupefaction or dulled senses of the
3 nervous system.
- 4 (b) Violation of subsection (a) shall be a class B nonperson
5 misdemeanor.
- 6 (c) In addition to any sentence or fine imposed, the court shall enter
7 an order which requires that the person enroll in and successfully complete
8 an alcohol and drug safety action education program, treatment
9 program or both such programs as provided in K.S.A. 8-1008, and amendments
10 thereto.
- 11 (d) This section shall not apply to the inhalation of anesthesia or other
12 substances for medical or dental purposes.
- 13 (e) For the purposes of this section, the term “toxic vapors” means
14 vapors from the following substances or products containing such
15 substances:
- 16 (1) Alcohols, including methyl, isopropyl, propyl or butyl;
 - 17 (2) aliphatic acetates, including ethyl, methyl, propyl or methyl cel-
18 losolve acetate;
 - 19 (3) acetone;
 - 20 (4) benzene;
 - 21 (5) carbon tetrachloride;
 - 22 (6) cyclohexane;
 - 23 (7) freons, including freon 11 and freon 12;
 - 24 (8) hexane;
 - 25 (9) methyl ethyl ketone;
 - 26 (10) methyl isobutyl ketone;
 - 27 (11) naphtha;
 - 28 (12) perchlorethylene;
 - 29 (13) toluene;
 - 30 (14) trichloroethane; or
 - 31 (15) xylene.
- 32 (f) In a prosecution for a violation of this section, evidence that a
33 container lists one or more of the substances described in subsection (c)
34 as one of its ingredients shall be prima facie evidence that the substance
35 in such container contains toxic vapors and emits the fumes thereof.
- 36 New Sec. 13. (a) It shall be unlawful for any person to distribute,
37 possess with the intent to distribute, or manufacture with the intent to
38 distribute any simulated controlled substance.
- 39 (b) It shall be unlawful for any person to possess any simulated controlled
40 substance.
- 41 (c) (1) Violation of subsection (a) shall be a nondrug severity level 9,
42 nonperson felony, except that violation of subsection (a) shall be a non-
43 drug severity level 7, nonperson felony if that person is 18 or more years

1 of age and the violation occurs on or within 1,000 feet of any school
2 property;

3 (2) violation of subsection (b) shall be a class A nonperson
4 misdemeanor.

5 New Sec. 14. (a) It shall be unlawful for any person to distribute or
6 possess with the intent to distribute any substance which is not a con-
7 trolled substance:

8 (1) Upon an express representation that the substance is a controlled
9 substance or that the substance is of such nature or appearance that the
10 recipient will be able to distribute the substance as a controlled substance;
11 or

12 (2) under circumstances which would give a reasonable person reason
13 to believe that the substance is a controlled substance.

14 (b) Violation of subsection (a) shall be a class A nonperson misde-
15 meanor, except that violation of subsection (a) shall be a nondrug severity
16 level 9, nonperson felony if the distributor is 18 or more years of age and
17 at least three years older than the person to whom the distribution is
18 made.

19 (c) If any one of the following factors is established, there shall be a
20 presumption that delivery of a substance was under circumstances which
21 would give a reasonable person reason to believe that a substance is a
22 controlled substance:

23 (1) The substance was packaged in a manner normally used for the
24 illegal delivery of controlled substances;

25 (2) the delivery of the substance included an exchange of or demand
26 for money or other consideration for delivery of the substance and the
27 amount of the consideration was substantially in excess of the reasonable
28 value of the substance; or

29 (3) the physical appearance of the capsule or other material contain-
30 ing the substance is substantially identical to a specific controlled
31 substance.

32 New Sec. 15. (a) It shall be unlawful for any person to intentionally
33 or knowingly administer a controlled substance to another person without
34 their consent for the purpose of impairing such other person's physical
35 or mental ability to appraise or control their conduct.

36 (b) Violation of subsection (a) shall be a class A person misdemeanor.

37 (c) (1) For the purpose of this section, the term "controlled sub-
38 stance," in addition to the definition provided in subsection (a) of section
39 1, and amendments thereto, includes gamma hydroxybutyric acid, or any
40 controlled substance analog, as defined in K.S.A. 65-4101, and amend-
41 ments thereto, of gamma hydroxybutyric acid, including gamma butyro-
42 lactone; butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-
43 furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone;

1 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid
2 lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone
3 with CAS No. 96-48-0; 1,4 butanediol; butanediol; butane-1,4-diol; 1,4-
4 butylene glycol; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene
5 glycol; tetramethylene glycol; tetramethylene 1,4-diol.

6 (2) For the purpose of this section “administer” means any method
7 of causing the ingestion by another person of a controlled substance in-
8 cluding introduction of the substance into any food, beverage or other
9 consumable that is known or should be known to be consumed by such
10 other person.

11 (d) This section shall not prohibit administration of any substance
12 described in subsection (b)(1) for lawful medical or therapeutic
13 treatment.

14 New Sec. 16. Within 10 days after the initiation of prosecution with
15 respect to a controlled substance analog by indictment, complaint or in-
16 formation, the prosecuting attorney shall notify the board of pharmacy of
17 information relevant to emergency scheduling as provided for in subsec-
18 tion (e) of K.S.A. 65-4102, and amendments thereto. After final deter-
19 mination that the controlled substance analog should not be scheduled,
20 no prosecution relating to that substance as a controlled substance analog
21 may be commenced or continued.

22 New Sec. 17. (a) It shall be unlawful for any person to receive or
23 acquire proceeds or engage in transactions involving proceeds, known to
24 be derived from commission of any crime in this act. The provisions of
25 this subsection do not apply to any transaction between an individual and
26 that individual’s counsel necessary to preserve that individual’s right to
27 representation, as guaranteed by section 10 of the bill of rights of the
28 constitution of the state of Kansas and by the sixth amendment to the
29 United States constitution. This exception does not create any presump-
30 tion against or prohibition of the right of the state to seek and obtain
31 forfeiture of any proceeds derived from a violation of this act.

32 (b) It shall be unlawful for any person to give, sell, transfer, trade,
33 invest, conceal, transport or maintain an interest in or otherwise make
34 available anything of value which that person knows is intended to be
35 used for the purpose of committing or furthering the commission of any
36 crime in this act.

37 (c) It shall be unlawful for any person to direct, plan, organize, ini-
38 tiate, finance, manage, supervise or facilitate the transportation or transfer
39 of proceeds known to be derived from commission of any crime in this
40 act.

41 (d) It shall be unlawful for any person to conduct a financial trans-
42 action involving proceeds derived from commission of any crime in this
43 act when the transaction is designed in whole or in part to conceal or

1 disguise the nature, location, source, ownership or control of the proceeds
2 known to be derived from commission of any crime in this act or to avoid
3 a transaction reporting requirement under state or federal law.

4 (e) (1) Violation of this section shall be a drug severity level 4 felony
5 if the value of the proceeds is less than \$5,000;

6 (2) violation of this section shall be a drug severity level 3 felony if
7 the value of the proceeds is at least \$5,000 but less than \$100,000;

8 (3) violation of this section shall be a drug severity level 2 felony if
9 the value of the proceeds is at least \$100,000 but less than \$500,000;

10 (4) violation of this section shall be a drug severity level 1 felony if
11 the value of the proceeds is \$500,000 or more.

12 New Sec. 18. The provisions listed below shall be applicable and uni-
13 form throughout this state and in all cities and counties therein. No city
14 or county shall enact or enforce any law, ordinance, rule, regulation or
15 resolution in conflict with, in addition to, or supplemental to, the provi-
16 sions listed below unless expressly authorized by law to do so:

17 (a) Subsection (c) of K.S.A. 21-2501a, and amendments thereto;

18 (b) subsections (k) and (l) of K.S.A. 65-1643, and amendments
19 thereto;

20 (c) subsection (e) of K.S.A. 65-4113, and amendments thereto;

21 (d) subsection (c) of section 3, and amendments thereto;

22 (e) subsection (g) of section 10, and amendments thereto;

23 (f) subsection (c) of section 12, and amendments thereto.

24 Sec. 19. K.S.A. 2007 Supp. 8-1567 is hereby amended to read as
25 follows: 8-1567. (a) No person shall operate or attempt to operate any
26 vehicle within this state while:

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

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

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

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

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

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

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

5 (d) Upon a first conviction of a violation of this section, a person shall
6 be guilty of a class B, nonperson misdemeanor and sentenced to not less
7 than 48 consecutive hours nor more than six months' imprisonment, or
8 in the court's discretion 100 hours of public service, and fined not less
9 than \$500 nor more than \$1,000. The person convicted must serve at
10 least 48 consecutive hours' imprisonment or 100 hours of public service
11 either before or as a condition of any grant of probation or suspension,
12 reduction of sentence or parole.

13 In addition, the court shall enter an order which requires that the
14 person enroll in and successfully complete an alcohol and drug safety
15 action education program or treatment program as provided in K.S.A. 8-
16 1008, and amendments thereto, or both the education and treatment
17 programs.

18 (e) On a second conviction of a violation of this section, a person shall
19 be guilty of a class A, nonperson misdemeanor and sentenced to not less
20 than 90 days nor more than one year's imprisonment and fined not less
21 than \$1,000 nor more than \$1,500. The person convicted must serve at
22 least five consecutive days' imprisonment before the person is granted
23 probation, suspension or reduction of sentence or parole or is otherwise
24 released. The five days' imprisonment mandated by this subsection may
25 be served in a work release program only after such person has served
26 48 consecutive hours' imprisonment, provided such work release program
27 requires such person to return to confinement at the end of each day in
28 the work release program. The court may place the person convicted
29 under a house arrest program pursuant to K.S.A. 21-4603b, and amend-
30 ments thereto, to serve the remainder of the minimum sentence only
31 after such person has served 48 consecutive hours' imprisonment.

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

36 (f) (1) On the third conviction of a violation of this section, a person
37 shall be guilty of a nonperson felony and sentenced to not less than 90
38 days nor more than one year's imprisonment and fined not less than
39 \$1,500 nor more than \$2,500. The person convicted shall not be eligible
40 for release on probation, suspension or reduction of sentence or parole
41 until the person has served at least 90 days' imprisonment. The 90 days'
42 imprisonment mandated by this paragraph may be served in a work re-
43 lease program only after such person has served 48 consecutive hours'

1 imprisonment, provided such work release program requires such person
2 to return to confinement at the end of each day in the work release
3 program. The court may place the person convicted under a house arrest
4 program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve
5 the remainder of the minimum sentence only after such person has served
6 48 consecutive hours' imprisonment.

7 (2) The court may order that the term of imprisonment imposed pur-
8 suant to paragraph (1) be served in a state facility in the custody of the
9 secretary of corrections in a facility designated by the secretary for the
10 provision of substance abuse treatment pursuant to the provisions of
11 K.S.A. 21-4704, and amendments thereto. The person shall remain im-
12 prisoned at the state facility only while participating in the substance
13 abuse treatment program designated by the secretary and shall be re-
14 turned to the custody of the sheriff for execution of the balance of the
15 term of imprisonment upon completion of or the person's discharge from
16 the substance abuse treatment program. Custody of the person shall be
17 returned to the sheriff for execution of the sentence imposed in the event
18 the secretary of corrections determines: (A) That substance abuse treat-
19 ment resources or the capacity of the facility designated by the secretary
20 for the incarceration and treatment of the person is not available; (B) the
21 person fails to meaningfully participate in the treatment program of the
22 designated facility; (C) the person is disruptive to the security or operation
23 of the designated facility; or (D) the medical or mental health condition
24 of the person renders the person unsuitable for confinement at the des-
25 ignated facility. The determination by the secretary that the person either
26 is not to be admitted into the designated facility or is to be transferred
27 from the designated facility is not subject to review. The sheriff shall be
28 responsible for all transportation expenses to and from the state correc-
29 tional facility.

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

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

43 (2) The court may order that the term of imprisonment imposed pur-

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

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

1 5217 et seq., and amendments thereto and as otherwise provided by law.

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

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

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

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

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

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

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

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

1 which prohibits the acts that this section prohibits or entering into a di-
2 version agreement in lieu of further criminal proceedings in a case alleg-
3 ing a violation of such law, ordinance or resolution;

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

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

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

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

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

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

42 (2) The court shall not order the impoundment or immobilization of
43 a motor vehicle driven by a person convicted of a violation of this section

1 if the motor vehicle had been stolen or converted at the time it was driven
2 in violation of this section.

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

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

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

11 (4) Any personal property in a vehicle impounded or immobilized
12 pursuant to this subsection may be retrieved prior to or during the period
13 of such impoundment or immobilization.

14 (5) As used in this subsection, the convicted person's motor vehicle
15 or vehicles shall include any vehicle leased by such person. If the lease
16 on the convicted person's motor vehicle subject to impoundment or im-
17 mobilization expires in less than one year from the date of the impound-
18 ment or immobilization, the time of impoundment or immobilization of
19 such vehicle shall be the amount of time remaining on the lease.

20 (q) No plea bargaining agreement shall be entered into nor shall any
21 judge approve a plea bargaining agreement entered into for the purpose
22 of permitting a person charged with a violation of this section, or a vio-
23 lation of any ordinance of a city or resolution of any county in this state
24 which prohibits the acts prohibited by this section, to avoid the mandatory
25 penalties established by this section or by the ordinance. For the purpose
26 of this subsection, entering into a diversion agreement pursuant to K.S.A.
27 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not
28 constitute plea bargaining.

29 (r) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may
30 be pleaded in the alternative, and the state, city or county, but shall not
31 be required to, may elect one or two of the three prior to submission of
32 the case to the fact finder.

33 (s) Upon a fourth or subsequent conviction, the judge of any court in
34 which any person is convicted of violating this section, may revoke the
35 person's license plate or temporary registration certificate of the motor
36 vehicle driven during the violation of this section for a period of one year.
37 Upon revoking any license plate or temporary registration certificate pur-
38 suant to this subsection, the court shall require that such license plate or
39 temporary registration certificate be surrendered to the court.

40 (t) For the purpose of this section: (1) "Alcohol concentration" means
41 the number of grams of alcohol per 100 milliliters of blood or per 210
42 liters of breath.

43 (2) "Imprisonment" shall include any restrained environment in

1 which the court and law enforcement agency intend to retain custody and
2 control of a defendant and such environment has been approved by the
3 board of county commissioners or the governing body of a city.

4 (3) “Drug” includes toxic vapors as such term is defined in ~~K.S.A. 65-~~
5 ~~4165~~ *section 12*, and amendments thereto.

6 (u) The amount of the increase in fines as specified in this section
7 shall be remitted by the clerk of the district court to the state treasurer
8 in accordance with the provisions of K.S.A. 75-4215, and amendments
9 thereto. Upon receipt of remittance of the increase provided in this act,
10 the state treasurer shall deposit the entire amount in the state treasury
11 and the state treasurer shall credit 50% to the community alcoholism and
12 intoxication programs fund and 50% to the department of corrections
13 alcohol and drug abuse treatment fund, which is hereby created in the
14 state treasury.

15 (v) Upon every conviction of a violation of this section, the court shall
16 order such person to submit to a pre-sentence alcohol and drug abuse
17 evaluation pursuant to K.S.A. 8-1008, and amendments thereto. Such pre-
18 sentence evaluation shall be made available, and shall be considered by
19 the sentencing court.

20 Sec. 20. K.S.A. 2007 Supp. 12-4104 is hereby amended to read as
21 follows: 12-4104. (a) The municipal court of each city shall have jurisdic-
22 tion to hear and determine cases involving violations of the ordinances of
23 the city, including concurrent jurisdiction to hear and determine a vio-
24 lation of an ordinance when the elements of such ordinance violation are
25 the same as the elements of a violation of one of the following state
26 statutes and would constitute, and be punished as, a felony if charged in
27 district court:

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

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

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

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

34 (5) ~~K.S.A. 65-4162~~ *Section 6*, and amendments thereto, possession of
35 marijuana.

36 (b) Search warrants shall not issue out of a municipal court.

37 Sec. 21. K.S.A. 12-4419 is hereby amended to read as follows: 12-
38 4419. (a) Except as provided in subsection (b), if a diversion agreement
39 between a city attorney and a defendant is entered into in lieu of further
40 criminal proceedings alleging a violation by the defendant, while under
41 21 years of age, of an ordinance prohibiting an act prohibited by ~~the~~
42 ~~uniform substances act (K.S.A. 65-4101 et seq. and amendments thereto)~~
43 *sections 1 through 18, and amendments thereto*, or K.S.A. 41-719, 41-

1 727, 41-804, 41-2719; *or* 41-2720, ~~65-4152, 65-4153, 65-4154 or 65-4155,~~
2 and amendments thereto, the agreement shall require the defendant to
3 submit to and complete an alcohol and drug evaluation by a community-
4 based alcohol and drug safety action program certified pursuant to K.S.A.
5 8-1008, and amendments thereto, and to pay a fee not to exceed the fee
6 established by that statute for such evaluation. If the city attorney finds
7 that the defendant is indigent, the fee may be waived.

8 (b) If the defendant is 18 or more years of age but less than 21 years
9 of age and allegedly committed a violation of K.S.A. 41-727, and amend-
10 ments thereto, involving cereal malt beverage, the provisions of subsec-
11 tion (a) are permissive and not mandatory.

12 Sec. 22. K.S.A. 12-4509 is hereby amended to read as follows: 12-
13 4509. (a) Whenever a person is found guilty of the violation of an ordi-
14 nance, the municipal judge may:

15 (1) Release the person without imposition of sentence;

16 (2) release the person on probation after the imposition of sentence,
17 without imprisonment or the payment of a fine or a portion thereof,
18 subject to conditions imposed by the court as provided in subsection (e);
19 or

20 (3) impose such sentence of fine or imprisonment, or both, as au-
21 thorized for the ordinance violation.

22 (b) In addition to or in lieu of any other sentence authorized by law,
23 whenever a person is found guilty of the violation of an ordinance and
24 there is evidence that the act constituting the violation of the ordinance
25 was substantially related to the possession, use or ingestion of cereal malt
26 beverage or alcoholic liquor by such person, the judge may order such
27 person to attend and satisfactorily complete an alcohol or drug education
28 or training program certified by the chief judge of the judicial district or
29 licensed by the secretary of social and rehabilitation services.

30 (c) Except as provided in subsection (d), in addition to or in lieu of
31 any other sentence authorized by law, whenever a person is convicted of
32 having violated, while under 21 years of age, an ordinance prohibiting an
33 act prohibited by ~~the uniform controlled substances act (K.S.A. 65-4101~~
34 ~~et seq. and amendments thereto)~~ *sections 1 through 18, and amendments*
35 *thereto*, or K.S.A. 41-719, 41-727, ~~65-4152, 65-4153, 65-4154 or 65-4155~~
36 or 8-1599, and amendments thereto, the municipal judge shall order such
37 person to submit to and complete an alcohol and drug evaluation by a
38 community-based alcohol and drug safety action program certified pur-
39 suant to K.S.A. 8-1008 and amendments thereto and to pay a fee not to
40 exceed the fee established by that statute for such evaluation. If the judge
41 finds that the person is indigent, the fee may be waived.

42 (d) If the person is 18 or more years of age but less than 21 years of
43 age and is convicted of a violation of K.S.A. 41-727, and amendments

1 thereto, involving cereal malt beverage, the provisions of subsection (c)
2 are permissive and not mandatory.

3 (e) The court may impose any conditions of probation or suspension
4 of sentence that the court deems proper, including, but not limited to,
5 requiring that the defendant:

6 (1) Avoid such injurious or vicious habits, as directed by the court or
7 the probation officer;

8 (2) avoid such persons or places of disreputable or harmful character,
9 as directed by the court or the probation officer;

10 (3) report to the probation officer as directed;

11 (4) permit the probation officer to visit the defendant at home or
12 elsewhere;

13 (5) work faithfully at suitable employment insofar as possible;

14 (6) remain within the state unless the court grants permission to
15 leave;

16 (7) pay a fine or costs, applicable to the ordinance violation, in one
17 or several sums and in the manner as directed by the court;

18 (8) support the defendant's dependents;

19 (9) reside in a residential facility located in the community and par-
20 ticipate in educational counseling, work and other correctional or reha-
21 bilitative programs;

22 (10) perform community or public service work for local govern-
23 mental agencies, private corporations organized not for profit, or chari-
24 table or social service organizations performing services for the
25 community;

26 (11) perform services under a system of day fines whereby the de-
27 fendant is required to satisfy fines, costs or reparation or restitution ob-
28 ligations by performing services for a period of days determined by the
29 court on the basis of ability to pay, standard of living, support obligations
30 and other factors;

31 (12) make reparation or restitution to the aggrieved party for the
32 damage or loss caused by the defendant's crime, in an amount and man-
33 ner determined by the court and to the person specified by the court; or

34 (13) reimburse the city, in accordance with any order made under
35 subsection (f), for all or a part of the reasonable expenditures by the city
36 to provide counsel and other defense services to the defendant.

37 (f) In addition to or in lieu of any other sentence authorized by law,
38 whenever a person is found guilty of the violation of an ordinance the
39 judge may order such person to reimburse the city for all or a part of the
40 reasonable expenditures by the city to provide counsel and other defense
41 services to the defendant. In determining the amount and method of
42 payment of such sum, the court shall take account of the financial re-
43 sources of the defendant and the nature of the burden that payment of

1 such sum will impose. A defendant who has been required to pay such
2 sum and who is not willfully in default in the payment thereof may at any
3 time petition the court which sentenced the defendant to waive payment
4 of such sum or of any unpaid portion thereof. If it appears to the satis-
5 faction of the court that payment of the amount due will impose manifest
6 hardship on the defendant or the defendant's immediate family, the court
7 may waive payment of all or part of the amount due or modify the method
8 of payment.

9 Sec. 23. K.S.A. 21-3436 is hereby amended to read as follows: 21-
10 3436. (a) Any of the following felonies shall be deemed an inherently
11 dangerous felony whether or not such felony is so distinct from the homi-
12 cide alleged to be a violation of subsection (b) of K.S.A. 21-3401, and
13 amendments thereto, as not to be an ingredient of the homicide alleged
14 to be a violation of subsection (b) of K.S.A. 21-3401, and amendments
15 thereto:

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

18 (2) aggravated kidnapping, as defined in K.S.A. 21-3421, and amend-
19 ments thereto;

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

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

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

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

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

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

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

31 (10) aggravated burglary, as defined in K.S.A. 21-3716, and amend-
32 ments thereto;

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

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

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

37 (14) any felony offense as provided in ~~K.S.A. 65-4127a, 65-4127b or~~
38 ~~65-4159 or 65-4160 through 65-4164~~ section 3, 5 or 6, and amendments
39 thereto;

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

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

- 1 (17) aggravated endangering the food supply as defined in K.S.A. 21-
2 4222, and amendments thereto;
- 3 (18) fleeing or attempting to elude a police officer, as defined in sub-
4 section (b) of K.S.A. 8-1568, and amendments thereto; or
- 5 (19) aggravated endangering a child, as defined in subsection (a)(1)
6 of K.S.A. 21-3608a, and amendments thereto.
- 7 (b) Any of the following felonies shall be deemed an inherently dan-
8 gerous felony only when such felony is so distinct from the homicide
9 alleged to be a violation of subsection (b) of K.S.A. 21-3401, and amend-
10 ments thereto, as to not be an ingredient of the homicide alleged to be
11 a violation of subsection (b) of K.S.A. 21-3401, and amendments thereto:
- 12 (1) Murder in the first degree, as defined in subsection (a) of K.S.A.
13 21-3401, and amendments thereto;
- 14 (2) murder in the second degree, as defined in subsection (a) of
15 K.S.A. 21-3402, and amendments thereto;
- 16 (3) voluntary manslaughter, as defined in subsection (a) of K.S.A. 21-
17 3403, and amendments thereto;
- 18 (4) aggravated assault, as defined in K.S.A. 21-3410, and amendments
19 thereto;
- 20 (5) aggravated assault of a law enforcement officer, as defined in
21 K.S.A. 21-3411, and amendments thereto;
- 22 (6) aggravated battery, as defined in subsection (a)(1) of K.S.A. 21-
23 3414, and amendments thereto; or
- 24 (7) aggravated battery against a law enforcement officer, as defined
25 in K.S.A. 21-3415, and amendments thereto.
- 26 (c) This section shall be part of and supplemental to the Kansas crim-
27 inal code.
- 28 Sec. 24. K.S.A. 21-3608a is hereby amended to read as follows: 21-
29 3608a. (a) Aggravated endangering a child is:
- 30 (1) Intentionally causing or permitting a child under the age of 18
31 years to be placed in a situation in which the child's life, body or health
32 is injured or endangered;
- 33 (2) recklessly causing or permitting a child under the age of 18 years
34 to be placed in a situation in which the child's life, body or health is
35 injured or endangered;
- 36 (3) causing or permitting such child to be in an environment where
37 a person is selling, offering for sale or having in such person's possession
38 with intent to sell, deliver, distribute, prescribe, administer, dispense,
39 manufacture or attempt to manufacture any methamphetamine as de-
40 fined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments
41 thereto; or
- 42 (4) causing or permitting such child to be in an environment where
43 drug paraphernalia or volatile, toxic or flammable chemicals are stored

1 for the purpose of manufacturing or attempting to manufacture any meth-
2 amphetamine as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107,
3 and amendments thereto.

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

5 (c) As used in this section:

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

8 (2) "drug paraphernalia" shall have the meaning ascribed to that term
9 in ~~K.S.A. 65-4150~~ *section 1*, and amendments thereto.

10 (d) This section shall be part of and supplemental to the Kansas crim-
11 inal code.

12 Sec. 25. K.S.A. 21-3718 is hereby amended to read as follows: 21-
13 3718. (a) Arson is: (1) Knowingly, by means of fire or explosive:

14 (A) Damaging any building or property which is a dwelling in which
15 another person has any interest without the consent of such other person;

16 (B) damaging any building or property which is a dwelling with intent
17 to injure or defraud an insurer or lienholder;

18 (C) damaging any building or property which is not a dwelling in
19 which another person has any interest without the consent of such other
20 person; or

21 (D) damaging any building or property which is not a dwelling with
22 intent to injure or defraud an insurer or lienholder;

23 (2) accidentally, by means of fire or explosive as a result of manufac-
24 turing or attempting to manufacture a controlled substance in violation
25 of ~~K.S.A. 65-4150~~ *section 3*, and amendments thereto, damaging any
26 building or property which is a dwelling; or

27 (3) accidentally, by means of fire or explosive as a result of manufac-
28 turing or attempting to manufacture a controlled substance in violation
29 of ~~K.S.A. 65-4150~~ *section 3*, and amendments thereto, damaging any
30 building or property which is not a dwelling.

31 (b) (1) Arson, as described in subsection (a)(1)(A) or (a)(1)(B), is a
32 severity level 6, person felony.

33 (2) Arson, as described in subsection (a)(1)(C), (a)(1)(D) or (a)(3), is
34 a severity level 7, nonperson felony.

35 (3) Arson, as described in subsection (a)(2), is a severity level 7, per-
36 son felony.

37 Sec. 26. K.S.A. 21-3826 is hereby amended to read as follows: 21-
38 3826. (a) Traffic in contraband in a correctional institution is introducing
39 or attempting to introduce into or upon the grounds of any correctional
40 institution or taking, sending, attempting to take or attempting to send
41 from any correctional institution or any unauthorized possession while in
42 any correctional institution or distributing within any correctional insti-
43 tution, any item without the consent of the administrator of the correc-

1 tional institution.

2 (b) For purposes of this section, “correctional institution” means any
3 state correctional institution or facility, conservation camp, state security
4 hospital, juvenile correctional facility, community correction center or
5 facility for detention or confinement, juvenile detention facility or jail.

6 (c) (1) Traffic in contraband in a correctional institution of firearms,
7 ammunition, explosives or a controlled substance which is defined in ~~sub-~~
8 ~~section (c) of K.S.A. 65-4101~~ *section 1*, and amendments thereto, is a
9 severity level 5, nonperson felony.

10 (2) Traffic in any contraband, as defined by rules and regulations
11 adopted by the secretary, in a correctional institution by an employee of
12 a correctional institution is a severity level 5, nonperson felony.

13 (d) Except as provided in subsection (c), traffic in contraband in a
14 correctional institution is a severity level 6, nonperson felony.

15 Sec. 27. K.S.A. 21-4203 is hereby amended to read as follows: 21-
16 4203. (a) Criminal disposal of firearms is knowingly:

17 (1) Selling, giving or otherwise transferring any firearm with a barrel
18 less than 12 inches long to any person under 18 years of age;

19 (2) selling, giving or otherwise transferring any firearms to any person
20 who is both addicted to and an unlawful user of a controlled substance;

21 (3) selling, giving or otherwise transferring any firearm to any person
22 who, within the preceding five years, has been convicted of a felony, other
23 than those specified in subsection (b), under the laws of this or any other
24 jurisdiction or has been released from imprisonment for a felony and was
25 found not to have been in possession of a firearm at the time of the
26 commission of the offense;

27 (4) selling, giving or otherwise transferring any firearm to any person
28 who, within the preceding 10 years, has been convicted of a felony to
29 which this subsection applies, but was not found to have been in the
30 possession of a firearm at the time of the commission of the offense, or
31 has been released from imprisonment for such a crime, and has not had
32 the conviction of such crime expunged or been pardoned for such crime;

33 (5) selling, giving or otherwise transferring any firearm to any person
34 who has been convicted of a felony under the laws of this or any other
35 jurisdiction and was found to have been in possession of a firearm at the
36 time of the commission of the offense; or

37 (6) selling, giving or otherwise transferring any firearm to any person
38 who is or has been a mentally ill person subject to involuntary commit-
39 ment for care and treatment, as defined in K.S.A. 59-2946, and amend-
40 ments thereto, or a person with an alcohol or substance abuse problem
41 subject to involuntary commitment for care and treatment as defined in
42 K.S.A. 59-29b46, and amendments thereto, and such person has not re-
43 ceived a certificate of restoration pursuant to K.S.A. 2007 Supp. 75-7c26,

1 and amendments thereto.

2 (b) Subsection (a)(4) shall apply to a felony under K.S.A. 21-3401,
3 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-
4 3419, 21-3420, 21-3421, 21-3427, 21-3442, 21-3502, 21-3506, 21-3518;
5 ~~or 21-3716, 65-4127a or 65-4127b, or 65-4160 through 65-4164,~~ and
6 amendments thereto, *or section 5 or 6, and amendments thereto*, or a
7 crime under a law of another jurisdiction which is substantially the same
8 as such felony.

9 (c) Criminal disposal of firearms is a class A nonperson misdemeanor.
10 Sec. 28. K.S.A. 21-4204 is hereby amended to read as follows: 21-
11 4204. (a) Criminal possession of a firearm is:

12 (1) Possession of any firearm by a person who is both addicted to and
13 an unlawful user of a controlled substance;

14 (2) possession of any firearm by a person who has been convicted of
15 a person felony or a violation of any provision of the uniform controlled
16 substances act under the laws of Kansas or a crime under a law of another
17 jurisdiction which is substantially the same as such felony or violation, or
18 was adjudicated a juvenile offender because of the commission of an act
19 which if done by an adult would constitute the commission of a person
20 felony or a violation of any provision of the uniform controlled substances
21 act, and was found to have been in possession of a firearm at the time of
22 the commission of the offense;

23 (3) possession of any firearm by a person who, within the preceding
24 five years has been convicted of a felony, other than those specified in
25 subsection (a)(4)(A), under the laws of Kansas or a crime under a law of
26 another jurisdiction which is substantially the same as such felony, has
27 been released from imprisonment for a felony or was adjudicated as a
28 juvenile offender because of the commission of an act which if done by
29 an adult would constitute the commission of a felony, and was found not
30 to have been in possession of a firearm at the time of the commission of
31 the offense;

32 (4) possession of any firearm by a person who, within the preceding
33 10 years, has been convicted of: (A) A felony under K.S.A. 21-3401, 21-
34 3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419,
35 21-3420, 21-3421, 21-3427, 21-3442, 21-3502, 21-3506, 21-3518; ~~or 21-
36 3716, 65-4127a or 65-4127b, or 65-4160 through 65-4164,~~ and amend-
37 ments thereto, *or section 5 or 6, and amendments thereto*, or a crime
38 under a law of another jurisdiction which is substantially the same as such
39 felony, has been released from imprisonment for such felony, or was
40 adjudicated as a juvenile offender because of the commission of an act
41 which if done by an adult would constitute the commission of such felony,
42 was found not to have been in possession of a firearm at the time of the
43 commission of the offense, and has not had the conviction of such crime

- 1 expunged or been pardoned for such crime; or (B) a nonperson felony
2 under the laws of Kansas or a crime under the laws of another jurisdiction
3 which is substantially the same as such nonperson felony, has been re-
4 leased from imprisonment for such nonperson felony or was adjudicated
5 as a juvenile offender because of the commission of an act which if done
6 by an adult would constitute the commission of a nonperson felony, and
7 was found to have been in possession of a firearm at the time of the
8 commission of the offense;
- 9 (5) possession of any firearm by any person, other than a law enforce-
10 ment officer, in or on any school property or grounds upon which is
11 located a building or structure used by a unified school district or an
12 accredited nonpublic school for student instruction or attendance or ex-
13 tracurricular activities of pupils enrolled in kindergarten or any of the
14 grades 1 through 12 or at any regularly scheduled school sponsored ac-
15 tivity or event;
- 16 (6) refusal to surrender or immediately remove from school property
17 or grounds or at any regularly scheduled school sponsored activity or
18 event any firearm in the possession of any person, other than a law en-
19 forcement officer, when so requested or directed by any duly authorized
20 school employee or any law enforcement officer; or
- 21 (7) possession of any firearm by a person who is or has been a men-
22 tally ill person subject to involuntary commitment for care and treatment,
23 as defined in K.S.A. 59-2946, and amendments thereto, or persons with
24 an alcohol or substance abuse problem subject to involuntary commit-
25 ment for care and treatment as defined in K.S.A. 59-29b46, and amend-
26 ments thereto.
- 27 (b) Subsection (a)(5) shall not apply to:
- 28 (1) Possession of any firearm in connection with a firearms safety
29 course of instruction or firearms education course approved and author-
30 ized by the school;
- 31 (2) any possession of any firearm specifically authorized in writing by
32 the superintendent of any unified school district or the chief administrator
33 of any accredited nonpublic school;
- 34 (3) possession of a firearm secured in a motor vehicle by a parent,
35 guardian, custodian or someone authorized to act in such person's behalf
36 who is delivering or collecting a student; or
- 37 (4) possession of a firearm secured in a motor vehicle by a registered
38 voter who is on the school grounds, which contain a polling place for the
39 purpose of voting during polling hours on an election day.
- 40 (c) Subsection (a)(7) shall not apply to a person who has received a
41 certificate of restoration pursuant to K.S.A. 2007 Supp. 75-7c26, and
42 amendments thereto.
- 43 (d) Violation of subsection (a)(1) or (a)(5) is a class B nonperson select

1 misdemeanor; violation of subsection (a)(2), (a)(3), (a)(4) or (a)(7) is a
2 severity level 8, nonperson felony; violation of subsection (a)(6) is a class
3 A nonperson misdemeanor.

4 Sec. 29. K.S.A. 21-4226 is hereby amended to read as follows: 21-
5 4226. As used in K.S.A. 21-4225 through 21-4229, and amendments
6 thereto:

7 (a) "Criminal street gang" means any organization, association or
8 group, whether formal or informal:

9 (1) Consisting of three or more persons;

10 (2) having as one of its primary activities the commission of one or
11 more person felonies, person misdemeanors, felony violations of ~~the uni-~~
12 ~~form controlled substances act, K.S.A. 65-4101 et seq. sections 1 through~~
13 *18*, and amendments thereto, or the comparable juvenile offenses, which
14 if committed by an adult would constitute the commission of such felonies
15 or misdemeanors;

16 (3) which has a common name or common identifying sign or symbol;
17 and

18 (4) whose members, individually or collectively, engage in or have
19 engaged in the commission, attempted commission, conspiracy to commit
20 or solicitation of two or more person felonies, person misdemeanors, fel-
21 ony violations of ~~the uniform controlled substances act, K.S.A. 65-4101~~
22 ~~et seq. sections 1 through 18~~, and amendments thereto, the comparable
23 juvenile offenses, which if committed by an adult would constitute the
24 commission of such felonies or misdemeanors or any substantially similar
25 offense from another jurisdiction.

26 (b) "Criminal street gang member" is a person who:

27 (1) Admits to criminal street gang membership; or

28 (2) meets three or more of the following criteria:

29 (A) Is identified as a criminal street gang member by a parent or
30 guardian.

31 (B) Is identified as a criminal street gang member by a state, county
32 or city law enforcement officer or correctional officer or documented
33 reliable informant.

34 (C) Is identified as a criminal street gang member by an informant
35 of previously untested reliability and such identification is corroborated
36 by independent information.

37 (D) Resides in or frequents a particular criminal street gang's area
38 and adopts such gang's style of dress, color, use of hand signs or tattoos,
39 and associates with known criminal street gang members.

40 (E) Has been arrested more than once in the company of identified
41 criminal street gang members for offenses which are consistent with usual
42 criminal street gang activity.

43 (F) Is identified as a criminal street gang member by physical evi-

1 dence including, but not limited to, photographs or other documentation.

2 (G) Has been stopped in the company of known criminal street gang
3 members two or more times.

4 (H) Has participated in or undergone activities self-identified or
5 identified by a reliable informant as a criminal street gang initiation ritual.

6 (c) “Criminal street gang activity” means the commission or at-
7 tempted commission of, or solicitation or conspiracy to commit, one or
8 more person felonies, person misdemeanors, felony violations of ~~the uni-
9 form controlled substances act, K.S.A. 65-4101, et seq. sections 1 through~~
10 *18*, and amendments thereto, or the comparable juvenile offenses, which
11 if committed by an adult would constitute the commission of such felonies
12 or misdemeanors on separate occasions.

13 (d) “Criminal street gang associate” means a person who:

14 (1) Admits to criminal street gang association; or

15 (2) meets two or more defining criteria for criminal street gang mem-
16 bership described in subsection (b)(2).

17 (e) For purposes of law enforcement identification and tracking only
18 “gang-related incident” means an incident that, upon investigation, meets
19 any of the following conditions:

20 (1) The participants are identified as criminal street gang members
21 or criminal street gang associates, acting, individually or collectively, to
22 further any criminal purpose of the gang;

23 (2) a state, county or city law enforcement officer or correctional of-
24 ficer or reliable informant identifies an incident as criminal street gang
25 activity; or

26 (3) an informant of previously untested reliability identifies an inci-
27 dent as criminal street gang activity and it is corroborated by independent
28 information.

29 Sec. 30. K.S.A. 21-4502 is hereby amended to read as follows: 21-
30 4502. (1) For the purpose of sentencing, the following classes of misde-
31 meanors and the punishment and the terms of confinement authorized
32 for each class are established:

33 (a) Class A, the sentence for which shall be a definite term of con-
34 finement in the county jail which shall be fixed by the court and shall not
35 exceed one year.

36 (b) Class B, the sentence for which shall be a definite term of con-
37 finement in the county jail which shall be fixed by the court and shall not
38 exceed six months.

39 (c) Class C, the sentence for which shall be a definite term of con-
40 finement in the county jail which shall be fixed by the court and shall not
41 exceed one month.

42 (d) Unclassified misdemeanors, which shall include all crimes de-
43 clared to be misdemeanors without specification as to class, the sentence

1 for which shall be in accordance with the sentence specified in the statute
2 that defines the crime; if no penalty is provided in such law, the sentence
3 shall be the same penalty as provided herein for a class C misdemeanor.

4 (2) Upon conviction of a misdemeanor, a person may be punished by
5 a fine, as provided in K.S.A. 21-4503, and amendments thereto, instead
6 of or in addition to confinement, as provided in this section.

7 (3) In addition to or in lieu of any other sentence authorized by law,
8 whenever there is evidence that the act constituting the misdemeanor
9 was substantially related to the possession, use or ingestion of cereal malt
10 beverage or alcoholic liquor by such person, the court may order such
11 person to attend and satisfactorily complete an alcohol or drug education
12 or training program certified by the chief judge of the judicial district or
13 licensed by the secretary of social and rehabilitation services.

14 (4) Except as provided in subsection (5), in addition to or in lieu of
15 any other sentence authorized by law, whenever a person is convicted of
16 having committed, while under 21 years of age, a misdemeanor under
17 ~~the uniform controlled substances act (K.S.A. 65-4101 et seq. and amend-~~
18 ~~ments thereto), K.S.A. 41-719, 41-727, 65-4152, 65-4153, 65-4154 or 65-~~
19 ~~4155~~ or 8-1599, and amendments thereto, *and sections 1 through 18, and*
20 *amendments thereto*, the court shall order such person to submit to and
21 complete an alcohol and drug evaluation by a community-based alcohol
22 and drug safety action program certified pursuant to K.S.A. 8-1008 and
23 amendments thereto and to pay a fee not to exceed the fee established
24 by that statute for such evaluation. If the court finds that the person is
25 indigent, the fee may be waived.

26 (5) If the person is 18 or more years of age but less than 21 years of
27 age and is convicted of a violation of K.S.A. 41-727, and amendments
28 thereto, involving cereal malt beverage, the provisions of subsection (4)
29 are permissive and not mandatory.

30 Sec. 31. K.S.A. 21-4603d is hereby amended to read as follows: 21-
31 4603d. (a) Whenever any person has been found guilty of a crime, the
32 court may adjudge any of the following:

33 (1) Commit the defendant to the custody of the secretary of correc-
34 tions if the current crime of conviction is a felony and the sentence pre-
35 sumes imprisonment, or the sentence imposed is a dispositional departure
36 to imprisonment; or, if confinement is for a misdemeanor, to jail for the
37 term provided by law;

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

39 (3) release the defendant on probation if the current crime of con-
40 viction and criminal history fall within a presumptive nonprison category
41 or through a departure for substantial and compelling reasons subject to
42 such conditions as the court may deem appropriate. In felony cases except
43 for violations of K.S.A. 8-1567, and amendments thereto, the court may

- 1 include confinement in a county jail not to exceed 60 days, which need
2 not be served consecutively, as a condition of an original probation sen-
3 tence and up to 60 days in a county jail upon each revocation of the
4 probation sentence, or community corrections placement;
- 5 (4) assign the defendant to a community correctional services pro-
6 gram as provided in K.S.A. 75-5291, and amendments thereto, or through
7 a departure for substantial and compelling reasons subject to such con-
8 ditions as the court may deem appropriate, including orders requiring full
9 or partial restitution;
- 10 (5) assign the defendant to a conservation camp for a period not to
11 exceed six months as a condition of probation followed by a six-month
12 period of follow-up through adult intensive supervision by a community
13 correctional services program, if the offender successfully completes the
14 conservation camp program;
- 15 (6) assign the defendant to a house arrest program pursuant to K.S.A.
16 21-4603b and amendments thereto;
- 17 (7) order the defendant to attend and satisfactorily complete an al-
18 colhol or drug education or training program as provided by subsection
19 (3) of K.S.A. 21-4502, and amendments thereto;
- 20 (8) order the defendant to repay the amount of any reward paid by
21 any crime stoppers chapter, individual, corporation or public entity which
22 materially aided in the apprehension or conviction of the defendant; repay
23 the amount of any costs and expenses incurred by any law enforcement
24 agency in the apprehension of the defendant, if one of the current crimes
25 of conviction of the defendant includes escape, as defined in K.S.A. 21-
26 3809, and amendments thereto, or aggravated escape, as defined in K.S.A.
27 21-3810, and amendments thereto; repay expenses incurred by a fire dis-
28 trict, fire department or fire company responding to a fire which has been
29 determined to be arson under K.S.A. 21-3718 or 21-3719, and amend-
30 ments thereto, if the defendant is convicted of such crime; repay the
31 amount of any public funds utilized by a law enforcement agency to pur-
32 chase controlled substances from the defendant during the investigation
33 which leads to the defendant's conviction; or repay the amount of any
34 medical costs and expenses incurred by any law enforcement agency or
35 county. Such repayment of the amount of any such costs and expenses
36 incurred by a county, law enforcement agency, fire district, fire depart-
37 ment or fire company or any public funds utilized by a law enforcement
38 agency shall be deposited and credited to the same fund from which the
39 public funds were credited to prior to use by the county, law enforcement
40 agency, fire district, fire department or fire company;
- 41 (9) order the defendant to pay the administrative fee authorized by
42 K.S.A. 22-4529, and amendments thereto, unless waived by the court;
- 43 (10) order the defendant to pay a domestic violence special program

1 fee authorized by K.S.A. 20-369, and amendments thereto;

2 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6),
3 (7), (8), (9) and (10); or

4 (12) suspend imposition of sentence in misdemeanor cases.

5 (b) (1) In addition to or in lieu of any of the above, the court shall
6 order the defendant to pay restitution, which shall include, but not be
7 limited to, damage or loss caused by the defendant's crime, unless the
8 court finds compelling circumstances which would render a plan of res-
9 titution unworkable. In regard to a violation of K.S.A. 21-4018, and
10 amendments thereto, such damage or loss shall include, but not be limited
11 to, attorney fees and costs incurred to repair the credit history or rating
12 of the person whose personal identification documents were obtained and
13 used in violation of such section, and to satisfy a debt, lien or other ob-
14 ligation incurred by the person whose personal identification documents
15 were obtained and used in violation of such section. If the court finds a
16 plan of restitution unworkable, the court shall state on the record in detail
17 the reasons therefor.

18 (2) If the court orders restitution, the restitution shall be a judgment
19 against the defendant which may be collected by the court by garnishment
20 or other execution as on judgments in civil cases. If, after 60 days from
21 the date restitution is ordered by the court, a defendant is found to be in
22 noncompliance with the plan established by the court for payment of
23 restitution, and the victim to whom restitution is ordered paid has not
24 initiated proceedings in accordance with K.S.A. 60-4301 et seq., and
25 amendments thereto, the court shall assign an agent procured by the
26 attorney general pursuant to K.S.A. 75-719, and amendments thereto, to
27 collect the restitution on behalf of the victim. The administrative judge
28 of each judicial district may assign such cases to an appropriate division
29 of the court for the conduct of civil collection proceedings.

30 (c) In addition to or in lieu of any of the above, the court shall order
31 the defendant to submit to and complete an alcohol and drug evaluation,
32 and pay a fee therefor, when required by subsection (4) of K.S.A. 21-
33 4502, and amendments thereto.

34 (d) In addition to any of the above, the court shall order the defend-
35 ant to reimburse the county general fund for all or a part of the expend-
36 itures by the county to provide counsel and other defense services to the
37 defendant. Any such reimbursement to the county shall be paid only after
38 any order for restitution has been paid in full. In determining the amount
39 and method of payment of such sum, the court shall take account of the
40 financial resources of the defendant and the nature of the burden that
41 payment of such sum will impose. A defendant who has been required
42 to pay such sum and who is not willfully in default in the payment thereof
43 may at any time petition the court which sentenced the defendant to

1 waive payment of such sum or any unpaid portion thereof. If it appears
2 to the satisfaction of the court that payment of the amount due will im-
3 pose manifest hardship on the defendant or the defendant's immediate
4 family, the court may waive payment of all or part of the amount due or
5 modify the method of payment.

6 (e) In imposing a fine the court may authorize the payment thereof
7 in installments. In releasing a defendant on probation, the court shall
8 direct that the defendant be under the supervision of a court services
9 officer. If the court commits the defendant to the custody of the secretary
10 of corrections or to jail, the court may specify in its order the amount of
11 restitution to be paid and the person to whom it shall be paid if restitution
12 is later ordered as a condition of parole, conditional release or postrelease
13 supervision.

14 (f) (1) When a new felony is committed while the offender is incar-
15 cerated and serving a sentence for a felony, or while the offender is on
16 probation, assignment to a community correctional services program, pa-
17 role, conditional release, or postrelease supervision for a felony, a new
18 sentence shall be imposed pursuant to the consecutive sentencing
19 requirements of K.S.A. 21-4608, and amendments thereto, and the court
20 may sentence the offender to imprisonment for the new conviction, even
21 when the new crime of conviction otherwise presumes a nonprison sen-
22 tence. In this event, imposition of a prison sentence for the new crime
23 does not constitute a departure.

24 (2) When a new felony is committed while the offender is incarcer-
25 ated in a juvenile correctional facility pursuant to K.S.A. 38-1671 prior to
26 its repeal or K.S.A. 2007 Supp. 38-2373, and amendments thereto, for an
27 offense, which if committed by an adult would constitute the commission
28 of a felony, upon conviction, the court shall sentence the offender to
29 imprisonment for the new conviction, even when the new crime of con-
30 viction otherwise presumes a nonprison sentence. In this event, imposi-
31 tion of a prison sentence for the new crime does not constitute a depart-
32 ure. The conviction shall operate as a full and complete discharge from
33 any obligations, except for an order of restitution, imposed on the of-
34 fender arising from the offense for which the offender was committed to
35 a juvenile correctional facility.

36 (3) When a new felony is committed while the offender is on release
37 for a felony pursuant to the provisions of article 28 of chapter 22 of the
38 Kansas Statutes Annotated, or similar provisions of the laws of another
39 jurisdiction, a new sentence may be imposed pursuant to the consecutive
40 sentencing requirements of K.S.A. 21-4608, and amendments thereto,
41 and the court may sentence the offender to imprisonment for the new
42 conviction, even when the new crime of conviction otherwise presumes
43 a nonprison sentence. In this event, imposition of a prison sentence for

1 the new crime does not constitute a departure.
2 (g) Prior to imposing a dispositional departure for a defendant whose
3 offense is classified in the presumptive nonprison grid block of either
4 sentencing guideline grid, prior to sentencing a defendant to incarceration
5 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing
6 guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H
7 or 3-I of the sentencing guidelines grid for drug crimes, prior to sen-
8 tencing a defendant to incarceration whose offense is classified in grid
9 blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and
10 whose offense does not meet the requirements of K.S.A. 21-4729, and
11 amendments thereto, prior to revocation of a nonprison sanction of a
12 defendant whose offense is classified in grid blocks 4-E or 4-F of the
13 sentencing guideline grid for drug crimes and whose offense does not
14 meet the requirements of K.S.A. 21-4729, and amendments thereto, or
15 prior to revocation of a nonprison sanction of a defendant whose offense
16 is classified in the presumptive nonprison grid block of either sentencing
17 guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines
18 grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the
19 sentencing guidelines grid for drug crimes, the court shall consider place-
20 ment of the defendant in the Labette correctional conservation camp,
21 conservation camps established by the secretary of corrections pursuant
22 to K.S.A. 75-52,127, and amendment thereto or a community interme-
23 diate sanction center. Pursuant to this paragraph the defendant shall not
24 be sentenced to imprisonment if space is available in a conservation camp
25 or a community intermediate sanction center and the defendant meets
26 all of the conservation camp's or a community intermediate sanction cen-
27 ter's placement criteria unless the court states on the record the reasons
28 for not placing the defendant in a conservation camp or a community
29 intermediate sanction center.
30 (h) The court in committing a defendant to the custody of the sec-
31 retary of corrections shall fix a term of confinement within the limits
32 provided by law. In those cases where the law does not fix a term of
33 confinement for the crime for which the defendant was convicted, the
34 court shall fix the term of such confinement.
35 (i) In addition to any of the above, the court shall order the defendant
36 to reimburse the state general fund for all or a part of the expenditures
37 by the state board of indigents' defense services to provide counsel and
38 other defense services to the defendant. In determining the amount and
39 method of payment of such sum, the court shall take account of the
40 financial resources of the defendant and the nature of the burden that
41 payment of such sum will impose. A defendant who has been required
42 to pay such sum and who is not willfully in default in the payment thereof
43 may at any time petition the court which sentenced the defendant to

1 waive payment of such sum or any unpaid portion thereof. If it appears
2 to the satisfaction of the court that payment of the amount due will im-
3 pose manifest hardship on the defendant or the defendant's immediate
4 family, the court may waive payment of all or part of the amount due or
5 modify the method of payment. The amount of attorney fees to be in-
6 cluded in the court order for reimbursement shall be the amount claimed
7 by appointed counsel on the payment voucher for indigents' defense serv-
8 ices or the amount prescribed by the board of indigents' defense services
9 reimbursement tables as provided in K.S.A. 22-4522, and amendments
10 thereto, whichever is less.

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

15 (k) An application for or acceptance of probation or assignment to a
16 community correctional services program shall not constitute an acqui-
17 escence in the judgment for purpose of appeal, and any convicted person
18 may appeal from such conviction, as provided by law, without regard to
19 whether such person has applied for probation, suspended sentence or
20 assignment to a community correctional services program.

21 (l) The secretary of corrections is authorized to make direct place-
22 ment to the Labette correctional conservation camp or a conservation
23 camp established by the secretary pursuant to K.S.A. 75-52,127, and
24 amendments thereto, of an inmate sentenced to the secretary's custody
25 if the inmate: (1) Has been sentenced to the secretary for a probation
26 revocation, as a departure from the presumptive nonimprisonment grid
27 block of either sentencing grid, for an offense which is classified in grid
28 blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug
29 crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing
30 guidelines grid for drug crimes, or for an offense which is classified in
31 gridblocks 4-E or 4-F of the sentencing guidelines grid for drug crimes
32 and such offense does not meet the requirements of K.S.A. 21-4729, and
33 amendments thereto, and (2) otherwise meets admission criteria of the
34 camp. If the inmate successfully completes a conservation camp program,
35 the secretary of corrections shall report such completion to the sentencing
36 court and the county or district attorney. The inmate shall then be as-
37 signed by the court to six months of follow-up supervision conducted by
38 the appropriate community corrections services program. The court may
39 also order that supervision continue thereafter for the length of time
40 authorized by K.S.A. 21-4611 and amendments thereto.

41 (m) When it is provided by law that a person shall be sentenced pur-
42 suant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of
43 this section shall not apply.

1 (n) Except as provided by subsection (f) of K.S.A. 21-4705, and
2 amendments thereto, in addition to any of the above, for felony violations
3 of ~~K.S.A. 65-4160 or 65-4162~~ *section 6*, and amendments thereto, the
4 court shall require the defendant who meets the requirements established
5 in K.S.A. 21-4729, and amendments thereto, to participate in a certified
6 drug abuse treatment program, as provided in K.S.A. 2007 Supp. 75-
7 52,144, and amendments thereto, including but not limited to, an ap-
8 proved after-care plan. If the defendant fails to participate in or has a
9 pattern of intentional conduct that demonstrates the offender's refusal to
10 comply with or participate in the treatment program, as established by
11 judicial finding, the defendant shall be subject to revocation of probation
12 and the defendant shall serve the underlying prison sentence as estab-
13 lished in K.S.A. 21-4705, and amendments thereto. For those offenders
14 who are convicted on or after the effective date of this act, upon com-
15 pletion of the underlying prison sentence, the defendant shall not be
16 subject to a period of postrelease supervision. The amount of time spent
17 participating in such program shall not be credited as service on the un-
18 derlying prison sentence.

19 Sec. 32. K.S.A. 21-4704 is hereby amended to read as follows: 21-
20 4704. (a) For purposes of sentencing, the following sentencing guidelines
21 grid for nondrug crimes shall be applied in felony cases for crimes com-
22 mitted on or after July 1, 1993:
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

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, 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 correctional*
42 *facility designated by the secretary of corrections if the secretary deter-*
43 *mines that substance abuse treatment resources and facility capacity is*

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

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

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

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

25 (k) If it is shown at sentencing that the offender committed any felony
26 violation for the benefit of, at the direction of, or in association with any
27 criminal street gang, with the specific intent to promote, further or assist
28 in any criminal conduct by gang members, the offender's sentence shall
29 be presumed imprisonment. Any decision made by the court regarding
30 the imposition of the optional nonprison sentence shall not be considered
31 a departure and shall not be subject to appeal. As used in this subsection,
32 "criminal street gang" means any organization, association or group of
33 three or more persons, whether formal or informal, having as one of its
34 primary activities the commission of one or more person felonies or felony
35 violations of ~~the uniform controlled substances act, K.S.A. 65-4101 et seq.~~
36 *sections 1 through 18*, and amendments thereto, which has a common
37 name or common identifying sign or symbol, whose members, individu-
38 ally or collectively engage in or have engaged in the commission, at-
39 tempted commission, conspiracy to commit or solicitation of two or more
40 person felonies or felony violations of ~~the uniform controlled substances~~
41 ~~act, K.S.A. 65-4101 et seq.~~ *sections 1 through 18*, and amendments
42 thereto, or any substantially similar offense from another jurisdiction.

43 (l) (1) The sentence for a violation of subsection (a) of K.S.A. 21-

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

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

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

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

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

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

25 Sec. 33. K.S.A. 21-4705 is hereby amended to read as follows: 21-
26 4705. (a) For the purpose of sentencing, the following sentencing guide-
27 lines grid for drug crimes shall be applied in felony cases under the uni-
28 form controlled substances act for crimes committed on or after July 1,
29 1993:

30
31
32
33
34
35
36
37
38
39
40
41
42
43

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

SENTENCING RANGE - DRUG 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	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
III	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	29 27 25	23 22 20	19 18 17	15 14 14
IV	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
Presumptive Imprisonment

1 (b) The provisions of subsection (a) will apply for the purpose of
2 sentencing violations of the uniform controlled substances act except as
3 otherwise provided by law. Sentences expressed in the sentencing guide-
4 lines grid for drug crimes in subsection (a) represent months of
5 imprisonment.

6 (c) (1) The sentencing court has discretion to sentence at any place
7 within the sentencing range. The sentencing judge shall select the center
8 of the range in the usual case and reserve the upper and lower limits for
9 aggravating and mitigating factors insufficient to warrant a departure. The
10 sentencing court shall not distinguish between the controlled substances
11 cocaine base (9041L000) and cocaine hydrochloride (9041L005) when
12 sentencing within the sentencing range of the grid block.

13 (2) In presumptive imprisonment cases, the sentencing court shall
14 pronounce the complete sentence which shall include the prison sen-
15 tence, the maximum potential reduction to such sentence as a result of
16 good time and the period of postrelease supervision at the sentencing
17 hearing. Failure to pronounce the period of postrelease supervision shall
18 not negate the existence of such period of postrelease supervision.

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

22 (d) Each grid block states the presumptive sentencing range for an
23 offender whose crime of conviction and criminal history place such of-
24 fender in that grid block. If an offense is classified in a grid block below
25 the dispositional line, the presumptive disposition shall be nonimprison-
26 ment. If an offense is classified in a grid block above the dispositional
27 line, the presumptive disposition shall be imprisonment. If an offense is
28 classified in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I, the court may impose
29 an optional nonprison sentence upon making the following findings on
30 the record:

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

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

37 (3) the nonprison sanction will serve community safety interests by
38 promoting offender reformation.

39 Any decision made by the court regarding the imposition of an optional
40 nonprison sentence if the offense is classified in grid blocks 3-E, 3-F, 3-
41 G, 3-H or 3-I shall not be considered a departure and shall not be subject
42 to appeal.

43 (e) The sentence for a second or subsequent conviction of K.S.A. 65-

1 4159 and amendments thereto, *prior to its repeal or section 3, and amend-*
2 *ments thereto*, manufacture of any controlled substance or controlled sub-
3 stance analog shall be a presumptive term of imprisonment of two times
4 the maximum duration of the presumptive term of imprisonment. The
5 court may impose an optional reduction in such sentence of not to exceed
6 50% of the mandatory increase provided by this subsection upon making
7 a finding on the record that one or more of the mitigating factors as
8 specified in K.S.A. 21-4716 and amendments thereto justify such a re-
9 duction in sentence. Any decision made by the court regarding the re-
10 duction in such sentence shall not be considered a departure and shall
11 not be subject to appeal.

12 (f) The sentence for a third or subsequent felony conviction of K.S.A.
13 65-4160 or 65-4162, and amendments thereto, *prior to their repeal or*
14 *section 6, and amendments thereto*, shall be a presumptive term of im-
15 prisonment and the defendant shall be sentenced to prison as provided
16 by this section, if the defendant has previously completed a certified drug
17 abuse treatment program, as provided in K.S.A. 2007 Supp. 75-52,144,
18 and amendments thereto, or has been discharged or refused to participate
19 in a certified drug abuse treatment program, as provided in K.S.A. 2007
20 Supp. 75-52,144, and amendments thereto. Such sentence shall not be
21 considered a departure and shall not be subject to appeal.

22 Sec. 34. K.S.A. 21-4708 is hereby amended to read as follows: 21-
23 4708. (a) The crime severity scale contained in the sentencing guidelines
24 grid for drug offenses as provided in K.S.A. 21-4705 and amendments
25 thereto consists of 4 levels of crimes. Crimes listed within each level are
26 considered to be relatively equal in severity. Level 1 crimes are the most
27 severe crimes and level 4 crimes are the least severe crimes.

28 (b) The provisions of this section shall also be applicable to the pre-
29 sumptive sentences for anticipatory crimes committed on or after July 1,
30 1993, contained in the sentencing guidelines grid for drug crimes as pro-
31 vided in K.S.A. 21-4705 and amendments thereto:

32 (1) The sentencing rule for a conviction of an attempt to commit a
33 drug offense shall be as provided in K.S.A. 21-3301 and amendments
34 thereto. The sentencing rule for a conviction of a conspiracy to commit
35 a drug offense shall be as provided in K.S.A. 21-3302 and amendments
36 thereto. The sentencing rule for conviction of a solicitation to commit a
37 drug offense shall be as provided in K.S.A. 21-3303 and amendments
38 thereto.

39 (2) No plea bargaining agreement may be entered into whereby the
40 prosecutor agrees to decline to use a prior drug conviction of the de-
41 fendant to elevate or enhance the severity level of a drug crime as pro-
42 vided in ~~K.S.A. 65-4127a, 65-4127b and 65-4159 or K.S.A. 1995 Supp.~~
43 ~~65-4160 through 65-4164~~ *section 3, 5 or 6, and amendments thereto, or*

1 agrees to exclude any prior conviction from the defendant's criminal
2 history.

3 Sec. 35. K.S.A. 21-4713 is hereby amended to read as follows: 21-
4 4713. The prosecutor and the attorney for the defendant, or the defend-
5 ant when acting pro se, may engage in discussions with a view toward
6 reaching an agreement that, upon the entering of a plea to a charged
7 offense or to a lesser or related offense, the prosecutor may do any of the
8 following:

- 9 (a) Move for dismissal of other charges or counts;
- 10 (b) recommend a particular sentence within the sentencing range ap-
11 plicable to the offense or to the offense to which the offender pled guilty;
- 12 (c) recommend a particular sentence outside of the sentencing range
13 only when departure factors exist and shall be stated on the record;
- 14 (d) agree to file a particular charge or count;
- 15 (e) agree not to file charges or counts; or
- 16 (f) make any other promise to the defendant, except that the prose-
17 cutor shall not enter into any agreement to decline to use a prior drug
18 conviction of the defendant to elevate or enhance the severity level of a
19 drug crime as provided in ~~K.S.A. 65-4127a, 65-4127b and 65-4159 or~~
20 ~~K.S.A. 1995 Supp. 65-4160 through 65-4164~~ section 3, 5 or 6, and amend-
21 ments thereto, or make any agreement to exclude any prior conviction
22 from the criminal history of the defendant.

23 Sec. 36. K.S.A. 21-4714 is hereby amended to read as follows: 21-
24 4714. (a) The court shall order the preparation of the presentence inves-
25 tigation report by the court services officer as soon as possible after con-
26 viction of the defendant.

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

- 30 (1) A summary of the factual circumstances of the crime or crimes
31 of conviction.
- 32 (2) If the defendant desires to do so, a summary of the defendant's
33 version of the crime.
- 34 (3) When there is an identifiable victim, a victim report. The person
35 preparing the victim report shall submit the report to the victim and
36 request that the information be returned to be submitted as a part of the
37 presentence investigation. To the extent possible, the report shall include
38 a complete listing of restitution for damages suffered by the victim.
- 39 (4) An appropriate classification of each crime of conviction on the
40 crime severity scale.
- 41 (5) A listing of prior adult convictions or juvenile adjudications for
42 felony or misdemeanor crimes or violations of county resolutions or city
43 ordinances comparable to any misdemeanor defined by state law. Such

1 listing shall include an assessment of the appropriate classification of the
2 criminal history on the criminal history scale and the source of informa-
3 tion regarding each listed prior conviction and any available source of
4 journal entries or other documents through which the listed convictions
5 may be verified. If any such journal entries or other documents are ob-
6 tained by the court services officer, they shall be attached to the pre-
7 sentence investigation report. Any prior criminal history worksheets of
8 the defendant shall also be attached.

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

12 (7) If the proposed grid block classification is a grid block which pre-
13 sumes imprisonment, the presumptive prison term range and the pre-
14 sumptive duration of postprison supervision as it relates to the crime
15 severity scale.

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

21 (9) For defendants who are being sentenced for a conviction of a
22 felony violation of K.S.A. 65-4160 or 65-4162, and amendments thereto,
23 *prior to their repeal or section 3, and amendments thereto*, and meet the
24 requirements of K.S.A. 21-4729, and amendments thereto, the drug
25 abuse assessment as provided in K.S.A. 21-4729, and amendments
26 thereto.

27 (c) The presentence report will become part of the court record and
28 shall be accessible to the public, except that the official version, defend-
29 ant's version and the victim's statement, any psychological reports, risk
30 and needs assessments and drug and alcohol reports and assessments shall
31 be accessible only to the parties, the sentencing judge, the department
32 of corrections, and if requested, the Kansas sentencing commission. If
33 the offender is committed to the custody of the secretary of corrections,
34 the report shall be sent to the secretary and, in accordance with K.S.A.
35 75-5220 and amendments thereto to the warden of the state correctional
36 institution to which the defendant is conveyed.

37 (d) The criminal history worksheet will not substitute as a present-
38 ence report.

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

43 (f) The court can take judicial notice in a subsequent felony proceed-

1 ing of an earlier presentence report criminal history worksheet prepared
2 for a prior sentencing of the defendant for a felony committed on or after
3 July 1, 1993.

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

7 Sec. 37. K.S.A. 21-4717 is hereby amended to read as follows: 21-
8 4717. (a) The following aggravating factors, which apply to drug crimes
9 committed on or after July 1, 1993, under the sentencing guidelines sys-
10 tem, may be considered in determining whether substantial and compel-
11 ling reasons for departure exist:

12 (1) The crime was committed as part of a major organized drug man-
13 ufacture, production, cultivation or delivery activity. Two or more of the
14 following nonexclusive factors constitute evidence of major organized
15 drug manufacture, production, cultivation or delivery activity:

16 (A) The offender derived a substantial amount of money or asset
17 ownership from the illegal drug sale activity.

18 (B) The presence of a substantial quantity or variety of weapons or
19 explosives at the scene of arrest or associated with the illegal drug activity.

20 (C) The presence of drug transaction records or customer lists that
21 indicate a drug sale activity of major size.

22 (D) The presence of manufacturing or distribution materials such as,
23 but not limited to, drug recipes, precursor chemicals, laboratory equip-
24 ment, lighting, irrigation systems, ventilation, power-generation, scales or
25 packaging material.

26 (E) Building acquisitions or building modifications including but not
27 limited to painting, wiring, plumbing or lighting which advanced or fa-
28 cilitated the commission of the offense.

29 (F) Possession of large amounts of illegal drugs or substantial quan-
30 tities of controlled substances.

31 (G) A showing that the offender has engaged in repeated criminal
32 acts associated with the manufacture, production, cultivation or delivery
33 of controlled substances.

34 (2) The offender possessed illegal drugs:

35 (A) With intent to sell, which were sold or were offered for sale to a
36 person under 18 years of age; or

37 (B) with the intent to sell, deliver or distribute or which were sold or
38 offered for sale in the immediate presence of a person under 18 years of
39 age.

40 (3) The offender, 18 or more years of age, employs, hires, uses, per-
41 suades, induces, entices or coerces any individual under 16 years of age
42 to violate or assist in avoiding detection or apprehension for violation of
43 any provision of the uniform controlled substances act, K.S.A. 65-4101 et

1 ~~see~~ *sections 1 through 18*, and amendments thereto, or any attempt,
2 conspiracy or solicitation as defined in K.S.A. 21-3301, 21-3302 or 21-
3 3303, and amendments thereto, to commit a violation of any provision of
4 the uniform controlled substances act regardless of whether the offender
5 knew the age of the individual under 16 years of age.

6 (4) The offender was incarcerated during the commission of the
7 offense.

8 (b) In determining whether aggravating factors exist as provided in
9 this section, the court shall review the victim impact statement.

10 Sec. 38. K.S.A. 21-4729 is hereby amended to read as follows: 21-
11 4729. (a) There is hereby established a nonprison sanction of certified
12 drug abuse treatment programs for certain offenders who are sentenced
13 on or after November 1, 2003. Placement of offenders in certified drug
14 abuse treatment programs by the court shall be limited to placement of
15 adult offenders, convicted of a felony violation of K.S.A. 65-4160 or 65-
16 4162, and amendments thereto, *prior to their repeal or section 3, and*
17 *amendments thereto*:

18 (1) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or
19 4-I of the sentencing guidelines grid for drug crimes and such offender
20 has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163
21 or 65-4164, and amendments thereto, *prior to their repeal or section 3,*
22 *5 or 17, and amendments thereto*, or any substantially similar offense from
23 another jurisdiction; or

24 (2) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of
25 the sentencing guidelines grid for drug crimes and such offender has no
26 felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-
27 4164, and amendments thereto, *prior to their repeal or section 3, 5 or*
28 *17, and amendments thereto*, or any substantially similar offense from
29 another jurisdiction, if such person felonies committed by the offender
30 were severity level 8, 9 or 10 or nongrid offenses of the sentencing guide-
31 lines grid for nondrug crimes and the court finds and sets forth with
32 particularity the reasons for finding that the safety of the members of the
33 public will not be jeopardized by such placement in a drug abuse treat-
34 ment program.

35 (b) As a part of the presentence investigation pursuant to K.S.A. 21-
36 4714, and amendments thereto, offenders who meet the requirements of
37 subsection (a) shall be subject to:

38 (1) A drug abuse assessment which shall include a clinical interview
39 with a mental health professional and a recommendation concerning drug
40 abuse treatment for the offender; and

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

- 1 (c) The sentencing court shall commit the offender to treatment in a
2 drug abuse treatment program until determined suitable for discharge by
3 the court but the term of treatment shall not exceed 18 months.
- 4 (d) Offenders shall be supervised by community correctional services.
- 5 (e) Placement of offenders under subsection (a)(2) shall be subject
6 to the departure sentencing statutes of the Kansas sentencing guidelines
7 act.
- 8 (f) (1) Offenders in drug abuse treatment programs shall be dis-
9 charged from such program if the offender:
- 10 (A) Is convicted of a new felony; or
11 (B) has a pattern of intentional conduct that demonstrates the of-
12 fender's refusal to comply with or participate in the treatment program,
13 as established by judicial finding.
- 14 (2) Offenders who are discharged from such program shall be subject
15 to the revocation provisions of subsection (n) of K.S.A. 21-4603d, and
16 amendments thereto.
- 17 (g) As used in this section, "mental health professional" includes li-
18 censed social workers, licensed psychiatrists, licensed psychologists, li-
19 censed professional counselors or registered alcohol and other drug abuse
20 counselors licensed or certified as addiction counselors who have been
21 certified by the secretary of corrections to treat offenders pursuant to
22 K.S.A. 2007 Supp. 75-52,144, and amendments thereto.
- 23 (h) (1) The following offenders who meet the requirements of sub-
24 section (a) shall not be subject to the provisions of this section and shall
25 be sentenced as otherwise provided by law:
- 26 (A) Offenders who are residents of another state and are returning
27 to such state pursuant to the interstate corrections compact or the inter-
28 state compact for adult offender supervision; or
29 (B) offenders who are not lawfully present in the United States and
30 being detained for deportation.
- 31 (2) Such sentence shall not be considered a departure and shall not
32 be subject to appeal.
- 33 Sec. 39. K.S.A. 22-2909 is hereby amended to read as follows: 22-
34 2909. (a) A diversion agreement shall provide that if the defendant fulfills
35 the obligations of the program described therein, as determined by the
36 attorney general or county or district attorney, such attorney shall act to
37 have the criminal charges against the defendant dismissed with prejudice.
38 The diversion agreement shall include specifically the waiver of all rights
39 under the law or the constitution of Kansas or of the United States to a
40 speedy arraignment, preliminary examinations and hearings, and a speedy
41 trial, and in the case of diversion under subsection (c) waiver of the rights
42 to counsel and trial by jury. The diversion agreement may include, but is
43 not limited to, provisions concerning payment of restitution, including

1 court costs and diversion costs, residence in a specified facility, mainte-
2 nance of gainful employment, and participation in programs offering
3 medical, educational, vocational, social and psychological services, cor-
4 rective and preventive guidance and other rehabilitative services. If a
5 county creates a local fund under the property crime restitution and com-
6 pensation act, a county or district attorney may require in all diversion
7 agreements as a condition of diversion the payment of a diversion fee in
8 an amount not to exceed \$100. Such fees shall be deposited into the local
9 fund and disbursed pursuant to recommendations of the local board un-
10 der the property crime restitution and victims compensation act.

11 (b) The diversion agreement shall state: (1) The defendant's full
12 name; (2) the defendant's full name at the time the complaint was filed,
13 if different from the defendant's current name; (3) the defendant's sex,
14 race and date of birth; (4) the crime with which the defendant is charged;
15 (5) the date the complaint was filed; and (6) the district court with which
16 the agreement is filed.

17 (c) If a diversion agreement is entered into in lieu of further criminal
18 proceedings on a complaint alleging a violation of K.S.A. 8-1567, and
19 amendments thereto, the diversion agreement shall include a stipulation,
20 agreed to by the defendant, the defendant's attorney if the defendant is
21 represented by an attorney and the attorney general or county or district
22 attorney, of the facts upon which the charge is based and a provision that
23 if the defendant fails to fulfill the terms of the specific diversion agree-
24 ment and the criminal proceedings on the complaint are resumed, the
25 proceedings, including any proceedings on appeal, shall be conducted on
26 the record of the stipulation of facts relating to the complaint. In addition,
27 the agreement shall include a requirement that the defendant:

28 (1) Pay a fine specified by the agreement in an amount equal to an
29 amount authorized by K.S.A. 8-1567, and amendments thereto, for a first
30 offense or, in lieu of payment of the fine, perform community service
31 specified by the agreement, in accordance with K.S.A. 8-1567, and
32 amendments thereto; and

33 (2) enroll in and successfully complete an alcohol and drug safety
34 action program or a treatment program, or both, as provided in K.S.A. 8-
35 1008, and amendments thereto, and specified by the agreement, and pay
36 the assessment required by K.S.A. 8-1008, and amendments thereto.

37 (d) If a diversion agreement is entered into in lieu of further criminal
38 proceedings on a complaint alleging a violation other than K.S.A. 8-1567
39 and amendments thereto, the diversion agreement may include a stipu-
40 lation, agreed to by the defendant, the defendant's attorney if the de-
41 fendant is represented by an attorney and the attorney general or county
42 or district attorney, of the facts upon which the charge is based and a
43 provision that if the defendant fails to fulfill the terms of the specific

1 diversion agreement and the criminal proceedings on the complaint are
2 resumed, the proceedings, including any proceedings on appeal, shall be
3 conducted on the record of the stipulation of facts relating to the
4 complaint.

5 (e) If the person entering into a diversion agreement is a nonresident,
6 the attorney general or county or district attorney shall transmit a copy
7 of the diversion agreement to the division. The division shall forward a
8 copy of the diversion agreement to the motor vehicle administrator of the
9 person's state of residence.

10 (f) If the attorney general or county or district attorney elects to offer
11 diversion in lieu of further criminal proceedings on the complaint and the
12 defendant agrees to all of the terms of the proposed agreement, the di-
13 version agreement shall be filed with the district court and the district
14 court shall stay further proceedings on the complaint. If the defendant
15 declines to accept diversion, the district court shall resume the criminal
16 proceedings on the complaint.

17 (g) Except as provided in subsection (h), if a diversion agreement is
18 entered into in lieu of further criminal proceedings alleging commission
19 of a misdemeanor by the defendant, while under 21 years of age, under
20 ~~the uniform controlled substances act (K.S.A. 65-4101 et seq., and~~
21 ~~amendments thereto) sections 1 through 18, and amendments thereto,~~ or
22 K.S.A. 41-719, 41-727, 41-804, 41-2719, or 41-2720, ~~65-4152, 65-4153,~~
23 ~~65-4154 or 65-4155,~~ and amendments thereto, the agreement shall re-
24 quire the defendant to submit to and complete an alcohol and drug eval-
25 uation by a community-based alcohol and drug safety action program
26 certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay
27 a fee not to exceed the fee established by that statute for such evaluation.
28 If the attorney general or county or district attorney finds that the de-
29 fendant is indigent, the fee may be waived.

30 (h) If the defendant is 18 or more years of age but less than 21 years
31 of age and allegedly committed a violation of K.S.A. 41-727, and amend-
32 ments thereto, involving cereal malt beverage, the provisions of subsec-
33 tion (g) are permissive and not mandatory.

34 (i) Except diversion agreements reported under subsection (j), the
35 attorney general or county or district attorney shall forward to the Kansas
36 bureau of investigation a copy of the diversion agreement at the time such
37 agreement is filed with the district court. The copy of the agreement shall
38 be made available upon request to the attorney general or any county,
39 district or city attorney or court.

40 (j) At the time of filing the diversion agreement with the district
41 court, the attorney general or county or district attorney shall forward to
42 the division of vehicles of the state department of revenue a copy of any
43 diversion agreement entered into in lieu of further criminal proceedings

- 1 on a complaint alleging a violation of K.S.A. 8-1567, and amendments
2 thereto. The copy of the agreement shall be made available upon request
3 to the attorney general or any county, district or city attorney or court.
- 4 Sec. 40. K.S.A. 22-3901 is hereby amended to read as follows: 22-
5 3901. The following unlawful activities and the use of real or personal
6 property in maintaining and carrying on such activities are hereby de-
7 clared to be common nuisances:
- 8 (a) Commercial gambling;
 - 9 (b) dealing in gambling devices;
 - 10 (c) possession of gambling devices;
 - 11 (d) promoting obscenity;
 - 12 (e) promoting prostitution;
 - 13 (f) habitually promoting prostitution;
 - 14 (g) violations of any law regulating controlled substances;
 - 15 (h) habitual violations of any law regulating the sale or exchange of
16 alcoholic liquor or cereal malt beverages, by any person not licensed pur-
17 suant to chapter 41 of the Kansas Statutes Annotated;
 - 18 (i) habitual violations of any law regulating the sale or exchange of
19 cigarettes or tobacco products, by any person not licensed pursuant to
20 article 33 of chapter 79 of the Kansas Statutes Annotated;
 - 21 (j) any felony committed for the benefit of, at the direction of, or in
22 association with any criminal street gang, with the specific intent to pro-
23 mote, further or assist in any criminal conduct by gang members. As used
24 in this subsection, "criminal street gang" means any organization, asso-
25 ciation or group, whether formal or informal:
 - 26 (1) Consisting of three or more persons;
 - 27 (2) having as one of its primary activities the commission of one or
28 more person felonies, person misdemeanors, felony violations of ~~the uni-~~
29 ~~form controlled substances act, K.S.A. 65-4101 et seq.~~ *sections 1 through*
30 *18*, and amendments thereto, or the comparable juvenile offenses, which
31 if committed by an adult would constitute the commission of such felonies
32 or misdemeanors;
 - 33 (3) which has a common name or common identifying sign or symbol;
 - 34 and
 - 35 (4) whose members, individually or collectively engage in or have
36 engaged in the commission, attempted commission, conspiracy to commit
37 or solicitation of two or more person felonies, person misdemeanors, fel-
38 ony violations of the uniform controlled substances act, K.S.A. 65-4101
39 et seq., and amendments thereto, or the comparable juvenile offenses,
40 which if committed by an adult would constitute the commission of such
41 felonies or misdemeanors, or any substantially similar offense from an-
42 other jurisdiction; or
 - 43 (k) use of pyrotechnics, pyrotechnic devices or pyrotechnic materials

1 in violation of K.S.A. 2007 Supp. 31-170, and amendments thereto.

2 Any real property used as a place where any such activities are carried
3 on or permitted to be carried on and any effects, equipment, parapher-
4 nalia, fixtures, appliances, musical instruments or other personal property
5 designed for and used on such premises in connection with such unlawful
6 activities are subject to the provisions of K.S.A. 22-3902, 22-3903 and 22-
7 3904, and amendments thereto.

8 Sec. 41. K.S.A. 22-4902 is hereby amended to read as follows: 22-
9 4902. As used in this act, unless the context otherwise requires:

10 (a) "Offender" means: (1) A sex offender as defined in subsection (b);
11 (2) a violent offender as defined in subsection (d);
12 (3) a sexually violent predator as defined in subsection (f);

13 (4) any person who, on and after the effective date of this act, is
14 convicted of any of the following crimes when the victim is less than 18
15 years of age:

16 (A) Kidnapping as defined in K.S.A. 21-3420 and amendments
17 thereto, except by a parent;

18 (B) aggravated kidnapping as defined in K.S.A. 21-3421 and amend-
19 ments thereto; or

20 (C) criminal restraint as defined in K.S.A. 21-3424 and amendments
21 thereto, except by a parent;

22 (5) any person convicted of any of the following criminal sexual con-
23 duct if one of the parties involved is less than 18 years of age:

24 (A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;

25 (B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-
26 3505, and amendments thereto;

27 (C) promoting prostitution as defined by K.S.A. 21-3513, and amend-
28 ments thereto;

29 (D) patronizing a prostitute as defined by K.S.A. 21-3515, and
30 amendments thereto;

31 (E) lewd and lascivious behavior as defined by K.S.A. 21-3508, and
32 amendments thereto; or

33 (F) unlawful sexual relations as defined by K.S.A. 21-3520, and
34 amendments thereto;

35 (6) any person who has been required to register under any federal,
36 military or other state's law or is otherwise required to be registered;

37 (7) any person who, on or after July 1, 2006, is convicted of any person
38 felony and the court makes a finding on the record that a deadly weapon
39 was used in the commission of such person felony;

40 (8) any person who has been convicted of an offense in effect at any
41 time prior to the effective date of this act, that is comparable to any crime
42 defined in subsection (4), (5), (7) or (11), or any federal, military or other
43 state conviction for an offense that under the laws of this state would be

- 1 an offense defined in subsection (4), (5), (7) or (11);
- 2 (9) any person who has been convicted of an attempt, conspiracy or
3 criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303
4 and amendments thereto, of an offense defined in subsection (4), (5), (7)
5 or (10);
- 6 (10) any person who has been convicted of aggravated trafficking as
7 defined in K.S.A. 21-3447, and amendments thereto; or
- 8 (11) any person who has been convicted of: (A) Unlawful manufac-
9 ture or attempting such of any controlled substance as defined by ~~K.S.A.~~
10 ~~65-4159~~ section 3, and amendments thereto, unless the court makes a
11 finding on the record that the manufacturing or attempting to manufac-
12 ture such controlled substance was for such person's personal use;
- 13 (B) possession of ephedrine, pseudoephedrine, red phosphorus, lith-
14 ium metal, sodium metal, iodine, anhydrous ammonia, pressurized am-
15 monia or phenylpropanolamine, or their salts, isomers or salts of isomers
16 with intent to use the product to manufacture a controlled substance as
17 defined by K.S.A. 65-7006, and amendments thereto, unless the court
18 makes a finding on the record that the possession of such product was
19 intended to be used to manufacture a controlled substance for such per-
20 son's personal use; or
- 21 (C) K.S.A. 65-4161, and amendments thereto, *prior to its repeal or*
22 *section 5, and amendments thereto.*
- 23 Convictions which result from or are connected with the same act, or
24 result from crimes committed at the same time, shall be counted for the
25 purpose of this section as one conviction. Any conviction set aside pur-
26 suant to law is not a conviction for purposes of this section. A conviction
27 from another state shall constitute a conviction for purposes of this
28 section.
- 29 (b) "Sex offender" includes any person who, after the effective date
30 of this act, is convicted of any sexually violent crime set forth in subsection
31 (c) or is adjudicated as a juvenile offender for an act which if committed
32 by an adult would constitute the commission of a sexually violent crime
33 set forth in subsection (c).
- 34 (c) "Sexually violent crime" means:
- 35 (1) Rape as defined in K.S.A. 21-3502 and amendments thereto;
- 36 (2) indecent liberties with a child as defined in K.S.A. 21-3503 and
37 amendments thereto;
- 38 (3) aggravated indecent liberties with a child as defined in K.S.A. 21-
39 3504 and amendments thereto;
- 40 (4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of
41 K.S.A. 21-3505 and amendments thereto;
- 42 (5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and
43 amendments thereto;

- 1 (6) indecent solicitation of a child as defined by K.S.A. 21-3510 and
2 amendments thereto;
- 3 (7) aggravated indecent solicitation of a child as defined by K.S.A.
4 21-3511 and amendments thereto;
- 5 (8) sexual exploitation of a child as defined by K.S.A. 21-3516 and
6 amendments thereto;
- 7 (9) sexual battery as defined by K.S.A. 21-3517 and amendments
8 thereto;
- 9 (10) aggravated sexual battery as defined by K.S.A. 21-3518 and
10 amendments thereto;
- 11 (11) aggravated incest as defined by K.S.A. 21-3603 and amendments
12 thereto; or
- 13 (12) any conviction for an offense in effect at any time prior to the
14 effective date of this act, that is comparable to a sexually violent crime as
15 defined in subparagraphs (1) through (11), or any federal, military or
16 other state conviction for an offense that under the laws of this state would
17 be a sexually violent crime as defined in this section;
- 18 (13) an attempt, conspiracy or criminal solicitation, as defined in
19 K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of a sex-
20 ually violent crime, as defined in this section; or
- 21 (14) any act which at the time of sentencing for the offense has been
22 determined beyond a reasonable doubt to have been sexually motivated.
23 As used in this subparagraph, "sexually motivated" means that one of the
24 purposes for which the defendant committed the crime was for the pur-
25 pose of the defendant's sexual gratification.
- 26 (d) "Violent offender" includes any person who, after the effective
27 date of this act, is convicted of any of the following crimes:
 - 28 (1) Capital murder as defined by K.S.A. 21-3439 and amendments
29 thereto;
 - 30 (2) murder in the first degree as defined by K.S.A. 21-3401 and
31 amendments thereto;
 - 32 (3) murder in the second degree as defined by K.S.A. 21-3402 and
33 amendments thereto;
 - 34 (4) voluntary manslaughter as defined by K.S.A. 21-3403 and amend-
35 ments thereto;
 - 36 (5) involuntary manslaughter as defined by K.S.A. 21-3404 and
37 amendments thereto; or
 - 38 (6) any conviction for an offense in effect at any time prior to the
39 effective date of this act, that is comparable to any crime defined in this
40 subsection, or any federal, military or other state conviction for an offense
41 that under the laws of this state would be an offense defined in this
42 subsection; or
 - 43 (7) an attempt, conspiracy or criminal solicitation, as defined in

1 K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an of-
2 fense defined in this subsection.

3 (e) “Law enforcement agency having jurisdiction” means the sheriff
4 of the county in which the offender expects to reside upon the offender’s
5 discharge, parole or release.

6 (f) “Sexually violent predator” means any person who, on or after July
7 1, 2001, is found to be a sexually violent predator pursuant to K.S.A. 59-
8 29a01 et seq. and amendments thereto.

9 (g) “Nonresident student or worker” includes any offender who
10 crosses into the state or county for more than 14 days, or for an aggregate
11 period exceeding 30 days in a calendar year, for the purposes of employ-
12 ment, with or without compensation, or to attend school as a student.

13 (h) “Aggravated offenses” means engaging in sexual acts involving
14 penetration with victims of any age through the use of force or the threat
15 of serious violence, or engaging in sexual acts involving penetration with
16 victims less than 14 years of age, and includes the following offenses:

17 (1) Rape as defined in subsection (a)(1)(A) and subsection (a)(2) of
18 K.S.A. 21-3502, and amendments thereto;

19 (2) aggravated criminal sodomy as defined in subsection (a)(1) and
20 subsection (a)(3)(A) of K.S.A. 21-3506, and amendments thereto; and

21 (3) any attempt, conspiracy or criminal solicitation, as defined in
22 K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an of-
23 fense defined in this subsection.

24 (i) “Institution of higher education” means any post-secondary school
25 under the supervision of the Kansas board of regents.

26 Sec. 42. K.S.A. 36-601 is hereby amended to read as follows: 36-601.
27 As used in this act:

28 (a) “Hotel” means the same as provided in K.S.A. 36-501, and
29 amendments thereto;

30 (b) “innkeeper” means the owner, operator, manager or keeper of a
31 hotel;

32 (c) “minor” means an unemancipated person under the age of 18
33 years;

34 (d) “alcoholic liquor” means the same as provided in subsection (b)
35 of K.S.A. 41-102, and amendments thereto;

36 (e) “cereal malt beverage” means the same as provided in subsection
37 (a) of K.S.A. 41-2701, and amendments thereto;

38 (f) “controlled substance” means the same as provided in ~~K.S.A. 65-~~
39 ~~4101 et seq.~~ *section 1*, and amendments thereto.

40 Sec. 43. K.S.A. 36-604 is hereby amended to read as follows: 36-604.
41 An innkeeper may eject a person from the hotel premises, without return
42 of such person’s room rental payment, for any of the following reasons:

43 (a) Nonpayment of the hotel’s charges for accommodations or

1 services;

2 (b) the person is engaged in disorderly conduct as defined in K.S.A.
3 21-4101, and amendments thereto, or has been the subject of complaints
4 from other guests of the hotel;

5 (c) the person is using the premises for an unlawful act, including but
6 not limited to the unlawful use or possession of controlled substances by
7 such person in violation of ~~K.S.A. 65-4101 et seq.~~ *sections 1 through 18*,
8 and amendments thereto, or the use of the premises for the consumption
9 of alcoholic liquor or cereal malt beverage by any person under the age
10 of 21 years in violation of K.S.A. 41-727, and amendments thereto;

11 (d) the person has brought property onto the hotel premises which
12 may be dangerous to other persons as defined in K.S.A. 21-4201 et seq.,
13 and amendments thereto;

14 (e) the person is not a registered guest of the hotel;

15 (f) the person has exceeded the limitations for guest room occupancy
16 established by the hotel;

17 (g) the person has obtained the accommodation under false
18 pretenses;

19 (h) the person is a minor and is not under the supervision of the adult
20 who has obtained the accommodation;

21 (i) the person has violated any federal, state or local laws or regula-
22 tions relating to the hotel; or

23 (j) the person has violated any rule of the hotel which is posted in a
24 conspicuous place and manner in the hotel as provided in K.S.A. 36-605,
25 except that no such rule may authorize the innkeeper to eject or to refuse
26 or deny service or accommodations to a person because of race, religion,
27 color, sex, disability, national origin or ancestry.

28 Sec. 44. K.S.A. 2007 Supp. 60-4104 is hereby amended to read as
29 follows: 60-4104. Conduct and offenses giving rise to forfeiture under this
30 act, whether or not there is a prosecution or conviction related to the
31 offense, are:

32 (a) All offenses which statutorily and specifically authorize forfeiture;

33 (b) violations of ~~the uniform controlled substances act, K.S.A. 65-~~
34 ~~4101 et seq.~~ *sections 1 through 18*, and amendments thereto;

35 (c) theft which is classified as a felony violation pursuant to K.S.A.
36 21-3701, and amendments thereto, in which the property taken was
37 livestock;

38 (d) unlawful discharge of a firearm, K.S.A. 21-4219, and amendments
39 thereto;

40 (e) money laundering, K.S.A. 65-4142, and amendments thereto;

41 (f) gambling, K.S.A. 21-4303, and amendments thereto, and com-
42 mercial gambling, K.S.A. 21-4304, and amendments thereto;

43 (g) counterfeiting, K.S.A. ~~2006 Supp.~~ 21-3763, and amendments

1 thereto;

2 (h) violations of K.S.A. ~~2006-Supp.~~ 21-4019, and amendments
3 thereto;

4 (i) medicaid fraud, K.S.A. 21-3844 et seq., and amendments thereto;

5 (j) an act or omission occurring outside this state, which would be a
6 violation in the place of occurrence and would be described in this section
7 if the act occurred in this state, whether or not it is prosecuted in any
8 state;

9 (k) an act or omission committed in furtherance of any act or omission
10 described in this section including any inchoate or preparatory offense,
11 whether or not there is a prosecution or conviction related to the act or
12 omission;

13 (l) any solicitation or conspiracy to commit any act or omission de-
14 scribed in this section, whether or not there is a prosecution or conviction
15 related to the act or omission;

16 (m) furtherance of terrorism or illegal use of weapons of mass de-
17 struction, K.S.A. ~~2006-Supp.~~ 21-3451, and amendments thereto.

18 Sec. 45. K.S.A. 65-4102 is hereby amended to read as follows: 65-
19 4102. (a) The board shall administer this act and may adopt rules and
20 regulations relating to the registration and control of the manufacture,
21 distribution and dispensing of controlled substances within this state. All
22 rules and regulations of the board shall be adopted in conformance with
23 article 4 of chapter 77 of the Kansas Statutes Annotated and the proce-
24 dures prescribed by this act.

25 (b) Annually, the board shall submit to the speaker of the house of
26 representatives and the president of the senate a report on substances
27 proposed by the board for scheduling, rescheduling or deletion by the
28 legislature with respect to any one of the schedules as set forth in this
29 act, and reasons for the proposal shall be submitted by the board there-
30 with. In making a determination regarding the proposal to schedule, res-
31 chedule or delete a substance, the board shall consider the following:

- 32 (1) The actual or relative potential for abuse;
- 33 (2) the scientific evidence of its pharmacological effect, if known;
- 34 (3) the state of current scientific knowledge regarding the substance;
- 35 (4) the history and current pattern of abuse;
- 36 (5) the scope, duration and significance of abuse;
- 37 (6) the risk to the public health;
- 38 (7) the potential of the substance to produce psychological or physi-
39 ological dependence liability; and
- 40 (8) whether the substance is an immediate precursor of a substance
41 already controlled under this article.

42 (c) The board shall not include any nonnarcotic substance within a
43 schedule if such substance may be lawfully sold over the counter without

- 1 a prescription under the federal food, drug and cosmetic act.
- 2 (d) Authority to control under this section does not extend to distilled
3 spirits, wine, malt beverages or tobacco.
- 4 (e) Upon receipt of notice under ~~K.S.A. 65-4105a~~ *section 16, and*
5 *amendments thereto*, the board shall initiate scheduling of the controlled
6 substance analog on an emergency basis pursuant to this subsection. The
7 scheduling of a substance under this subsection expires one year after the
8 adoption of the scheduling rule. With respect to the finding of an im-
9 minent hazard to the public safety, the board shall consider whether the
10 substance has been scheduled on a temporary basis under federal law or
11 factors set forth in subsections (b)(4), (5) and (6), and may also consider
12 clandestine importation, manufacture or distribution, and if available, in-
13 formation concerning the other factors set forth in subsection (b). A rule
14 may not be adopted under this subsection until the board initiates a ru-
15 lemaking proceeding under subsection (a) with respect to the substance.
16 A rule adopted under this subsection lapses upon the conclusion of the
17 rulemaking proceeding initiated under subsection (a) with respect to the
18 substance.
- 19 Sec. 46. K.S.A. 65-4127c is hereby amended to read as follows: 65-
20 4127c. ~~Except as otherwise provided in K.S.A. 65-4127a and 65-4127b~~
21 ~~and K.S.A. 65-4160 through 65-4164 and amendments thereto~~, Any per-
22 son violating any of the provisions of the uniform controlled substances
23 act shall be guilty of a class A nonperson misdemeanor. The criminal
24 penalties prescribed for violations of the uniform controlled substances
25 act shall not be applicable to violations of the rules and regulations
26 adopted by the board pursuant thereto.
- 27 Sec. 47. K.S.A. 2007 Supp. 72-89c01 is hereby amended to read as
28 follows: 72-89c01. As used in K.S.A. 72-89c01 and 72-89c02, and amend-
29 ments thereto:
- 30 (a) “Board of education” means the board of education of a unified
31 school district or the governing authority of an accredited nonpublic
32 school.
- 33 (b) “School” means a public school or an accredited nonpublic school.
- 34 (c) “Public school” means a school operated by a unified school dis-
35 trict organized under the laws of this state.
- 36 (d) “Accredited nonpublic school” means a nonpublic school partic-
37 ipating in the quality performance accreditation system.
- 38 (e) “Chief administrative officer of a school” means, in the case of a
39 public school, the superintendent of schools or a designee of the super-
40 intendent and, in the case of an accredited nonpublic school, the person
41 designated as chief administrative officer by the governing authority of
42 the school.
- 43 (f) “Weapon” means (1) any weapon which will or is designed to or

1 may readily be converted to expel a projectile by the action of an explo-
2 sive; (2) the frame or receiver of any weapon described in the preceding
3 example; (3) any firearm muffler or firearm silencer; (4) any explosive,
4 incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a
5 propellant charge of more than four ounces, (D) missile having an explo-
6 sive or incendiary charge of more than $\frac{1}{4}$ ounce, (E) mine, or (F) similar
7 device; (5) any weapon which will, or which may be readily converted to,
8 expel a projectile by the action of an explosive or other propellant, and
9 which has any barrel with a bore of more than $\frac{1}{2}$ inch in diameter; (6)
10 any combination of parts either designed or intended for use in converting
11 any device into any destructive device described in the two immediately
12 preceding examples, and from which a destructive device may be readily
13 assembled; (7) any bludgeon, sandclub, metal knuckles or throwing star;
14 (8) any knife, commonly referred to as a switch-blade, which has a blade
15 that opens automatically by hand pressure applied to a button, spring or
16 other device in the handle of the knife, or any knife having a blade that
17 opens or falls or is ejected into position by the force of gravity or by an
18 outward, downward or centrifugal thrust or movement; (9) any electronic
19 device designed to discharge immobilizing levels of electricity, commonly
20 known as a stun gun. The term "weapon" does not include within its
21 meaning (1) an antique firearm; (2) any device which is neither designed
22 nor redesigned for use as a weapon; (3) any device, although originally
23 designed for use as a weapon, which is redesigned for use as a signaling,
24 pyrotechnic, line throwing, safety, or similar device; (4) surplus ordinance
25 sold, loaned, or given by the secretary of the army pursuant to the pro-
26 visions of section 4684(2), 4685, or 4686 of title 10 of the United States
27 Code; (5) class C common fireworks.

28 (g) "Controlled substance" has the meaning ascribed thereto in
29 ~~K.S.A. 65-4101~~ *section 1*, and amendments thereto.

30 (h) "Illegal drug" means a controlled substance but does not include
31 a controlled substance that is legally possessed, used under the supervi-
32 sion of a licensed health-care professional or used under authority of any
33 federal or state law.

34 (i) "Possession of a weapon or illegal drug" means knowingly having
35 direct physical control over a weapon or illegal drug or knowingly having
36 the power and the intention at a given time to exercise dominion or
37 control over a weapon or illegal drug.

38 (j) "School safety violation" means: (1) The possession of a weapon
39 or illegal drug at school, upon school property or at a school-supervised
40 activity; or (2) an act or behavior committed at school, upon school prop-
41 erty or at a school-supervised activity which resulted in, or was substan-
42 tially likely to have resulted in, serious bodily injury to others.

43 (k) "Law enforcement agency" means the police department of a city

1 if the school safety violation occurs within the corporate limits of a city
2 or the office of the county sheriff if the school safety violation occurs
3 outside the corporate limits of a city.

4 (l) "Division" means the division of motor vehicles of the Kansas de-
5 partment of revenue.

6 Sec. 48. K.S.A. 2007 Supp. 75-52,144 is hereby amended to read as
7 follows: 75-52,144. (a) Drug abuse treatment programs certified in ac-
8 cordance with subsection (b) shall provide:

9 (1) Presentence drug abuse assessments of any person who is con-
10 victed of a felony violation of K.S.A. 65-4160 or 65-4162, and amendments
11 thereto, *prior to their repeal or section 6, and amendments thereto*, and
12 meets the requirements of K.S.A. 21-4729, and amendments thereto;

13 (2) treatment of all persons who are convicted of a felony violation
14 of K.S.A. 65-4160 or 65-4162, and amendments thereto, *prior to their*
15 *repeal or section 6, and amendments thereto*, and meet the requirements
16 of K.S.A. 21-4729, and amendments thereto, and whose sentence re-
17 quires completion of a certified drug abuse treatment program, as pro-
18 vided in this section;

19 (3) one or more treatment options in the continuum of services
20 needed to reach recovery: Detoxification, rehabilitation, continuing care
21 and aftercare, and relapse prevention;

22 (4) treatment options to incorporate family and auxiliary support serv-
23 ices; and

24 (5) treatment options for alcohol abuse when indicated by the as-
25 sessment of the offender or required by the court.

26 (b) The presentence criminal risk-need assessment shall be con-
27 ducted by a court services officer or a community corrections officer. The
28 presentence drug abuse treatment program placement assessment shall
29 be conducted by a drug abuse treatment program certified in accordance
30 with the provisions of this subsection to provide assessment and treatment
31 services. A drug abuse treatment program shall be certified by the sec-
32 retary of corrections. The secretary may establish qualifications for the
33 certification of programs, which may include requirements for supervi-
34 sion and monitoring of clients; fee reimbursement procedures; handling
35 of conflicts of interest; delivery of services to clients unable to pay; and
36 other matters relating to quality and delivery of services by the program.
37 Drug abuse treatment may include community based and faith based
38 programs. The certification shall be for a four-year period. Recertification
39 of a program shall be by the secretary. To be eligible for certification
40 under this subsection, the secretary shall determine that a drug abuse
41 treatment program: (1) Meets the qualifications established by the sec-
42 retary; (2) is capable of providing the assessments, supervision and mon-
43 itoring required under subsection (a); (3) has employed or contracted with

1 certified treatment providers; and (4) meets any other functions and du-
2 ties specified by law.

3 (c) Any treatment provider who is employed or has contracted with
4 a certified drug abuse treatment program who provides services to of-
5 fenders shall be certified by the secretary of corrections. The secretary
6 shall require education and training which shall include, but not be lim-
7 ited to, case management and cognitive behavior training. The duties of
8 providers who prepare the presentence drug abuse assessment may also
9 include appearing at sentencing and probation hearings in accordance
10 with the orders of the court, monitoring offenders in the treatment pro-
11 grams, notifying the probation department and the court of any offender
12 failing to meet the conditions of probation or referrals to treatment, ap-
13 pearing at revocation hearings as may be required and providing assis-
14 tance and data reporting and program evaluation.

15 (d) The cost for all drug abuse assessments and certified drug abuse
16 treatment programs for any person shall be paid by the Kansas sentencing
17 commission from funds appropriated for such purpose. The Kansas sen-
18 tencing commission shall contract for payment for such services with the
19 supervising agency. The sentencing court shall determine the extent, if
20 any, that such person is able to pay for such assessment and treatment.
21 Such payments shall be used by the supervising agency to offset costs to
22 the state. If such financial obligations are not met or cannot be met, the
23 sentencing court shall be notified for the purpose of collection or review
24 and further action on the offender's sentence.

25 (e) The community corrections staff shall work with the substance
26 abuse treatment staff to ensure effective supervision and monitoring of
27 the offender.

28 (f) The secretary of corrections is hereby authorized to adopt rules
29 and regulations to carry out the provisions of this section.

30 Sec. 49. K.S.A. 12-4419, 12-4509, 21-3436, 21-3445, 21-3608a, 21-
31 3718, 21-3826, 21-4203, 21-4204, 21-4214, 21-4215, 21-4226, 21-4502,
32 21-4603d, 21-4704, 21-4705, 21-4708, 21-4713, 21-4714, 21-4717, 21-
33 4729, 22-2909, 22-3901, 22-4902, 36-601, 36-604, 65-4102, 65-4105a, 65-
34 4127c, 65-4141, 65-4142, 65-4155, 65-4158, 65-4162, 65-4163, 65-4164
35 and 65-4165 and K.S.A. 2007 Supp. 8-1567, 8-1567b, 12-4104, 21-4704b,
36 60-4104, 65-4150, 65-4151, 65-4152, 65-4153, 65-4159, 65-4159a, 65-
37 4160, 65-4161, 65-4166, 72-89c01 and 75-52,144 are hereby repealed.

38 Sec. 50. This act shall take effect and be in force from and after its
39 publication in the statute book.