

House Substitute for SENATE BILL No. 176

By Committee on Corrections and Juvenile Justice

3-16

1 AN ACT concerning criminal procedure; relating to conditions of release
2 and bond; relating to house arrest; relating to employment of county
3 and municipal prisoners; amending K.S.A. 22-4603 and K.S.A. 2010
4 Supp. 12-4509 and 22-2802 and sections 244, 249 and 285 of chapter
5 136 of the 2010 Session Laws of Kansas and repealing the existing
6 sections; also repealing K.S.A. 2009 Supp. 21-4603d, as amended by
7 section 7 of chapter 101 of the 2010 Session Laws of Kansas, and
8 K.S.A. 2010 Supp. 21-4603d and 21-4704.
9

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

11 Section 1. K.S.A. 2010 Supp. 12-4509 is hereby amended to read as
12 follows: 12-4509. (a) Whenever a person is found guilty of the violation of
13 an ordinance, the municipal judge may:

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

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

18 (3) impose such sentence of fine or imprisonment, or both, as
19 authorized for the ordinance violation; *or*

20 (4) *impose a sentence of house arrest as provided in section 249 of*
21 *chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.*

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 K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and
34 amendments thereto, or K.S.A. 8-1599, 41-719 or 41-727, and
35 amendments thereto, the municipal judge shall order such person to submit

1 to and complete an alcohol and drug evaluation by a community-based
2 alcohol and drug safety action program certified pursuant to K.S.A. 8-
3 1008, and amendments thereto, and to pay a fee not to exceed the fee
4 established by that statute for such evaluation. If the judge finds that the
5 person is indigent, the fee may be waived.

6 (d) If the person is 18 or more years of age but less than 21 years of
7 age and is convicted of a violation of K.S.A. 41-727, and amendments
8 thereto, involving cereal malt beverage, the provisions of subsection (c)
9 are permissive and not mandatory.

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

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

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

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

18 (4) permit the probation officer to visit the defendant at home or
19 elsewhere;

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

21 (6) remain within the state unless the court grants permission to
22 leave;

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

25 (8) support the defendant's dependents;

26 (9) reside in a residential facility located in the community and
27 participate in educational counseling, work and other correctional or
28 rehabilitative programs;

29 (10) perform community or public service work for local
30 governmental agencies, private corporations organized not for profit, or
31 charitable or social service organizations performing services for the
32 community;

33 (11) perform services under a system of day fines whereby the
34 defendant is required to satisfy fines, costs or reparation or restitution
35 obligations by performing services for a period of days determined by the
36 court on the basis of ability to pay, standard of living, support obligations
37 and other factors;

38 (12) make reparation or restitution to the aggrieved party for the
39 damage or loss caused by the defendant's crime, in an amount and manner
40 determined by the court and to the person specified by the court; or

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

1 (f) In addition to or in lieu of any other sentence authorized by law,
2 whenever a person is found guilty of the violation of an ordinance the
3 judge may order such person to reimburse the city for all or a part of the
4 reasonable expenditures by the city to provide counsel and other defense
5 services to the defendant. In determining the amount and method of
6 payment of such sum, the court shall take account of the financial
7 resources of the defendant and the nature of the burden that payment of
8 such sum will impose. A defendant who has been required to pay such sum
9 and who is not willfully in default in the payment thereof may at any time
10 petition the court which sentenced the defendant to waive payment of such
11 sum or of any unpaid portion thereof. If it appears to the satisfaction of the
12 court that payment of the amount due will impose manifest hardship on the
13 defendant or the defendant's immediate family, the court may waive
14 payment of all or part of the amount due or modify the method of
15 payment.

16 Sec. 2. K.S.A. 2010 Supp. 22-2802 is hereby amended to read as
17 follows: 22-2802. (1) Any person charged with a crime shall, at the
18 person's first appearance before a magistrate, be ordered released pending
19 preliminary examination or trial upon the execution of an appearance bond
20 in an amount specified by the magistrate and sufficient to assure the
21 appearance of such person before the magistrate when ordered and to
22 assure the public safety. If the person is being bound over for a felony, the
23 bond shall also be conditioned on the person's appearance in the district
24 court or by way of a two-way electronic audio-video communication as
25 provided in subsection (14) at the time required by the court to answer the
26 charge against such person and at any time thereafter that the court
27 requires. Unless the magistrate makes a specific finding otherwise, if the
28 person is being bonded out for a person felony or a person misdemeanor,
29 the bond shall be conditioned on the person being prohibited from having
30 any contact with the alleged victim of such offense for a period of at least
31 72 hours. The magistrate may impose such of the following additional
32 conditions of release as will reasonably assure the appearance of the
33 person for preliminary examination or trial:

34 (a) Place the person in the custody of a designated person or
35 organization agreeing to supervise such person;

36 (b) place restrictions on the travel, association or place of abode of
37 the person during the period of release;

38 (c) impose any other condition deemed reasonably necessary to
39 assure appearance as required, including a condition requiring that the
40 person return to custody during specified hours;

41 (d) place the person under a house arrest program pursuant to ~~K.S.A.~~
42 ~~21-4603b~~ *section 249 of chapter 136 of the 2010 Session Laws of Kansas,*
43 and amendments thereto; or

1 (e) place the person under the supervision of a court services officer
2 responsible for monitoring the person's compliance with any conditions of
3 release ordered by the magistrate.

4 (2) In addition to any conditions of release provided in subsection (1),
5 for any person charged with a felony, the magistrate may order such
6 person to submit to a drug abuse examination and evaluation in a public or
7 private treatment facility or state institution and, if determined by the head
8 of such facility or institution that such person is a drug abuser or
9 incapacitated by drugs, to submit to treatment for such drug abuse, as a
10 condition of release.

11 (3) The appearance bond shall be executed with sufficient solvent
12 sureties who are residents of the state of Kansas, unless the magistrate
13 determines, in the exercise of such magistrate's discretion, that requiring
14 sureties is not necessary to assure the appearance of the person at the time
15 ordered.

16 (4) A deposit of cash in the amount of the bond may be made in lieu
17 of the execution of the bond pursuant to ~~paragraph~~ subsection (3). Except
18 as provided in ~~paragraph~~ subsection (5), such deposit shall be in the full
19 amount of the bond and in no event shall a deposit of cash in less than the
20 full amount of bond be permitted. Any person charged with a crime who is
21 released on a cash bond shall be entitled to a refund of all moneys paid for
22 the cash bond, after deduction of any outstanding restitution, costs, fines
23 and fees, after the final disposition of the criminal case if the person
24 complies with all requirements to appear in court. The court may not
25 exclude the option of posting bond pursuant to ~~paragraph~~ subsection (3).

26 (5) Except as provided further, the amount of the appearance bond
27 shall be the same whether executed as described in subsection (3) or
28 posted with a deposit of cash as described in subsection (4). When the
29 appearance bond has been set at \$2,500 or less and the most serious charge
30 against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson
31 felony, a drug severity level 4 felony or a violation of K.S.A. 8-1567, and
32 amendments thereto, the magistrate may allow the person to deposit cash
33 with the clerk in the amount of 10% of the bond, provided the person
34 meets at least the following qualifications:

- 35 (A) Is a resident of the state of Kansas;
36 (B) has a criminal history score category of G, H or I;
37 (C) has no prior history of failure to appear for any court
38 appearances;
39 (D) has no detainer or hold from any other jurisdiction;
40 (E) has not been extradited from, and is not awaiting extradition to,
41 another state; and
42 (F) has not been detained for an alleged violation of probation.
43 (6) In the discretion of the court, a person charged with a crime may

1 be released upon the person's own recognizance by guaranteeing payment
2 of the amount of the bond for the person's failure to comply with all
3 requirements to appear in court. The release of a person charged with a
4 crime upon the person's own recognizance shall not require the deposit of
5 any cash by the person.

6 (7) The court shall not impose any administrative fee.

7 (8) In determining which conditions of release will reasonably assure
8 appearance and the public safety, the magistrate shall, on the basis of
9 available information, take into account the nature and circumstances of
10 the crime charged; the weight of the evidence against the defendant;
11 *whether the defendant is lawfully present in the United States*; the
12 defendant's family ties, employment, financial resources, character, mental
13 condition, length of residence in the community, record of convictions,
14 record of appearance or failure to appear at court proceedings or of flight
15 to avoid prosecution; the likelihood or propensity of the defendant to
16 commit crimes while on release, including whether the defendant will be
17 likely to threaten, harass or cause injury to the victim of the crime or any
18 witnesses thereto; and whether the defendant is on probation or parole
19 from a previous offense at the time of the alleged commission of the
20 subsequent offense.

21 (9) The appearance bond shall set forth all of the conditions of
22 release.

23 (10) A person for whom conditions of release are imposed and who
24 continues to be detained as a result of the person's inability to meet the
25 conditions of release shall be entitled, upon application, to have the
26 conditions reviewed without unnecessary delay by the magistrate who
27 imposed them. If the magistrate who imposed conditions of release is not
28 available, any other magistrate in the county may review such conditions.

29 (11) A magistrate ordering the release of a person on any conditions
30 specified in this section may at any time amend the order to impose
31 additional or different conditions of release. If the imposition of additional
32 or different conditions results in the detention of the person, the provisions
33 of subsection (10) shall apply.

34 (12) Statements or information offered in determining the conditions
35 of release need not conform to the rules of evidence. No statement or
36 admission of the defendant made at such a proceeding shall be received as
37 evidence in any subsequent proceeding against the defendant.

38 (13) The appearance bond and any security required as a condition of
39 the defendant's release shall be deposited in the office of the magistrate or
40 the clerk of the court where the release is ordered. If the defendant is
41 bound to appear before a magistrate or court other than the one ordering
42 the release, the order of release, together with the bond and security shall
43 be transmitted to the magistrate or clerk of the court before whom the

1 defendant is bound to appear.

2 (14) Proceedings before a magistrate as provided in this section to
3 determine the release conditions of a person charged with a crime
4 including release upon execution of an appearance bond may be conducted
5 by two-way electronic audio-video communication between the defendant
6 and the judge in lieu of personal presence of the defendant or defendant's
7 counsel in the courtroom in the discretion of the court. The defendant may
8 be accompanied by the defendant's counsel. The defendant shall be
9 informed of the defendant's right to be personally present in the courtroom
10 during such proceeding if the defendant so requests. Exercising the right to
11 be present shall in no way prejudice the defendant.

12 (15) The magistrate may order the person to pay for any costs
13 associated with the supervision of the conditions of release of the
14 appearance bond in an amount not to exceed \$15 per week of such
15 supervision.

16 Sec. 3. K.S.A. 22-4603 is hereby amended to read as follows: 22-
17 4603. (1) Whenever any able-bodied prisoner is confined in the county jail
18 or the jail of any town or city, having been convicted of a misdemeanor or
19 of a violation of an ordinance of such town or city, the sheriff of such
20 county, or the marshal or the chief of police of such town or city, under the
21 direction of the county commissioners or the governing body of the town
22 or city, may ~~cause~~ *allow* such persons to work at suitable public *or*
23 *charitable* employment for not to ~~exceed~~ *more than* eight hours on each
24 working day.

25 (2) A person so employed shall ~~be given credit at the rate of five~~
26 ~~dollars a day on any fine and costs imposed upon him.~~ *receive a credit on*
27 *any fine and costs imposed in an amount equal to \$5 for each full hour*
28 *spent by the person in the specified work.*

29 (3) Persons held in jail and awaiting trial or held on civil process,
30 may, with their consent, be likewise so employed and shall receive *a*
31 *credit on any fines and costs in an amount equal to \$5 for each full hour*
32 *spent by the person in the specified work, or if there are no such fines and*
33 *costs, compensation at the rate of five dollars a day* for such employment
34 *in an amount agreed to by the person and the city or county, but not less*
35 *than \$5 a day, to be paid by the city or the county.*

36 (4) Any prisoner employed as above provided, shall continue to be
37 deemed prisoners during the hours of their employment and subject to all
38 laws, rules and regulations relating to prisoners.

39 Sec. 4. Section 244 of chapter 136 of the 2010 Session Laws of
40 Kansas is hereby amended to read as follows: Sec. 244. (a) Whenever any
41 person has been found guilty of a crime, the court may adjudge any of the
42 following:

43 (1) Commit the defendant to the custody of the secretary of

1 corrections if the current crime of conviction is a felony and the sentence
2 presumes imprisonment, or the sentence imposed is a dispositional
3 departure to imprisonment; or, if confinement is for a misdemeanor, to jail
4 for the term provided by law;

5 (2) impose the fine applicable to the offense *and may impose the*
6 *provisions of subsection (q)*;

7 (3) release the defendant on probation if the current crime of
8 conviction and criminal history fall within a presumptive nonprison
9 category or through a departure for substantial and compelling reasons
10 subject to such conditions as the court may deem appropriate. In felony
11 cases except for violations of K.S.A. 8-1567, and amendments thereto, the
12 court may include confinement in a county jail not to exceed 60 days,
13 which need not be served consecutively, as a condition of an original
14 probation sentence and up to 60 days in a county jail upon each revocation
15 of the probation sentence, or community corrections placement;

16 (4) assign the defendant to a community correctional services
17 program as provided in K.S.A. 75-5291, and amendments thereto, or
18 through a departure for substantial and compelling reasons subject to such
19 conditions as the court may deem appropriate, including orders requiring
20 full or partial restitution;

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

26 (6) assign the defendant to a house arrest program pursuant to section
27 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments
28 thereto;

29 (7) order the defendant to attend and satisfactorily complete an
30 alcohol or drug education or training program as provided by subsection
31 (c) of section 242 of chapter 136 of the 2010 Session Laws of Kansas, and
32 amendments thereto;

33 (8) order the defendant to repay the amount of any reward paid by
34 any crime stoppers chapter, individual, corporation or public entity which
35 materially aided in the apprehension or conviction of the defendant; repay
36 the amount of any costs and expenses incurred by any law enforcement
37 agency in the apprehension of the defendant, if one of the current crimes
38 of conviction of the defendant includes escape *from custody* or aggravated
39 escape *from custody*, as defined in section 136 of chapter 136 of the 2010
40 Session Laws of Kansas, and amendments thereto; repay expenses incurred
41 by a fire district, fire department or fire company responding to a fire
42 which has been determined to be arson ~~under~~ or aggravated arson as
43 defined in section 98 of chapter 136 of the 2010 Session Laws of Kansas,

1 and amendments thereto, if the defendant is convicted of such crime; repay
2 the amount of any public funds utilized by a law enforcement agency to
3 purchase controlled substances from the defendant during the investigation
4 which leads to the defendant's conviction; or repay the amount of any
5 medical costs and expenses incurred by any law enforcement agency or
6 county. Such repayment of the amount of any such costs and expenses
7 incurred by a county, law enforcement agency, fire district, fire department
8 or fire company or any public funds utilized by a law enforcement agency
9 shall be deposited and credited to the same fund from which the public
10 funds were credited to prior to use by the county, law enforcement agency,
11 fire district, fire department or fire company;

12 (9) order the defendant to pay the administrative fee authorized by
13 K.S.A. 22-4529, and amendments thereto, unless waived by the court;

14 (10) order the defendant to pay a domestic violence special program
15 fee authorized by K.S.A. 20-369, and amendments thereto;

16 (11) *if the defendant is convicted of a misdemeanor or convicted of a*
17 *felony specified in subsection (i) of section 285 of chapter 136 of the 2010*
18 *Session Laws of Kansas, and amendments thereto, assign the defendant to*
19 *work release program, other than a program at a correctional institution*
20 *under the control of the secretary of corrections as defined in K.S.A. 75-*
21 *5202, and amendments thereto, provided such work release program*
22 *requires such defendant to return to confinement at the end of each day in*
23 *the work release program;*

24 ~~(11)~~(12) impose any appropriate combination of (1), (2), (3), (4), (5),
25 (6), (7), (8), (9) ~~and~~, (10) and (11); or

26 ~~(12)~~(13) suspend imposition of sentence in misdemeanor cases.

27 (b) (1) In addition to or in lieu of any of the above, the court shall
28 order the defendant to pay restitution, which shall include, but not be
29 limited to, damage or loss caused by the defendant's crime, unless the
30 court finds compelling circumstances which would render a plan of
31 restitution unworkable. In regard to a violation of section 177 of chapter
32 136 of the 2010 Session Laws of Kansas, and amendments thereto, such
33 damage or loss shall include, but not be limited to, attorney fees and costs
34 incurred to repair the credit history or rating of the person whose personal
35 identification documents were obtained and used in violation of such
36 section, and to satisfy a debt, lien or other obligation incurred by the
37 person whose personal identification documents were obtained and used in
38 violation of such section. If the court finds a plan of restitution
39 unworkable, the court shall state on the record in detail the reasons
40 therefor.

41 (2) If the court orders restitution, the restitution shall be a judgment
42 against the defendant which may be collected by the court by garnishment
43 or other execution as on judgments in civil cases. If, after 60 days from the

1 date restitution is ordered by the court, a defendant is found to be in
2 noncompliance with the plan established by the court for payment of
3 restitution, and the victim to whom restitution is ordered paid has not
4 initiated proceedings in accordance with K.S.A. 60-4301 et seq., and
5 amendments thereto, the court shall assign an agent procured by the
6 attorney general pursuant to K.S.A. 75-719, and amendments thereto, to
7 collect the restitution on behalf of the victim. The ~~administrative chief~~
8 judge of each judicial district may assign such cases to an appropriate
9 division of the court for the conduct of civil collection proceedings.

10 (c) In addition to or in lieu of any of the above, the court shall order
11 the defendant to submit to and complete an alcohol and drug evaluation,
12 and pay a fee therefor, when required by subsection (d) of section 242 *of*
13 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

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

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

37 (f) (1) When a new felony is committed while the offender is
38 incarcerated and serving a sentence for a felony, or while the offender is on
39 probation, assignment to a community correctional services program,
40 parole, conditional release or postrelease supervision for a felony, a new
41 sentence shall be imposed pursuant to the consecutive sentencing
42 requirements of section 246 *of chapter 136 of the 2010 Session Laws of*
43 *Kansas*, and amendments thereto, and the court may sentence the offender

1 to imprisonment for the new conviction, even when the new crime of
2 conviction otherwise presumes a nonprison sentence. In this event,
3 imposition of a prison sentence for the new crime does not constitute a
4 departure.

5 (2) When a new felony is committed while the offender is
6 incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671,
7 prior to its repeal, or K.S.A. 2009-2010 Supp. 38-2373, and amendments
8 thereto, for an offense, which if committed by an adult would constitute
9 the commission of a felony, upon conviction, the court shall sentence the
10 offender to imprisonment for the new conviction, even when the new
11 crime of conviction otherwise presumes a nonprison sentence. In this
12 event, imposition of a prison sentence for the new crime does not
13 constitute a departure. The conviction shall operate as a full and complete
14 discharge from any obligations, except for an order of restitution, imposed
15 on the offender arising from the offense for which the offender was
16 committed to a juvenile correctional facility.

17 (3) When a new felony is committed while the offender is on release
18 for a felony pursuant to the provisions of article 28 of chapter 22 of the
19 Kansas Statutes Annotated, and amendments thereto, or similar provisions
20 of the laws of another jurisdiction, a new sentence may be imposed
21 pursuant to the consecutive sentencing requirements of section 246 of
22 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto,
23 and the court may sentence the offender to imprisonment for the new
24 conviction, even when the new crime of conviction otherwise presumes a
25 nonprison sentence. In this event, imposition of a prison sentence for the
26 new crime does not constitute a departure.

27 (g) Prior to imposing a dispositional departure for a defendant whose
28 offense is classified in the presumptive nonprison grid block of either
29 sentencing guideline grid, prior to sentencing a defendant to incarceration
30 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing
31 guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or
32 3-I of the sentencing guidelines grid for drug crimes, prior to sentencing a
33 defendant to incarceration whose offense is classified in grid blocks 4-E or
34 4-F of the sentencing guideline grid for drug crimes and whose offense
35 does not meet the requirements of section 305 of *chapter 136 of the 2010*
36 *Session Laws of Kansas*, and amendments thereto, prior to revocation of a
37 nonprison sanction of a defendant whose offense is classified in grid
38 blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and
39 whose offense does not meet the requirements of section 305 of *chapter*
40 *136 of the 2010 Session Laws of Kansas*, and amendments thereto, or prior
41 to revocation of a nonprison sanction of a defendant whose offense is
42 classified in the presumptive nonprison grid block of either sentencing
43 guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines

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

13 (h) The court in committing a defendant to the custody of the
14 secretary of corrections shall fix a term of confinement within the limits
15 provided by law. In those cases where the law does not fix a term of
16 confinement for the crime for which the defendant was convicted, the
17 court shall fix the term of such confinement.

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

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

40 (k) An application for or acceptance of probation or assignment to a
41 community correctional services program shall not constitute an
42 acquiescence in the judgment for purpose of appeal, and any convicted
43 person may appeal from such conviction, as provided by law, without

1 regard to whether such person has applied for probation, suspended
2 sentence or assignment to a community correctional services program.

3 (l) The secretary of corrections is authorized to make direct
4 placement to the Labette correctional conservation camp or a conservation
5 camp established by the secretary pursuant to K.S.A. 75-52,127, and
6 amendments thereto, of an inmate sentenced to the secretary's custody if
7 the inmate:

8 (1) Has been sentenced to the secretary for a probation revocation, as
9 a departure from the presumptive nonimprisonment grid block of either
10 sentencing grid, for an offense which is classified in grid blocks 5-H, 5-I,
11 or 6-G of the sentencing guidelines grid for nondrug crimes or in grid
12 blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug
13 crimes, or for an offense which is classified in grid blocks 4-E or 4-F of
14 the sentencing guidelines grid for drug crimes and such offense does not
15 meet the requirements of section 305 of *chapter 136 of the 2010 Session*
16 *Laws of Kansas*, and amendments thereto; and

17 (2) otherwise meets admission criteria of the camp.

18 If the inmate successfully completes a conservation camp program, the
19 secretary of corrections shall report such completion to the sentencing
20 court and the county or district attorney. The inmate shall then be assigned
21 by the court to six months of follow-up supervision conducted by the
22 appropriate community corrections services program. The court may also
23 order that supervision continue thereafter for the length of time authorized
24 by section ~~305~~ 248 of *chapter 136 of the 2010 Session Laws of Kansas*,
25 and amendments thereto.

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

29 (n) Except as provided by subsection (f) of section 286 of *chapter*
30 *136 of the 2010 Session Laws of Kansas*, and amendments thereto, in
31 addition to any of the above, for felony violations of K.S.A. ~~2009~~ 2010
32 Supp. 21-36a06, and amendments thereto, the court shall require the
33 defendant who meets the requirements established in section 305 of
34 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto,
35 to participate in a certified drug abuse treatment program, as provided in
36 K.S.A. ~~2009~~ 2010 Supp. 75-52,144, and amendments thereto, including,
37 but not limited to, an approved after-care plan. If the defendant fails to
38 participate in or has a pattern of intentional conduct that demonstrates the
39 offender's refusal to comply with or participate in the treatment program,
40 as established by judicial finding, the defendant shall be subject to
41 revocation of probation and the defendant shall serve the underlying prison
42 sentence as established in section ~~305~~ 286 of *chapter 136 of the 2010*
43 *Session Laws of Kansas*, and amendments thereto. For those offenders who

1 are convicted on or ~~after the effective date of this act~~ *after* July 1, 2003,
2 upon completion of the underlying prison sentence, the defendant shall not
3 be subject to a period of postrelease supervision. The amount of time spent
4 participating in such program shall not be credited as service on the
5 underlying prison sentence.

6 (o) (1) Except as provided in paragraph (3), in addition to any other
7 penalty or disposition imposed by law, upon a conviction for unlawful
8 possession of a controlled substance or controlled substance analog in
9 violation of K.S.A. ~~2009~~ 2010 Supp. 21-36a06, and amendments thereto,
10 in which the trier of fact makes a finding that the unlawful possession
11 occurred while transporting the controlled substance or controlled
12 substance analog in any vehicle upon a highway or street, the offender's
13 driver's license or privilege to operate a motor vehicle on the streets and
14 highways of this state shall be suspended for one year.

15 (2) Upon suspension of a license pursuant to this subsection, the court
16 shall require the person to surrender the license to the court, which shall
17 transmit the license to the division of motor vehicles of the department of
18 revenue, to be retained until the period of suspension expires. At that time,
19 the licensee may apply to the division for return of the license. If the
20 license has expired, the person may apply for a new license, which shall be
21 issued promptly upon payment of the proper fee and satisfaction of other
22 conditions established by law for obtaining a license unless another
23 suspension or revocation of the person's privilege to operate a motor
24 vehicle is in effect.

25 (3) (A) In lieu of suspending the driver's license or privilege to
26 operate a motor vehicle on the highways of this state of any person as
27 provided in paragraph (1), the judge of the court in which such person was
28 convicted may enter an order which places conditions on such person's
29 privilege of operating a motor vehicle on the highways of this state, a
30 certified copy of which such person shall be required to carry any time
31 such person is operating a motor vehicle on the highways of this state. Any
32 such order shall prescribe the duration of the conditions imposed, which in
33 no event shall be for a period of more than one year.

34 (B) Upon entering an order restricting a person's license hereunder,
35 the judge shall require such person to surrender such person's driver's
36 license to the judge who shall cause it to be transmitted to the division of
37 vehicles, together with a copy of the order. Upon receipt thereof, the
38 division of vehicles shall issue without charge a driver's license which
39 shall indicate on its face that conditions have been imposed on such
40 person's privilege of operating a motor vehicle and that a certified copy of
41 the order imposing such conditions is required to be carried by the person
42 for whom the license was issued any time such person is operating a motor
43 vehicle on the highways of this state. If the person convicted is a

1 nonresident, the judge shall cause a copy of the order to be transmitted to
2 the division and the division shall forward a copy of it to the motor vehicle
3 administrator, of such person's state of residence. Such judge shall furnish
4 to any person whose driver's license has had conditions imposed on it
5 under this paragraph a copy of the order, which shall be recognized as a
6 valid Kansas driver's license until such time as the division shall issue the
7 restricted license provided for in this paragraph.

8 (C) Upon expiration of the period of time for which conditions are
9 imposed pursuant to this subsection, the licensee may apply to the division
10 for the return of the license previously surrendered by such licensee. In the
11 event such license has expired, such person may apply to the division for a
12 new license, which shall be issued immediately by the division upon
13 payment of the proper fee and satisfaction of the other conditions
14 established by law, unless such person's privilege to operate a motor
15 vehicle on the highways of this state has been suspended or revoked prior
16 thereto. If any person shall violate any of the conditions imposed under
17 this paragraph, such person's driver's license or privilege to operate a
18 motor vehicle on the highways of this state shall be revoked for a period of
19 not less than 60 days nor more than one year by the judge of the court in
20 which such person is convicted of violating such conditions.

21 (4) As used in this subsection, "highway" and "street" ~~have the~~
22 ~~meanings provided by~~ means the same as in K.S.A. 8-1424 and 8-1473,
23 and amendments thereto.

24 (p) *In addition to any of the above, for any criminal offense that*
25 *includes the domestic violence designation pursuant to section 1 of*
26 *chapter 101 of the 2010 Session Laws of Kansas, and amendments thereto,*
27 *the court shall require the defendant to undergo a domestic violence*
28 *offender assessment and follow all recommendations unless otherwise*
29 *ordered by the court or the department of corrections. The court may*
30 *order a domestic violence offender assessment and any other evaluation*
31 *prior to sentencing if the assessment or evaluation would assist the court*
32 *in determining an appropriate sentence. The entity completing the*
33 *assessment or evaluation shall provide the assessment or evaluation and*
34 *recommendations to the court and the court shall provide the domestic*
35 *violence assessment and any other evaluation to any entity responsible for*
36 *supervising such defendant. A defendant ordered to undergo a domestic*
37 *violence offender assessment shall be required to pay for the assessment*
38 *and, unless otherwise ordered by the court or the department of*
39 *corrections, for completion of all recommendations.*

40 (q) *In imposing a fine, the court may authorize the payment thereof in*
41 *installments. In lieu of payment of any fine imposed, the court may order*
42 *that the person perform community service specified by the court. The*
43 *person shall receive a credit on the fine imposed in an amount equal to \$5*

1 *for each full hour spent by the person in the specified community service.*
2 *The community service ordered by the court shall be required to be*
3 *performed by the later of one year after the fine is imposed or one year*
4 *after release from imprisonment or jail, or by an earlier date specified by*
5 *the court. If by the required date the person performs an insufficient*
6 *amount of community service to reduce to zero the portion of the fine*
7 *required to be paid by the person, the remaining balance shall become due*
8 *on that date. If conditional of any fine is rescinded by the court for any*
9 *reason, then pursuant to the court's order the person may be ordered to*
10 *perform community service by one year after the date of such rescission or*
11 *by an earlier date specified by the court. If by the required date the*
12 *person performs an insufficient amount of community service to reduce to*
13 *zero the portion of the fine required to be paid by the person, the*
14 *remaining balance of the fine shall become due on that date. All credits*
15 *for community service shall be subject to review and approval by the*
16 *court.*

17 Sec. 5. Section 249 of chapter 136 of the 2010 Session Laws of
18 Kansas is hereby amended to read as follows: Sec. 249. (a) The court or
19 the secretary of corrections may implement a house arrest program for
20 defendants or inmates being sentenced by the court or in the custody of the
21 secretary of corrections *or as a sanction for offenders who have failed to*
22 *comply with the conditions of probation, parole or postrelease supervision,*
23 *except:*

24 (1) No defendant shall be placed by the court under house arrest if
25 found guilty of:

26 (A) Any crime designated as a class A or B felony in article 34 or 35
27 of the Kansas Statutes Annotated, prior to their repeal;

28 (B) subsection (b) of section 81 *of chapter 136 of the 2010 Session*
29 *Laws of Kansas, and amendments thereto; or*

30 (C) section 79 *of chapter 136 of the 2010 Session Laws of Kansas,*
31 *and amendments thereto;*

32 (D) *any off-grid felony; or*

33 (E) *any nondrug crime ranked in severity levels 1 through 5 or any*
34 *felony ranked in severity levels 1 through 3 of the drug grid, unless the*
35 *offender has been sentenced to probation;*

36 (2) no inmate shall be placed under house arrest if such inmate's
37 security status is greater than minimum security; or

38 (3) no inmate shall be placed under house arrest who has been denied
39 parole by the parole board within the last 6 months. Any inmate who,
40 while participating in the house arrest program, is denied parole by the
41 parole board shall be allowed to remain under house arrest until the
42 completion of the sentence or until the inmate is otherwise removed from
43 the program.

1 (b) ~~Prior to the~~ *At the time of* placement of an inmate under house
2 arrest, the court ~~or~~ , secretary *or house arrest staff* shall provide written
3 notification to the sheriff and district or county attorney of the county in
4 which any person under house arrest is to be placed and to the chief law
5 enforcement officer of any incorporated city or town in which such person
6 is to be placed of the placement of the person under house arrest within the
7 county or incorporated city or town.

8 (c) House arrest sanctions shall be administered by the court and the
9 secretary of corrections, respectively, through rules and regulations, and
10 may include, but are not limited to, rehabilitative restitution in money or in
11 kind, curfew, revocation or suspension of the driver's license, community
12 service, deprivation of nonessential activities or privileges, or other
13 appropriate restraints on the inmate's liberty.

14 (d) *Upon placement in a house arrest program, the court, secretary*
15 *or house arrest staff shall inform the offender, and any other people*
16 *residing with such offender, of the nature and extent of such house arrest*
17 *monitoring, and shall obtain the written agreement of such offender to*
18 *comply with all requirements of the program.*

19 (e) *The offender shall remain within the property boundaries of the*
20 *offender's residence at all times during the term of house arrest, except as*
21 *provided under the house arrest agreement with such offender.*

22 (f) *The offender shall allow any law enforcement officer, community*
23 *corrections officer, court services officer or duly authorized agent of the*
24 *department of corrections, to enter such offender's residence at any time to*
25 *verify the offender's compliance with the conditions of the house release.*

26 (g) *As a condition of house arrest, the court or secretary may require*
27 *an offender placed under house arrest to pay any supervision costs*
28 *associated with the house arrest program.*

29 (h) *The offender shall consent to be monitored by:*

30 (1) *An electronic monitoring device on such offender's person;*

31 (2) *an electronic monitoring device in such offender's home;*

32 (3) *a remote blood alcohol monitoring device;*

33 (4) *a home telephone verification procedure;*

34 (5) *radio frequency devices; or*

35 (6) *any combination of monitoring methods as the court, secretary or*
36 *house arrest staff finds necessary.*

37 (i) *The secretary or the court may contract for independent*
38 *monitoring services. Such independent monitoring service shall be able to*
39 *provide monitoring 24 hours a day, every day of the year, and any other*
40 *services as determined by the secretary.*

41 (j) *As used in this section:*

42 (1) *"House arrest staff" means an independent contractor or*
43 *government entity, and agents thereof, utilized by the secretary or court to*

1 administer the provisions of a house arrest program;

2 (2) "electronic monitoring device" means:

3 (A) an active or passive global positioning system-enabled device
4 capable of recording and transmitting an offender's location at all times or
5 at designated intervals. Such monitoring device may record or transmit
6 sound, visual images or other information regarding such offender's
7 location, via wireless communication; or

8 (B) a radio frequency device capable of monitoring an offender's
9 location; and

10 (3) "remote alcohol monitoring device" means a device capable of
11 monitoring an offender's blood alcohol content via micro fuel cell or deep
12 lung tissue sample. Such monitoring devices shall be of comparable
13 accuracy to roadside breath alcohol testing devices utilized by law
14 enforcement, and shall have wireless or landline telephone transmission
15 capabilities. Such device may be used in conjunction with an alcohol and
16 drug-sensing bracelet to monitor such offender's compliance with the
17 terms of house arrest.

18 Sec. 6. Section 285 of chapter 136 of the 2010 Session Laws of
19 Kansas is hereby amended to read as follows: Sec. 285. (a) The provisions
20 of this section shall be applicable to the sentencing guidelines grid for
21 nondrug crimes. The following sentencing guidelines grid shall be
22 applicable to nondrug felony crimes:

23 (b) Sentences expressed in the sentencing guidelines grid for nondrug
24 crimes represent months of imprisonment.

25 (c) The sentencing guidelines grid is a two-dimensional crime
26 severity and criminal history classification tool. The grid's vertical axis is
27 the crime severity scale which classifies current crimes of conviction. The
28 grid's horizontal axis is the criminal history scale which classifies criminal
29 histories.

30 (d) The sentencing guidelines grid for nondrug crimes as provided in
31 this section defines presumptive punishments for felony convictions,
32 subject to the sentencing court's discretion to enter a departure sentence.
33 The appropriate punishment for a felony conviction should depend on the
34 severity of the crime of conviction when compared to all other crimes and
35 the offender's criminal history.

36 (e) (1) The sentencing court has discretion to sentence at any place
37 within the sentencing range. In the usual case it is recommended that the
38 sentencing judge select the center of the range and reserve the upper and
39 lower limits for aggravating and mitigating factors insufficient to warrant a
40 departure.

41 (2) In presumptive imprisonment cases, the sentencing court shall
42 pronounce the complete sentence which shall include the:

43 (A) Prison sentence;

1 (B) maximum potential reduction to such sentence as a result of good
2 time; and

3 (C) period of postrelease supervision at the sentencing hearing.
4 Failure to pronounce the period of postrelease supervision shall not negate
5 the existence of such period of postrelease supervision.

6 (3) In presumptive nonprison cases, the sentencing court shall
7 pronounce the:

8 (A) Prison sentence; and

9 (B) duration of the nonprison sanction at the sentencing hearing.

10 (f) Each grid block states the presumptive sentencing range for an
11 offender whose crime of conviction and criminal history place such
12 offender in that grid block. If an offense is classified in a grid block below
13 the dispositional line, the presumptive disposition shall be
14 nonimprisonment. If an offense is classified in a grid block above the
15 dispositional line, the presumptive disposition shall be imprisonment. If an
16 offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose
17 an optional nonprison sentence as provided in subsection (q).

18 (g) The sentence for a violation of ~~section 48, and amendments~~
19 ~~thereto, K.S.A. 21-3415, prior to its repeal~~, aggravated battery against a
20 law enforcement officer committed prior to July 1, 2006, or a violation of
21 *subsection (d) of section 47 of chapter 136 of the 2010 Session Laws of*
22 *Kansas*, and amendments thereto, aggravated assault against a law
23 enforcement officer, which places the defendant's sentence in grid block 6-
24 H or 6-I shall be presumed imprisonment. The court may impose an
25 optional nonprison sentence as provided in subsection (q).

26 (h) When a firearm is used to commit any person felony, the
27 offender's sentence shall be presumed imprisonment. The court may
28 impose an optional nonprison sentence as provided in subsection (q).

29 (i) (l) The sentence for the violation of the felony provision of
30 K.S.A. 8-1567, subsection (b)(3) of section 49 *of chapter 136 of the 2010*
31 *Session Laws of Kansas*, subsections (b)(3) and (b)(4) of section 109 *of*
32 *chapter 136 of the 2010 Session Laws of Kansas*, section 223 *of chapter*
33 *136 of the 2010 Session Laws of Kansas* and section 227 *of chapter 136 of*
34 *the 2010 Session Laws of Kansas*, and amendments thereto, shall be as
35 provided by the specific mandatory sentencing requirements of that section
36 and shall not be subject to the provisions of this section or section 288 *of*
37 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

38 (2) If because of the offender's criminal history classification the
39 offender is subject to presumptive imprisonment or if the judge departs
40 from a presumptive probation sentence and the offender is subject to
41 imprisonment, the provisions of this section and section 288 *of chapter*
42 *136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall
43 apply and the offender shall not be subject to the mandatory sentence as

1 provided in section 109 of chapter 136 of the 2010 Session Laws of
2 Kansas, and amendments thereto.

3 (3) Notwithstanding the provisions of any other section, the term of
4 imprisonment imposed for the violation of the felony provision of K.S.A.
5 8-1567, subsection (b)(3) of section 49 of chapter 136 of the 2010 Session
6 Laws of Kansas, subsections (b)(3) and (b)(4) of section 109 of chapter
7 136 of the 2010 Session Laws of Kansas, section 223 and section 227 of
8 chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto,
9 shall not be served in a state facility in the custody of the secretary of
10 corrections, except that the term of imprisonment for felony violations of
11 K.S.A. 8-1567, and amendments thereto, may be served in a state
12 correctional facility designated by the secretary of corrections if the
13 secretary determines that substance abuse treatment resources and facility
14 capacity is available. The secretary's determination regarding the
15 availability of treatment resources and facility capacity shall not be subject
16 to review. *Prior to imposing any sentence pursuant to this subsection, the*
17 *court may consider assigning the defendant to a house arrest program*
18 *pursuant to section 249 of the 2010 Session Laws of Kansas, and*
19 *amendments thereto.*

20 (j) (1) The sentence for any persistent sex offender whose current
21 convicted crime carries a presumptive term of imprisonment shall be
22 double the maximum duration of the presumptive imprisonment term. The
23 sentence for any persistent sex offender whose current conviction carries a
24 presumptive nonprison term shall be presumed imprisonment and shall be
25 double the maximum duration of the presumptive imprisonment term.

26 (2) Except as otherwise provided in this subsection, as used in this
27 subsection, "persistent sex offender" means a person who:

28 (A) (i) Has been convicted in this state of a sexually violent crime,
29 as defined in K.S.A. 22-3717, and amendments thereto; and

30 (ii) at the time of the conviction under ~~paragraph~~ subsection (j)(2)(A)
31 (i) has at least one conviction for a sexually violent crime, as defined in
32 K.S.A. 22-3717, and amendments thereto, in this state or comparable
33 felony under the laws of another state, the federal government or a foreign
34 government; or

35 (B) (i) has been convicted of rape, as defined in K.S.A. 21-3502,
36 prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of
37 Kansas, and amendments thereto; and

38 (ii) at the time of the conviction under ~~paragraph~~ subsection (j)(2)(B)
39 (i) has at least one conviction for rape in this state or comparable felony
40 under the laws of another state, the federal government or a foreign
41 government.

42 (3) Except as provided in ~~paragraph~~ subsection (j)(2)(B), the
43 provisions of this subsection shall not apply to any person whose current

1 convicted crime is a severity level 1 or 2 felony.

2 (k) (1) If it is shown at sentencing that the offender committed any
3 felony violation for the benefit of, at the direction of, or in association with
4 any criminal street gang, with the specific intent to promote, further or
5 assist in any criminal conduct by gang members, the offender's sentence
6 shall be presumed imprisonment. The court may impose an optional
7 nonprison sentence as provided in subsection (q).

8 (2) As used in this subsection, "criminal street gang" means any
9 organization, association or group of three or more persons, whether
10 formal or informal, having as one of its primary activities:

11 (A) The commission of one or more person felonies; or

12 (B) the commission of felony violations of K.S.A. ~~2009~~ 2010 Supp.
13 21-36a01 through 21-36a17, and amendments thereto; and

14 (C) its members have a common name or common identifying sign or
15 symbol; and

16 (D) its members, individually or collectively, engage in or have
17 engaged in the commission, attempted commission, conspiracy to commit
18 or solicitation of two or more person felonies or felony violations of
19 K.S.A. ~~2009~~ 2010 Supp. 21-36a01 through 21-36a17, and amendments
20 thereto, or any substantially similar offense from another jurisdiction.

21 (l) Except as provided in subsection (o), the sentence for a violation
22 of subsection (a)(1) of section 93 *of chapter 136 of the 2010 Session Laws*
23 *of Kansas*, and amendments thereto, *or any attempt or conspiracy, as*
24 *defined in sections 33 and 34 of chapter 136 of the 2010 Session Laws of*
25 *Kansas, and amendments thereto, to commit such offense*, when such
26 person being sentenced has a prior conviction for a violation of subsection
27 (a) or (b) of K.S.A. 21-3715, prior to its repeal, 21-3716, prior to its repeal,
28 subsection (a)(1) or (a)(2) of section 93 *of chapter 136 of the 2010 Session*
29 *Laws of Kansas*, or subsection (b) of section 93 *of chapter 136 of the 2010*
30 *Session Laws of Kansas*, and amendments thereto, *or any attempt or*
31 *conspiracy to commit such offense*, shall be ~~presumed~~ *presumptive*
32 imprisonment.

33 (m) The sentence for a violation of K.S.A 22-4903 or subsection (a)
34 (2) of section 138 *of chapter 136 of the 2010 Session Laws of Kansas*, and
35 amendments thereto, shall be presumptive imprisonment. If an offense
36 under such sections is classified in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I,
37 the court may impose an optional nonprison sentence as provided in
38 subsection (q).

39 (n) The sentence for a violation of criminal deprivation of property, as
40 defined in section 89 *of chapter 136 of the 2010 Session Laws of Kansas*,
41 and amendments thereto, when such property is a motor vehicle, and when
42 such person being sentenced has any combination of two or more prior
43 convictions of subsection (b) of K.S.A. 21-3705, prior to its repeal, or of

1 criminal deprivation of property, as defined in section 89 *of chapter 136 of*
2 *the 2010 Session Laws of Kansas*, and amendments thereto, when such
3 property is a motor vehicle, shall be presumptive imprisonment. Such
4 sentence shall not be considered a departure and shall not be subject to
5 appeal.

6 (o) The sentence for a felony violation of theft of property as defined
7 in section 87 *of chapter 136 of the 2010 Session Laws of Kansas*, and
8 amendments thereto, or burglary as defined in subsection (a) of section 93
9 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
10 thereto, when such person being sentenced has no prior convictions for a
11 violation of K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of
12 property as defined in section 87 *of chapter 136 of the 2010 Session Laws*
13 *of Kansas*, and amendments thereto, or burglary as defined in subsection
14 (a) of section 93 *of chapter 136 of the 2010 Session Laws of Kansas*, and
15 amendments thereto; or the sentence for a felony violation of theft of
16 property as defined in section 87 *of chapter 136 of the 2010 Session Laws*
17 *of Kansas*, and amendments thereto, when such person being sentenced
18 has one or two prior felony convictions for a violation of K.S.A. 21-3701,
19 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in
20 section 87 *of chapter 136 of the 2010 Session Laws of Kansas*, and
21 amendments thereto, or burglary *or aggravated burglary* as defined in
22 section 93 *of chapter 136 of the 2010 Session Laws of Kansas*, and
23 amendments thereto; or the sentence for a felony violation of burglary as
24 defined in subsection (a) of section 93 *of chapter 136 of the 2010 Session*
25 *Laws of Kansas*, and amendments thereto, when such person being
26 sentenced has one prior felony conviction for a violation of K.S.A. 21-
27 3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as
28 defined in section 87 *of chapter 136 of the 2010 Session Laws of Kansas*,
29 and amendments thereto, or burglary *or aggravated burglary* as defined in
30 section 93 *of chapter 136 of the 2010 Session Laws of Kansas*, and
31 amendments thereto, shall be the sentence as provided by this section,
32 except that the court may order an optional nonprison sentence for a
33 defendant to participate in a drug treatment program, including, but not
34 limited to, an approved after-care plan, if the court makes the following
35 findings on the record:

36 (1) Substance abuse was an underlying factor in the commission of
37 the crime;

38 (2) substance abuse treatment in the community is likely to be more
39 effective than a prison term in reducing the risk of offender recidivism;
40 and

41 (3) participation in an intensive substance abuse treatment program
42 will serve community safety interests.

43 A defendant sentenced to an optional nonprison sentence under this

1 subsection shall be supervised by community correctional services. The
2 provisions of subsection (f)(1) of section 305 *of chapter 136 of the 2010*
3 *Session Laws of Kansas*, and amendments thereto, shall apply to a
4 defendant sentenced under this subsection. The sentence under this
5 subsection shall not be considered a departure and shall not be subject to
6 appeal.

7 (p) The sentence for a felony violation of theft of property as defined
8 in section 87 *of chapter 136 of the 2010 Session Laws of Kansas*, and
9 amendments thereto, when such person being sentenced has any
10 combination of three or more prior felony convictions for violations of
11 K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of
12 property as defined in section 87 *of chapter 136 of the 2010 Session Laws*
13 *of Kansas*, and amendments thereto, or burglary or *aggravated burglary* as
14 defined in section 93 *of chapter 136 of the 2010 Session Laws of Kansas*;
15 or the sentence for a violation of burglary as defined in subsection (a) of
16 section 93 *of chapter 136 of the 2010 Session Laws of Kansas*, and
17 amendments thereto, when such person being sentenced has any
18 combination of two or more prior convictions for violations of K.S.A. 21-
19 3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as
20 defined in section 87 *of chapter 136 of the 2010 Session Laws of Kansas*,
21 and amendments thereto, or burglary or aggravated burglary as defined in
22 section 93 *of chapter 136 of the 2010 Session Laws of Kansas*, and
23 amendments thereto, shall be presumed imprisonment and the defendant
24 shall be sentenced to prison as provided by this section, except that the
25 court may recommend that an offender be placed in the custody of the
26 secretary of corrections, in a facility designated by the secretary to
27 participate in an intensive substance abuse treatment program, upon
28 making the following findings on the record:

29 (1) Substance abuse was an underlying factor in the commission of
30 the crime;

31 (2) substance abuse treatment with a possibility of an early release
32 from imprisonment is likely to be more effective than a prison term in
33 reducing the risk of offender recidivism; and

34 (3) participation in an intensive substance abuse treatment program
35 with the possibility of an early release from imprisonment will serve
36 community safety interests by promoting offender reformation.

37 The intensive substance abuse treatment program shall be determined
38 by the secretary of corrections, but shall be for a period of at least four
39 months. Upon the successful completion of such intensive treatment
40 program, the offender shall be returned to the court and the court may
41 modify the sentence by directing that a less severe penalty be imposed in
42 lieu of that originally adjudged within statutory limits. If the offender's
43 term of imprisonment expires, the offender shall be placed under the

1 applicable period of postrelease supervision. The sentence under this
2 subsection shall not be considered a departure and shall not be subject to
3 appeal.

4 (q) As used in this section, an "optional nonprison sentence" is a
5 sentence which the court may impose, in lieu of the presumptive sentence,
6 upon making the following findings on the record:

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

10 (2) the recommended treatment program is available and the offender
11 can be admitted to such program within a reasonable period of time; or

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

14 Any decision made by the court regarding the imposition of an optional
15 nonprison sentence shall not be considered a departure and shall not be
16 subject to appeal.

17 (r) The sentence for a violation of subsection (c)(2) of section 48 of
18 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto,
19 shall be presumptive imprisonment and shall be served consecutively to
20 any other term or terms of imprisonment imposed. Such sentence shall not
21 be considered a departure and shall not be subject to appeal.

22 (s) *The sentence for a violation of section 76 of chapter 136 of the*
23 *2010 Session Laws of Kansas, and amendments thereto, shall be*
24 *presumptive imprisonment. Such sentence shall not be considered a*
25 *departure and shall not be subject to appeal.*

26 (t) (1) *If the trier of fact makes a finding that an offender wore or*
27 *used ballistic resistant material in the commission of, or attempt to*
28 *commit, or flight from any felony, in addition to the sentence imposed*
29 *pursuant to the Kansas sentencing guidelines act, the offender shall be*
30 *sentenced to an additional 30 months' imprisonment.*

31 (2) *The sentence imposed pursuant to subsection (t)(1) shall be*
32 *presumptive imprisonment and shall be served consecutively to any other*
33 *term or terms of imprisonment imposed. Such sentence shall not be*
34 *considered a departure and shall not be subject to appeal.*

35 (3) *As used in this subsection, "ballistic resistant material" means:*
36 *(A) Any commercially produced material designed with the purpose of*
37 *providing ballistic and trauma protection, including, but not limited to,*
38 *bulletproof vests and kevlar vests; and (B) any homemade or fabricated*
39 *substance or item designed with the purpose of providing ballistic and*
40 *trauma protection.*

41 Sec. 7. K.S.A. 22-4603 and K.S.A. 2009 Supp. 21-4603d, as
42 amended by section 7 of chapter 101 of the 2010 Session Laws of Kansas,
43 K.S.A. 2010 Supp. 12-4509, 21-4603d, 21-4704 and 22-2802 and sections

1 244, 249 and 285 of chapter 136 of the 2010 Session Laws of Kansas are
2 hereby repealed.

3 Sec. 8. This act shall take effect and be in force from and after its
4 publication in the statute book.

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