

**HOUSE BILL No. 2694**

By Committee on Corrections and Juvenile Justice

2-12

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to driving under the influence; sentencing; amending K.S.A. 2015  
3 Supp. 8-1567 and 21-6804 and repealing the existing sections.  
4

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

6 Sec. 1. K.S.A. 2015 Supp. 8-1567 is hereby amended to read as  
7 follows: 8-1567. (a) Driving under the influence is operating or attempting  
8 to operate any vehicle within this state while:

9 (1) The alcohol concentration in the person's blood or breath as  
10 shown by any competent evidence, including other competent evidence, as  
11 defined in ~~paragraph (1) of subsection (f) of K.S.A. 8-1013(f)(1), and~~  
12 amendments thereto, is 0.08 or more;

13 (2) the alcohol concentration in the person's blood or breath, as  
14 measured within three hours of the time of operating or attempting to  
15 operate a vehicle, is 0.08 or more;

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

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

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

23 (b) (1) Driving under the influence is:

24 (A) On a first conviction a class B, nonperson misdemeanor. The  
25 person convicted shall be sentenced to not less than 48 consecutive hours  
26 nor more than six months' imprisonment, or in the court's discretion 100  
27 hours of public service, and fined not less than \$750 nor more than \$1,000.  
28 The person convicted shall serve at least 48 consecutive hours'  
29 imprisonment or 100 hours of public service either before or as a condition  
30 of any grant of probation or suspension, reduction of sentence or parole.  
31 The court may place the person convicted under a house arrest program  
32 pursuant to K.S.A. 2015 Supp. 21-6609, and amendments thereto, to serve  
33 the remainder of the sentence only after such person has served 48  
34 consecutive hours' imprisonment;

35 (B) on a second conviction a class A, nonperson misdemeanor. The  
36 person convicted shall be sentenced to not less than 90 days nor more than

1 one year's imprisonment and fined not less than \$1,250 nor more than  
2 \$1,750. The person convicted shall serve at least five consecutive days'  
3 imprisonment before the person is granted probation, suspension or  
4 reduction of sentence or parole or is otherwise released. The five days'  
5 imprisonment mandated by this subsection may be served in a work  
6 release program only after such person has served 48 consecutive hours'  
7 imprisonment, provided such work release program requires such person  
8 to return to confinement at the end of each day in the work release  
9 program. The person convicted, if placed into a work release program,  
10 shall serve a minimum of 120 hours of confinement. Such 120 hours of  
11 confinement shall be a period of at least 48 consecutive hours of  
12 imprisonment followed by confinement hours at the end of and continuing  
13 to the beginning of the offender's work day. The court may place the  
14 person convicted under a house arrest program pursuant to K.S.A. 2015  
15 Supp. 21-6609, and amendments thereto, to serve the five days'  
16 imprisonment mandated by this subsection only after such person has  
17 served 48 consecutive hours' imprisonment. The person convicted, if  
18 placed under house arrest, shall be monitored by an electronic monitoring  
19 device, which verifies the offender's location. The offender shall serve a  
20 minimum of 120 hours of confinement within the boundaries of the  
21 offender's residence. Any exceptions to remaining within the boundaries of  
22 the offender's residence provided for in the house arrest agreement shall  
23 not be counted as part of the 120 hours;

24 (C) on a third conviction a class A, nonperson misdemeanor, except  
25 as provided in subsection (b)(1)(D). The person convicted shall be  
26 sentenced to not less than 90 days nor more than one year's imprisonment  
27 and fined not less than \$1,750 nor more than \$2,500. The person convicted  
28 shall not be eligible for release on probation, suspension or reduction of  
29 sentence or parole until the person has served at least 90 days'  
30 imprisonment. The 90 days' imprisonment mandated by this subsection  
31 may be served in a work release program only after such person has served  
32 48 consecutive hours' imprisonment, provided such work release program  
33 requires such person to return to confinement at the end of each day in the  
34 work release program. The person convicted, if placed into a work release  
35 program, shall serve a minimum of 2,160 hours of confinement. Such  
36 2,160 hours of confinement shall be a period of at least 48 consecutive  
37 hours of imprisonment followed by confinement hours at the end of and  
38 continuing to the beginning of the offender's work day. The court may  
39 place the person convicted under a house arrest program pursuant to  
40 K.S.A. 2015 Supp. 21-6609, and amendments thereto, to serve the 90 days'  
41 imprisonment mandated by this subsection only after such person has  
42 served 48 consecutive hours' imprisonment. The person convicted, if  
43 placed under house arrest, shall be monitored by an electronic monitoring

1 device, which verifies the offender's location. The offender shall serve a  
2 minimum of 2,160 hours of confinement within the boundaries of the  
3 offender's residence. Any exceptions to remaining within the boundaries of  
4 the offender's residence provided for in the house arrest agreement shall  
5 not be counted as part of the 2,160 hours;

6 (D) on a third conviction a nonperson felony if the person has a prior  
7 conviction which occurred within the preceding 10 years, not including  
8 any period of incarceration. The person convicted shall be sentenced to not  
9 less than 90 days nor more than one year's imprisonment and fined not less  
10 than \$1,750 nor more than \$2,500. The person convicted shall not be  
11 eligible for release on probation, suspension or reduction of sentence or  
12 parole until the person has served at least 90 days' imprisonment. The 90  
13 days' imprisonment mandated by this subsection may be served in a work  
14 release program only after such person has served 48 consecutive hours'  
15 imprisonment, provided such work release program requires such person  
16 to return to confinement at the end of each day in the work release  
17 program. The person convicted, if placed into a work release program,  
18 shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of  
19 confinement shall be a period of at least 48 consecutive hours of  
20 imprisonment followed by confinement hours at the end of and continuing  
21 to the beginning of the offender's work day. The court may place the  
22 person convicted under a house arrest program pursuant to K.S.A. 2015  
23 Supp. 21-6609, and amendments thereto, to serve the 90 days'  
24 imprisonment mandated by this subsection only after such person has  
25 served 48 consecutive hours' imprisonment. The person convicted, if  
26 placed under house arrest, shall be monitored by an electronic monitoring  
27 device, which verifies the offender's location. The offender shall serve a  
28 minimum of 2,160 hours of confinement within the boundaries of the  
29 offender's residence. Any exceptions to remaining within the boundaries of  
30 the offender's residence provided for in the house arrest agreement shall  
31 not be counted as part of the 2,160 hours; ~~and~~

32 (E) on a fourth ~~or subsequent~~, *fifth or sixth* conviction a nonperson  
33 felony. The person convicted shall be sentenced to not less than 90 days  
34 nor more than one year's imprisonment and fined \$2,500. The person  
35 convicted shall not be eligible for release on probation, suspension or  
36 reduction of sentence or parole until the person has served at least 90 days'  
37 imprisonment. The 90 days' imprisonment mandated by this subsection  
38 may be served in a work release program only after such person has served  
39 72 consecutive hours' imprisonment, provided such work release program  
40 requires such person to return to confinement at the end of each day in the  
41 work release program. The person convicted, if placed into a work release  
42 program, shall serve a minimum of 2,160 hours of confinement. Such  
43 2,160 hours of confinement shall be a period of at least 72 consecutive

1 hours of imprisonment followed by confinement hours at the end of and  
2 continuing to the beginning of the offender's work day. The court may  
3 place the person convicted under a house arrest program pursuant to  
4 K.S.A. 2015 Supp. 21-6609, and amendments thereto, to serve the 90 days'  
5 imprisonment mandated by this subsection only after such person has  
6 served 72 consecutive hours' imprisonment. The person convicted, if  
7 placed under house arrest, shall be monitored by an electronic monitoring  
8 device, which verifies the offender's location. The offender shall serve a  
9 minimum of 2,160 hours of confinement within the boundaries of the  
10 offender's residence. Any exceptions to remaining within the boundaries of  
11 the offender's residence provided for in the house arrest agreement shall  
12 not be counted as part of the 2,160 hours; *and*

13 *(F) on a seventh or subsequent conviction, a severity level 6,*  
14 *nonperson felony.*

15 (2) The court may order that the term of imprisonment imposed  
16 pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a state facility in  
17 the custody of the secretary of corrections in a facility designated by the  
18 secretary for the provision of substance abuse treatment pursuant to the  
19 provisions of K.S.A. 2015 Supp. 21-6804, and amendments thereto. The  
20 person shall remain imprisoned at the state facility only while participating  
21 in the substance abuse treatment program designated by the secretary and  
22 shall be returned to the custody of the sheriff for execution of the balance  
23 of the term of imprisonment upon completion of or the person's discharge  
24 from the substance abuse treatment program. Custody of the person shall  
25 be returned to the sheriff for execution of the sentence imposed in the  
26 event the secretary of corrections determines: (A) That substance abuse  
27 treatment resources or the capacity of the facility designated by the  
28 secretary for the incarceration and treatment of the person is not available;  
29 (B) the person fails to meaningfully participate in the treatment program of  
30 the designated facility; (C) the person is disruptive to the security or  
31 operation of the designated facility; or (D) the medical or mental health  
32 condition of the person renders the person unsuitable for confinement at  
33 the designated facility. The determination by the secretary that the person  
34 either is not to be admitted into the designated facility or is to be  
35 transferred from the designated facility is not subject to review. The sheriff  
36 shall be responsible for all transportation expenses to and from the state  
37 correctional facility.

38 (3) In addition, for any conviction pursuant to subsection (b)(1)(C),  
39 (b)(1)(D) or (b)(1)(E), at the time of the filing of the judgment form or  
40 journal entry as required by K.S.A. 22-3426 or K.S.A. 2015 Supp. 21-  
41 6711, and amendments thereto, the court shall cause a certified copy to be  
42 sent to the officer having the offender in charge. The court shall determine  
43 whether the offender, upon release from imprisonment, shall be supervised

1 by community correctional services or court services based upon the risk  
2 and needs of the offender. The risk and needs of the offender shall be  
3 determined by use of a risk assessment tool specified by the Kansas  
4 sentencing commission. The law enforcement agency maintaining custody  
5 and control of a defendant for imprisonment shall cause a certified copy of  
6 the judgment form or journal entry to be sent to the supervision office  
7 designated by the court and upon expiration of the term of imprisonment  
8 shall deliver the defendant to a location designated by the supervision  
9 office designated by the court. After the term of imprisonment imposed by  
10 the court, the person shall be placed on supervision to community  
11 correctional services or court services, as determined by the court, for a  
12 mandatory one-year period of supervision, which such period of  
13 supervision shall not be reduced. During such supervision, the person shall  
14 be required to participate in a multidisciplinary model of services for  
15 substance use disorders facilitated by a Kansas department for aging and  
16 disability services designated care coordination agency to include  
17 assessment and, if appropriate, referral to a community based substance  
18 use disorder treatment including recovery management and mental health  
19 counseling as needed. The multidisciplinary team shall include the  
20 designated care coordination agency, the supervision officer, the Kansas  
21 department for aging and disability services designated treatment provider  
22 and the offender. Any violation of the conditions of such supervision may  
23 subject such person to revocation of supervision and imprisonment in jail  
24 for the remainder of the period of imprisonment, the remainder of the  
25 supervision period, or any combination or portion thereof.

26 (4) In addition, prior to sentencing for any conviction pursuant to  
27 subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to  
28 participate in an alcohol and drug evaluation conducted by a provider in  
29 accordance with K.S.A. 8-1008, and amendments thereto. The person shall  
30 be required to follow any recommendation made by the provider after such  
31 evaluation, unless otherwise ordered by the court.

32 (c) Any person convicted of violating this section or an ordinance  
33 which prohibits the acts that this section prohibits who had one or more  
34 children under the age of 14 years in the vehicle at the time of the offense  
35 shall have such person's punishment enhanced by one month of  
36 imprisonment. This imprisonment must be served consecutively to any  
37 other minimum mandatory penalty imposed for a violation of this section  
38 or an ordinance which prohibits the acts that this section prohibits. Any  
39 enhanced penalty imposed shall not exceed the maximum sentence  
40 allowable by law. During the service of the enhanced penalty, the judge  
41 may order the person on house arrest, work release or other conditional  
42 release.

43 (d) If a person is charged with a violation of this section involving

1 drugs, the fact that the person is or has been entitled to use the drug under  
2 the laws of this state shall not constitute a defense against the charge.

3 (e) The court may establish the terms and time for payment of any  
4 fines, fees, assessments and costs imposed pursuant to this section. Any  
5 assessment and costs shall be required to be paid not later than 90 days  
6 after imposed, and any remainder of the fine shall be paid prior to the final  
7 release of the defendant by the court.

8 (f) In lieu of payment of a fine imposed pursuant to this section, the  
9 court may order that the person perform community service specified by  
10 the court. The person shall receive a credit on the fine imposed in an  
11 amount equal to \$5 for each full hour spent by the person in the specified  
12 community service. The community service ordered by the court shall be  
13 required to be performed not later than one year after the fine is imposed  
14 or by an earlier date specified by the court. If by the required date the  
15 person performs an insufficient amount of community service to reduce to  
16 zero the portion of the fine required to be paid by the person, the  
17 remaining balance of the fine shall become due on that date.

18 (g) Prior to filing a complaint alleging a violation of this section, a  
19 prosecutor shall request and shall receive from the:

20 (1) Division a record of all prior convictions obtained against such  
21 person for any violations of any of the motor vehicle laws of this state; and

22 (2) Kansas bureau of investigation central repository all criminal  
23 history record information concerning such person.

24 (h) The court shall electronically report every conviction of a  
25 violation of this section and every diversion agreement entered into in lieu  
26 of further criminal proceedings on a complaint alleging a violation of this  
27 section to the division. Prior to sentencing under the provisions of this  
28 section, the court shall request and shall receive from the division a record  
29 of all prior convictions obtained against such person for any violations of  
30 any of the motor vehicle laws of this state.

31 (i) For the purpose of determining whether a conviction is a first,  
32 second, third, fourth or subsequent conviction in sentencing under this  
33 section:

34 (1) Convictions for a violation of this section, or a violation of an  
35 ordinance of any city or resolution of any county which prohibits the acts  
36 that this section prohibits, or entering into a diversion agreement in lieu of  
37 further criminal proceedings on a complaint alleging any such violations,  
38 shall be taken into account, but only convictions or diversions occurring  
39 on or after July 1, 2001. Nothing in this provision shall be construed as  
40 preventing any court from considering any convictions or diversions  
41 occurring during the person's lifetime in determining the sentence to be  
42 imposed within the limits provided for a first, second, third, fourth or  
43 subsequent offense;

1 (2) any convictions for a violation of the following sections occurring  
2 during a person's lifetime shall be taken into account: (A) Refusing to  
3 submit to a test to determine the presence of alcohol or drugs, K.S.A. 2015  
4 Supp. 8-1025, and amendments thereto; (B) driving a commercial motor  
5 vehicle under the influence, K.S.A. 8-2,144, and amendments thereto; (C)  
6 operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131,  
7 and amendments thereto; (D) involuntary manslaughter while driving  
8 under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal,  
9 or ~~subsection (a)(3) of~~ K.S.A. 2015 Supp. 21-5405(a)(3), and amendments  
10 thereto; (E) aggravated battery as described in ~~subsection (b)(3) of~~ K.S.A.  
11 2015 Supp. 21-5413(b)(3), and amendments thereto; and (F) aggravated  
12 vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular  
13 battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed  
14 while committing a violation of K.S.A. 8-1567, and amendments thereto;

15 (3) "conviction" includes: (A) Entering into a diversion agreement in  
16 lieu of further criminal proceedings on a complaint alleging a violation of  
17 a crime described in subsection (i)(2); (B) conviction of a violation of an  
18 ordinance of a city in this state, a resolution of a county in this state or any  
19 law of another state which would constitute a crime described in  
20 subsection (i)(1) or (i)(2); and (C) receiving punishment under the uniform  
21 code of military justice or Kansas code of military justice for an act which  
22 was committed on a military reservation and which would constitute a  
23 crime described in subsection (i)(1) or (i)(2) if committed off a military  
24 reservation in this state;

25 (4) multiple convictions of any crime described in subsection (i)(1) or  
26 (i)(2) arising from the same arrest shall only be counted as one conviction;

27 (5) it is irrelevant whether an offense occurred before or after  
28 conviction for a previous offense; and

29 (6) a person may enter into a diversion agreement in lieu of further  
30 criminal proceedings for a violation of this section, and amendments  
31 thereto, or an ordinance which prohibits the acts of this section, and  
32 amendments thereto, only once during the person's lifetime.

33 (j) Upon conviction of a person of a violation of this section or a  
34 violation of a city ordinance or county resolution prohibiting the acts  
35 prohibited by this section, the division, upon receiving a report of  
36 conviction, shall suspend, restrict or suspend and restrict the person's  
37 driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

38 (k) (1) Nothing contained in this section shall be construed as  
39 preventing any city from enacting ordinances, or any county from adopting  
40 resolutions, declaring acts prohibited or made unlawful by this act as  
41 unlawful or prohibited in such city or county and prescribing penalties for  
42 violation thereof.

43 (2) The minimum penalty prescribed by any such ordinance or

1 resolution shall not be less than the minimum penalty prescribed by this  
2 section for the same violation, and the maximum penalty in any such  
3 ordinance or resolution shall not exceed the maximum penalty prescribed  
4 for the same violation.

5 (3) On and after July 1, 2007, and retroactive for ordinance violations  
6 committed on or after July 1, 2006, an ordinance may grant to a municipal  
7 court jurisdiction over a violation of such ordinance which is concurrent  
8 with the jurisdiction of the district court over a violation of this section,  
9 notwithstanding that the elements of such ordinance violation are the same  
10 as the elements of a violation of this section that would constitute, and be  
11 punished as, a felony.

12 (4) Any such ordinance or resolution shall authorize the court to order  
13 that the convicted person pay restitution to any victim who suffered loss  
14 due to the violation for which the person was convicted.

15 (l) (1) Upon the filing of a complaint, citation or notice to appear  
16 alleging a person has violated a city ordinance prohibiting the acts  
17 prohibited by this section, and prior to conviction thereof, a city attorney  
18 shall request and shall receive from the:

19 (A) Division a record of all prior convictions obtained against such  
20 person for any violations of any of the motor vehicle laws of this state; and

21 (B) Kansas bureau of investigation central repository all criminal  
22 history record information concerning such person.

23 (2) If the elements of such ordinance violation are the same as the  
24 elements of a violation of this section that would constitute, and be  
25 punished as, a felony, the city attorney shall refer the violation to the  
26 appropriate county or district attorney for prosecution.

27 (m) No plea bargaining agreement shall be entered into nor shall any  
28 judge approve a plea bargaining agreement entered into for the purpose of  
29 permitting a person charged with a violation of this section, or a violation  
30 of any ordinance of a city or resolution of any county in this state which  
31 prohibits the acts prohibited by this section, to avoid the mandatory  
32 penalties established by this section or by the ordinance. For the purpose  
33 of this subsection, entering into a diversion agreement pursuant to K.S.A.  
34 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not  
35 constitute plea bargaining.

36 (n) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3)  
37 may be pleaded in the alternative, and the state, city or county, but shall  
38 not be required to, may elect one or two of the three prior to submission of  
39 the case to the fact finder.

40 (o) As used in this section: (1) "Alcohol concentration" means the  
41 number of grams of alcohol per 100 milliliters of blood or per 210 liters of  
42 breath;

43 (2) "imprisonment" shall include any restrained environment in which



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

4 (3) "drug" includes toxic vapors as such term is defined in K.S.A.  
5 2015 Supp. 21-5712, and amendments thereto.

6 (p) (1) 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 in  
8 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, the  
10 state treasurer shall deposit the entire amount in the state treasury and the  
11 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 state  
14 treasury.

15 (2) On and after July 1, 2011, the amount of \$250 from each fine  
16 imposed pursuant to this section shall be remitted by the clerk of the  
17 district court to the state treasurer in accordance with the provisions of  
18 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such  
19 remittance, the state treasurer shall credit the entire amount to the  
20 community corrections supervision fund established by K.S.A. 2015 Supp.  
21 75-52,113, and amendments thereto.

22 Sec. 2. K.S.A. 2015 Supp. 21-6804 is hereby amended to read as  
23 follows: 21-6804. (a) The provisions of this section shall be applicable to  
24 the sentencing guidelines grid for nondrug crimes. The following  
25 sentencing guidelines grid shall be applicable to nondrug felony crimes:

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 34 31	34 32 30
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	7 6 5

LEGEND
Presumptive Probation
Prob. NoS
Presumptive Imprisonment

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

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

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

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

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

21 (A) Prison sentence;

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

24 (C) period of postrelease supervision at the sentencing hearing.  
25 Failure to pronounce the period of postrelease supervision shall not negate  
26 the existence of such period of postrelease supervision.

27 (3) In presumptive nonprison cases, the sentencing court shall  
28 pronounce the:

29 (A) Prison sentence; and

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

31 (f) Each grid block states the presumptive sentencing range for an  
32 offender whose crime of conviction and criminal history place such  
33 offender in that grid block. If an offense is classified in a grid block below  
34 the dispositional line, the presumptive disposition shall be  
35 nonimprisonment. If an offense is classified in a grid block above the  
36 dispositional line, the presumptive disposition shall be imprisonment. If an  
37 offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose  
38 an optional nonprison sentence as provided in subsection (q).

39 (g) The sentence for a violation of K.S.A. 21-3415, prior to its repeal,  
40 aggravated battery against a law enforcement officer committed prior to  
41 July 1, 2006, or a violation of K.S.A. 2015 Supp. 21-5412(d), and  
42 amendments thereto, aggravated assault against a law enforcement officer,  
43 which places the defendant's sentence in grid block 6-H or 6-I shall be

1 presumed imprisonment. The court may impose an optional nonprison  
2 sentence as provided in subsection (q).

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

6 (i) (1) The sentence for the violation of the felony provision of K.S.A.  
7 2015 Supp. 8-1025, K.S.A. 8-2,144, K.S.A. 8-1567(b)(1)(D) or (b)(1)(E),  
8 K.S.A. 2015 Supp. 21-5414(b)(3), K.S.A. 2015 Supp. 21-5823(b)(3) and  
9 (b)(4), K.S.A. 2015 Supp. 21-6412 and K.S.A. 2015 Supp. 21-6416, and  
10 amendments thereto, shall be as provided by the specific mandatory  
11 sentencing requirements of that section and shall not be subject to the  
12 provisions of this section or K.S.A. 2015 Supp. 21-6807, and amendments  
13 thereto.

14 (2) If because of the offender's criminal history classification the  
15 offender is subject to presumptive imprisonment or if the judge departs  
16 from a presumptive probation sentence and the offender is subject to  
17 imprisonment, the provisions of this section and K.S.A. 2015 Supp. 21-  
18 6807, and amendments thereto, shall apply and the offender shall not be  
19 subject to the mandatory sentence as provided in K.S.A. 2015 Supp. 21-  
20 5823, and amendments thereto.

21 (3) Notwithstanding the provisions of any other section, the term of  
22 imprisonment imposed for the violation of the felony provision of K.S.A.  
23 2015 Supp. 8-1025, K.S.A. 8-2,144, K.S.A. 8-1567(b)(1)(D) or (b)(1)(E),  
24 K.S.A. 2015 Supp. 21-5414(b)(3), K.S.A. 2015 Supp. 21-5823(b)(3) and  
25 (b)(4), K.S.A. 2015 Supp. 21-6412 and K.S.A. 2015 Supp. 21-6416, and  
26 amendments thereto, shall not be served in a state facility in the custody of  
27 the secretary of corrections, except that the term of imprisonment for  
28 felony violations of K.S.A. 2015 Supp. 8-1025 or K.S.A. 8-2,144 or  
29 K.S.A. 8-1567, and amendments thereto, may be served in a state  
30 correctional facility designated by the secretary of corrections if the  
31 secretary determines that substance abuse treatment resources and facility  
32 capacity is available. The secretary's determination regarding the  
33 availability of treatment resources and facility capacity shall not be subject  
34 to review. Prior to imposing any sentence pursuant to this subsection, the  
35 court may consider assigning the defendant to a house arrest program  
36 pursuant to K.S.A. 2015 Supp. 21-6609, and amendments thereto.

37 (j) (1) The sentence for any persistent sex offender whose current  
38 convicted crime carries a presumptive term of imprisonment shall be  
39 double the maximum duration of the presumptive imprisonment term. The  
40 sentence for any persistent sex offender whose current conviction carries a  
41 presumptive nonprison term shall be presumed imprisonment and shall be  
42 double the maximum duration of the presumptive imprisonment term.

43 (2) Except as otherwise provided in this subsection, as used in this

1 subsection, "persistent sex offender" means a person who:

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

4 (ii) at the time of the conviction under subsection (j)(2)(A)(i) has at  
5 least one conviction for a sexually violent crime, as defined in K.S.A. 22-  
6 3717, and amendments thereto, in this state or comparable felony under  
7 the laws of another state, the federal government or a foreign government;  
8 or

9 (B) (i) has been convicted of rape, as defined in K.S.A. 21-3502,  
10 prior to its repeal, or K.S.A. 2015 Supp. 21-5503, and amendments  
11 thereto; and

12 (ii) at the time of the conviction under subsection (j)(2)(B)(i) has at  
13 least one conviction for rape in this state or comparable felony under the  
14 laws of another state, the federal government or a foreign government.

15 (3) Except as provided in subsection (j)(2)(B), the provisions of this  
16 subsection shall not apply to any person whose current convicted crime is  
17 a severity level 1 or 2 felony.

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

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

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

28 (B) the commission of felony violations of article 57 of chapter 21 of  
29 the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010  
30 Supp. 21-36a01 through 21-36a17, prior to their transfer, or any felony  
31 violation of any provision of the uniform controlled substances act prior to  
32 July 1, 2009; and

33 (C) its members have a common name or common identifying sign or  
34 symbol; and

35 (D) its 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 or felony violations of article  
38 57 of chapter 21 of the Kansas Statutes Annotated, and amendments  
39 thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their  
40 transfer, any felony violation of any provision of the uniform controlled  
41 substances act prior to July 1, 2009, or any substantially similar offense  
42 from another jurisdiction.

43 (l) Except as provided in subsection (o), the sentence for a violation

1 of K.S.A. 2015 Supp. 21-5807(a)(1), and amendments thereto, or any  
2 attempt or conspiracy, as defined in K.S.A. 2015 Supp. 21-5301 and 21-  
3 5302, and amendments thereto, to commit such offense, when such person  
4 being sentenced has a prior conviction for a violation of K.S.A. 21-3715(a)  
5 or (b), prior to its repeal, 21-3716, prior to its repeal, K.S.A. 2015 Supp.  
6 21-5807(a)(1) or (a)(2), or K.S.A. 2015 Supp. 21-5807(b), and  
7 amendments thereto, or any attempt or conspiracy to commit such offense,  
8 shall be presumptive imprisonment.

9 (m) The sentence for a violation of K.S.A. 22-4903 or K.S.A. 2015  
10 Supp. 21-5913(a)(2), and amendments thereto, shall be presumptive  
11 imprisonment. If an offense under such sections is classified in grid blocks  
12 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison  
13 sentence as provided in subsection (q).

14 (n) The sentence for a violation of criminal deprivation of property, as  
15 defined in K.S.A. 2015 Supp. 21-5803, and amendments thereto, when  
16 such property is a motor vehicle, and when such person being sentenced  
17 has any combination of two or more prior convictions of K.S.A. 21-  
18 3705(b), prior to its repeal, or of criminal deprivation of property, as  
19 defined in K.S.A. 2015 Supp. 21-5803, and amendments thereto, when  
20 such property is a motor vehicle, shall be presumptive imprisonment. Such  
21 sentence shall not be considered a departure and shall not be subject to  
22 appeal.

23 (o) The sentence for a felony violation of theft of property as defined  
24 in K.S.A. 2015 Supp. 21-5801, and amendments thereto, or burglary as  
25 defined in K.S.A. 2015 Supp. 21-5807(a), and amendments thereto, when  
26 such person being sentenced has no prior convictions for a violation of  
27 K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of property as  
28 defined in K.S.A. 2015 Supp. 21-5801, and amendments thereto, or  
29 burglary as defined in K.S.A. 2015 Supp. 21-5807(a), and amendments  
30 thereto; or the sentence for a felony violation of theft of property as  
31 defined in K.S.A. 2015 Supp. 21-5801, and amendments thereto, when  
32 such person being sentenced has one or two prior felony convictions for a  
33 violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or  
34 theft of property as defined in K.S.A. 2015 Supp. 21-5801, and  
35 amendments thereto, or burglary or aggravated burglary as defined in  
36 K.S.A. 2015 Supp. 21-5807, and amendments thereto; or the sentence for a  
37 felony violation of burglary as defined in K.S.A. 2015 Supp. 21-5807(a),  
38 and amendments thereto, when such person being sentenced has one prior  
39 felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716,  
40 prior to their repeal, or theft of property as defined in K.S.A. 2015 Supp.  
41 21-5801, and amendments thereto, or burglary or aggravated burglary as  
42 defined in K.S.A. 2015 Supp. 21-5807, and amendments thereto, shall be  
43 the sentence as provided by this section, except that the court may order an

1 optional nonprison sentence for a defendant to participate in a drug  
2 treatment program, including, but not limited to, an approved after-care  
3 plan, if the court makes the following findings on the record:

4 (1) Substance abuse was an underlying factor in the commission of  
5 the crime;

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

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

11 A defendant sentenced to an optional nonprison sentence under this  
12 subsection shall be supervised by community correctional services. The  
13 provisions of K.S.A. 2015 Supp. 21-6824(f)(1), and amendments thereto,  
14 shall apply to a defendant sentenced under this subsection. The sentence  
15 under this subsection shall not be considered a departure and shall not be  
16 subject to appeal.

17 (p) The sentence for a felony violation of theft of property as defined  
18 in K.S.A. 2015 Supp. 21-5801, and amendments thereto, when such  
19 person being sentenced has any combination of three or more prior felony  
20 convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to  
21 their repeal, or theft of property as defined in K.S.A. 2015 Supp. 21-5801,  
22 and amendments thereto, or burglary or aggravated burglary as defined in  
23 K.S.A. 2015 Supp. 21-5807, and amendments thereto; or the sentence for a  
24 violation of burglary as defined in K.S.A. 2015 Supp. 21-5807(a), and  
25 amendments thereto, when such person being sentenced has any  
26 combination of two or more prior convictions for violations of K.S.A. 21-  
27 3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as  
28 defined in K.S.A. 2015 Supp. 21-5801, and amendments thereto, or  
29 burglary or aggravated burglary as defined in K.S.A. 2015 Supp. 21-5807,  
30 and amendments thereto, shall be presumed imprisonment and the  
31 defendant shall be sentenced to prison as provided by this section, except  
32 that the court may recommend that an offender be placed in the custody of  
33 the secretary of corrections, in a facility designated by the secretary to  
34 participate in an intensive substance abuse treatment program, upon  
35 making the following findings on the record:

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

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

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

1 The intensive substance abuse treatment program shall be determined  
2 by the secretary of corrections, but shall be for a period of at least four  
3 months. Upon the successful completion of such intensive treatment  
4 program, the offender shall be returned to the court and the court may  
5 modify the sentence by directing that a less severe penalty be imposed in  
6 lieu of that originally adjudged within statutory limits. If the offender's  
7 term of imprisonment expires, the offender shall be placed under the  
8 applicable period of postrelease supervision. The sentence under this  
9 subsection shall not be considered a departure and shall not be subject to  
10 appeal.

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

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

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

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

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

24 (r) The sentence for a violation of K.S.A. 2015 Supp. 21-5413(c)(2),  
25 and amendments thereto, shall be presumptive imprisonment and shall be  
26 served consecutively to any other term or terms of imprisonment imposed.  
27 Such sentence shall not be considered a departure and shall not be subject  
28 to appeal.

29 (s) The sentence for a violation of K.S.A. 2015 Supp. 21-5512, and  
30 amendments thereto, shall be presumptive imprisonment. Such sentence  
31 shall not be considered a departure and shall not be subject to appeal.

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

37 (2) The sentence imposed pursuant to subsection (t)(1) shall be  
38 presumptive imprisonment and shall be served consecutively to any other  
39 term or terms of imprisonment imposed. Such sentence shall not be  
40 considered a departure and shall not be subject to appeal.

41 (3) As used in this subsection, "ballistic resistant material" means:  
42 (A) Any commercially produced material designed with the purpose of  
43 providing ballistic and trauma protection, including, but not limited to,



1 bulletproof vests and kevlar vests; and (B) any homemade or fabricated  
2 substance or item designed with the purpose of providing ballistic and  
3 trauma protection.

4 (u) The sentence for a violation of K.S.A. 2015 Supp. 21-6107, and  
5 amendments thereto, or any attempt or conspiracy, as defined in K.S.A.  
6 2015 Supp. 21-5301 and 21-5302, and amendments thereto, to commit  
7 such offense, when such person being sentenced has a prior conviction for  
8 a violation of K.S.A. 21-4018, prior to its repeal, or K.S.A. 2015 Supp. 21-  
9 6107, and amendments thereto, or any attempt or conspiracy to commit  
10 such offense, shall be presumptive imprisonment. Such sentence shall not  
11 be considered a departure and shall not be subject to appeal.

12 (v) The sentence for a third or subsequent violation of K.S.A. 8-1568,  
13 and amendments thereto, shall be presumptive imprisonment and shall be  
14 served consecutively to any other term or terms of imprisonment imposed.  
15 Such sentence shall not be considered a departure and shall not be subject  
16 to appeal.

17 (w) The sentence for aggravated criminal damage to property as  
18 defined in K.S.A. 2015 Supp. 21-5813(b), and amendments thereto, when  
19 such person being sentenced has a prior conviction for any nonperson  
20 felony shall be presumptive imprisonment. Such sentence shall not be  
21 considered a departure and shall not be subject to appeal.

22 Sec. 3. K.S.A. 2015 Supp. 8-1567 and 21-6804 are hereby repealed.

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