

SENATE BILL No. 368

By Committee on Judiciary

2-2

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to drug treatment programs; disposition and supervision of offenders;
3 amending K.S.A. 2011 Supp. 21-6604, 21-6805, 21-6824, 75-5291 and
4 75-52,144 and repealing the existing sections; also repealing K.S.A.
5 2011 Supp. 75-5291b.
6

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

8 Section 1. K.S.A. 2011 Supp. 21-6604 is hereby amended to read as
9 follows: 21-6604. (a) Whenever any person has been found guilty of a
10 crime, the court may adjudge any of the following:

11 (1) Commit the defendant to the custody of the secretary of
12 corrections if the current crime of conviction is a felony and the sentence
13 presumes imprisonment, or the sentence imposed is a dispositional
14 departure to imprisonment; or, if confinement is for a misdemeanor, to jail
15 for the term provided by law;

16 (2) impose the fine applicable to the offense and may impose the
17 provisions of subsection (q);

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

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

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

1 (6) assign the defendant to a house arrest program pursuant to K.S.A.
2 2011 Supp. 21-6609, and amendments thereto;

3 (7) order the defendant to attend and satisfactorily complete an
4 alcohol or drug education or training program as provided by subsection
5 (c) of K.S.A. 2011 Supp. 21-6602, and amendments thereto;

6 (8) order the defendant to repay the amount of any reward paid by
7 any crime stoppers chapter, individual, corporation or public entity which
8 materially aided in the apprehension or conviction of the defendant; repay
9 the amount of any costs and expenses incurred by any law enforcement
10 agency in the apprehension of the defendant, if one of the current crimes
11 of conviction of the defendant includes escape from custody or aggravated
12 escape from custody, as defined in K.S.A. 2011 Supp. 21-5911, and
13 amendments thereto; repay expenses incurred by a fire district, fire
14 department or fire company responding to a fire which has been
15 determined to be arson or aggravated arson as defined in K.S.A. 2011
16 Supp. 21-5812, and amendments thereto, if the defendant is convicted of
17 such crime; repay the amount of any public funds utilized by a law
18 enforcement agency to purchase controlled substances from the defendant
19 during the investigation which leads to the defendant's conviction; or repay
20 the amount of any medical costs and expenses incurred by any law
21 enforcement agency or county. Such repayment of the amount of any such
22 costs and expenses incurred by a county, law enforcement agency, fire
23 district, fire department or fire company or any public funds utilized by a
24 law enforcement agency shall be deposited and credited to the same fund
25 from which the public funds were credited to prior to use by the county,
26 law enforcement agency, fire district, fire department or fire company;

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

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

31 (11) if the defendant is convicted of a misdemeanor or convicted of a
32 felony specified in subsection (i) of K.S.A. 2011 Supp. 21-6804, and
33 amendments thereto, assign the defendant to work release program, other
34 than a program at a correctional institution under the control of the
35 secretary of corrections as defined in K.S.A. 75-5202, and amendments
36 thereto, provided such work release program requires such defendant to
37 return to confinement at the end of each day in the work release program.
38 On a second conviction of K.S.A. 8-1567, and amendments thereto, an
39 offender placed into a work release program must serve a total of 120
40 hours of confinement. Such 120 hours of confinement shall be a period of
41 at least 48 consecutive hours of imprisonment followed by confinement
42 hours at the end of and continuing to the beginning of the offender's work
43 day. On a third or subsequent conviction of K.S.A. 8-1567, and

1 amendments thereto, an offender placed into a work release program must
2 serve a total of 240 hours of confinement. Such 240 hours of confinement
3 shall be a period of at least 48 consecutive hours of imprisonment
4 followed by confinement hours at the end of and continuing to the
5 beginning of the offender's work day;

6 (12) order the defendant to pay the full amount of unpaid costs
7 associated with the conditions of release of the appearance bond under
8 K.S.A. 22-2802, and amendments thereto;

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

11 (14) suspend imposition of sentence in misdemeanor cases.

12 (b) (1) In addition to or in lieu of any of the above, the court shall
13 order the defendant to pay restitution, which shall include, but not be
14 limited to, damage or loss caused by the defendant's crime, unless the
15 court finds compelling circumstances which would render a plan of
16 restitution unworkable. In regard to a violation of K.S.A. 2011 Supp. 21-
17 6107, and amendments thereto, such damage or loss shall include, but not
18 be limited to, attorney fees and costs incurred to repair the credit history or
19 rating of the person whose personal identification documents were
20 obtained and used in violation of such section, and to satisfy a debt, lien or
21 other obligation incurred by the person whose personal identification
22 documents were obtained and used in violation of such section. If the court
23 finds a plan of restitution unworkable, the court shall state on the record in
24 detail the reasons therefor.

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

37 (c) In addition to or in lieu of any of the above, the court shall order
38 the defendant to submit to and complete an alcohol and drug evaluation,
39 and pay a fee therefor, when required by subsection (d) of K.S.A. 2011
40 Supp. 21-6602, and amendments thereto.

41 (d) In addition to any of the above, the court shall order the defendant
42 to reimburse the county general fund for all or a part of the expenditures
43 by the county to provide counsel and other defense services to the

1 defendant. Any such reimbursement to the county shall be paid only after
2 any order for restitution has been paid in full. In determining the amount
3 and method of payment of such sum, the court shall take account of the
4 financial resources of the defendant and the nature of the burden that
5 payment of such sum will impose. A defendant who has been required to
6 pay such sum and who is not willfully in default in the payment thereof
7 may at any time petition the court which sentenced the defendant to waive
8 payment of such sum or any unpaid portion thereof. If it appears to the
9 satisfaction of the court that payment of the amount due will impose
10 manifest hardship on the defendant or the defendant's immediate family,
11 the court may waive payment of all or part of the amount due or modify
12 the method of payment.

13 (e) In releasing a defendant on probation, the court shall direct that
14 the defendant be under the supervision of a court services officer. If the
15 court commits the defendant to the custody of the secretary of corrections
16 or to jail, the court may specify in its order the amount of restitution to be
17 paid and the person to whom it shall be paid if restitution is later ordered
18 as a condition of parole, conditional release or postrelease supervision.

19 (f) (1) When a new felony is committed while the offender is
20 incarcerated and serving a sentence for a felony, or while the offender is on
21 probation, assignment to a community correctional services program,
22 parole, conditional release or postrelease supervision for a felony, a new
23 sentence shall be imposed pursuant to the consecutive sentencing
24 requirements of K.S.A. 2011 Supp. 21-6606, and amendments thereto, and
25 the court may sentence the offender to imprisonment for the new
26 conviction, even when the new crime of conviction otherwise presumes a
27 nonprison sentence. In this event, imposition of a prison sentence for the
28 new crime does not constitute a departure.

29 (2) When a new felony is committed while the offender is
30 incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671,
31 prior to its repeal, or K.S.A. 2011 Supp. 38-2373, and amendments thereto,
32 for an offense, which if committed by an adult would constitute the
33 commission of a felony, upon conviction, the court shall sentence the
34 offender to imprisonment for the new conviction, even when the new
35 crime of conviction otherwise presumes a nonprison sentence. In this
36 event, imposition of a prison sentence for the new crime does not
37 constitute a departure. The conviction shall operate as a full and complete
38 discharge from any obligations, except for an order of restitution, imposed
39 on the offender arising from the offense for which the offender was
40 committed to a juvenile correctional facility.

41 (3) When a new felony is committed while the offender is on release
42 for a felony pursuant to the provisions of article 28 of chapter 22 of the
43 Kansas Statutes Annotated, and amendments thereto, or similar provisions

1 of the laws of another jurisdiction, a new sentence may be imposed
2 pursuant to the consecutive sentencing requirements of K.S.A. 2011 Supp.
3 21-6606, and amendments thereto, and the court may sentence the offender
4 to imprisonment for the new conviction, even when the new crime of
5 conviction otherwise presumes a nonprison sentence. In this event,
6 imposition of a prison sentence for the new crime does not constitute a
7 departure.

8 (g) Prior to imposing a dispositional departure for a defendant whose
9 offense is classified in the presumptive nonprison grid block of either
10 sentencing guideline grid, prior to sentencing a defendant to incarceration
11 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing
12 guidelines grid for nondrug crimes or in grid blocks 3-C, 3-D, 3-E, 3-F, 3-
13 G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, prior to
14 sentencing a defendant to incarceration whose offense is classified in grid
15 blocks 4-C, 4-D, 4-E or 4-F of the sentencing guideline grid for drug
16 crimes and whose offense does not meet the requirements of K.S.A. 2011
17 Supp. 21-6824, and amendments thereto, prior to revocation of a
18 nonprison sanction of a defendant whose offense is classified in grid
19 blocks 4-C, 4-D, 4-E or 4-F of the sentencing guideline grid for drug
20 crimes and whose offense does not meet the requirements of K.S.A. 2011
21 Supp. 21-6824, and amendments thereto, or prior to revocation of a
22 nonprison sanction of a defendant whose offense is classified in the
23 presumptive nonprison grid block of either sentencing guideline grid or
24 grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug
25 crimes or in grid blocks 3-C, 3-D, 3-E, 3-F, 3-G, 3-H or 3-I of the
26 sentencing guidelines grid for drug crimes, the court shall consider
27 placement of the defendant in the Labette correctional conservation camp,
28 conservation camps established by the secretary of corrections pursuant to
29 K.S.A. 75-52,127, and amendment thereto, or a community intermediate
30 sanction center. Pursuant to this paragraph the defendant shall not be
31 sentenced to imprisonment if space is available in a conservation camp or
32 a community intermediate sanction center and the defendant meets all of
33 the conservation camp's or a community intermediate sanction center's
34 placement criteria unless the court states on the record the reasons for not
35 placing the defendant in a conservation camp or a community intermediate
36 sanction center.

37 (h) The court in committing a defendant to the custody of the
38 secretary of corrections shall fix a term of confinement within the limits
39 provided by law. In those cases where the law does not fix a term of
40 confinement for the crime for which the defendant was convicted, the
41 court shall fix the term of such confinement.

42 (i) In addition to any of the above, the court shall order the defendant
43 to reimburse the state general fund for all or a part of the expenditures by

1 the state board of indigents' defense services to provide counsel and other
2 defense services to the defendant. In determining the amount and method
3 of payment of such sum, the court shall take account of the financial
4 resources of the defendant and the nature of the burden that payment of
5 such sum will impose. A defendant who has been required to pay such sum
6 and who is not willfully in default in the payment thereof may at any time
7 petition the court which sentenced the defendant to waive payment of such
8 sum or any unpaid portion thereof. If it appears to the satisfaction of the
9 court that payment of the amount due will impose manifest hardship on the
10 defendant or the defendant's immediate family, the court may waive
11 payment of all or part of the amount due or modify the method of
12 payment. The amount of attorney fees to be included in the court order for
13 reimbursement shall be the amount claimed by appointed counsel on the
14 payment voucher for indigents' defense services or the amount prescribed
15 by the board of indigents' defense services reimbursement tables as
16 provided in K.S.A. 22-4522, and amendments thereto, whichever is less.

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

21 (k) An application for or acceptance of probation or assignment to a
22 community correctional services program shall not constitute an
23 acquiescence in the judgment for purpose of appeal, and any convicted
24 person may appeal from such conviction, as provided by law, without
25 regard to whether such person has applied for probation, suspended
26 sentence or assignment to a community correctional services program.

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

32 (1) Has been sentenced to the secretary for a probation revocation, as
33 a departure from the presumptive nonimprisonment grid block of either
34 sentencing grid, for an offense which is classified in grid blocks 5-H, 5-I,
35 or 6-G of the sentencing guidelines grid for nondrug crimes or in grid
36 blocks 3-C, 3-D, 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid
37 for drug crimes, or for an offense which is classified in grid blocks 4-C, 4-
38 D, 4-E or 4-F of the sentencing guidelines grid for drug crimes and such
39 offense does not meet the requirements of K.S.A. 2011 Supp. 21-6824, and
40 amendments thereto; and

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

42 If the inmate successfully completes a conservation camp program, the
43 secretary of corrections shall report such completion to the sentencing

1 court and the county or district attorney. The inmate shall then be assigned
2 by the court to six months of follow-up supervision conducted by the
3 appropriate community corrections services program. The court may also
4 order that supervision continue thereafter for the length of time authorized
5 by K.S.A. 2011 Supp. 21-6608, and amendments thereto.

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

9 (n) Except as provided by subsection (f) of K.S.A. 2011 Supp. 21-
10 6805, and amendments thereto, in addition to any of the above, for felony
11 violations of K.S.A. 2011 Supp. 21-5706, and amendments thereto, the
12 court shall require the defendant who meets the requirements established
13 in K.S.A. 2011 Supp. 21-6824, and amendments thereto, to participate in a
14 certified drug abuse treatment program, as provided in K.S.A. 2011 Supp.
15 75-52,144, and amendments thereto, including, but not limited to, an
16 approved after-care plan. If the defendant fails to participate in or has a
17 pattern of intentional conduct that demonstrates the offender's refusal to
18 comply with or participate in the treatment program, as established by
19 judicial finding, the defendant shall be subject to revocation of probation
20 and the defendant shall serve the underlying prison sentence as established
21 in K.S.A. 2011 Supp. 21-6805, and amendments thereto. For those
22 offenders who are convicted on or after July 1, 2003, upon completion of
23 the underlying prison sentence, the defendant shall not be subject to a
24 period of postrelease supervision. The amount of time spent participating
25 in such program shall not be credited as service on the underlying prison
26 sentence.

27 (o) (1) Except as provided in paragraph (3), in addition to any other
28 penalty or disposition imposed by law, upon a conviction for unlawful
29 possession of a controlled substance or controlled substance analog in
30 violation of K.S.A. 2011 Supp. 21-5706, and amendments thereto, in
31 which the trier of fact makes a finding that the unlawful possession
32 occurred while transporting the controlled substance or controlled
33 substance analog in any vehicle upon a highway or street, the offender's
34 driver's license or privilege to operate a motor vehicle on the streets and
35 highways of this state shall be suspended for one year.

36 (2) Upon suspension of a license pursuant to this subsection, the court
37 shall require the person to surrender the license to the court, which shall
38 transmit the license to the division of motor vehicles of the department of
39 revenue, to be retained until the period of suspension expires. At that time,
40 the licensee may apply to the division for return of the license. If the
41 license has expired, the person may apply for a new license, which shall be
42 issued promptly upon payment of the proper fee and satisfaction of other
43 conditions established by law for obtaining a license unless another

1 suspension or revocation of the person's privilege to operate a motor
2 vehicle is in effect.

3 (3) (A) In lieu of suspending the driver's license or privilege to
4 operate a motor vehicle on the highways of this state of any person as
5 provided in paragraph (1), the judge of the court in which such person was
6 convicted may enter an order which places conditions on such person's
7 privilege of operating a motor vehicle on the highways of this state, a
8 certified copy of which such person shall be required to carry any time
9 such person is operating a motor vehicle on the highways of this state. Any
10 such order shall prescribe the duration of the conditions imposed, which in
11 no event shall be for a period of more than one year.

12 (B) Upon entering an order restricting a person's license hereunder,
13 the judge shall require such person to surrender such person's driver's
14 license to the judge who shall cause it to be transmitted to the division of
15 vehicles, together with a copy of the order. Upon receipt thereof, the
16 division of vehicles shall issue without charge a driver's license which
17 shall indicate on its face that conditions have been imposed on such
18 person's privilege of operating a motor vehicle and that a certified copy of
19 the order imposing such conditions is required to be carried by the person
20 for whom the license was issued any time such person is operating a motor
21 vehicle on the highways of this state. If the person convicted is a
22 nonresident, the judge shall cause a copy of the order to be transmitted to
23 the division and the division shall forward a copy of it to the motor vehicle
24 administrator, of such person's state of residence. Such judge shall furnish
25 to any person whose driver's license has had conditions imposed on it
26 under this paragraph a copy of the order, which shall be recognized as a
27 valid Kansas driver's license until such time as the division shall issue the
28 restricted license provided for in this paragraph.

29 (C) Upon expiration of the period of time for which conditions are
30 imposed pursuant to this subsection, the licensee may apply to the division
31 for the return of the license previously surrendered by such licensee. In the
32 event such license has expired, such person may apply to the division for a
33 new license, which shall be issued immediately by the division upon
34 payment of the proper fee and satisfaction of the other conditions
35 established by law, unless such person's privilege to operate a motor
36 vehicle on the highways of this state has been suspended or revoked prior
37 thereto. If any person shall violate any of the conditions imposed under
38 this paragraph, such person's driver's license or privilege to operate a
39 motor vehicle on the highways of this state shall be revoked for a period of
40 not less than 60 days nor more than one year by the judge of the court in
41 which such person is convicted of violating such conditions.

42 (4) As used in this subsection, "highway" and "street" means the
43 same as in K.S.A. 8-1424 and 8-1473, and amendments thereto.

1 (p) In addition to any of the above, for any criminal offense that
2 includes the domestic violence designation pursuant to K.S.A. 2011 Supp.
3 22-4616, and amendments thereto, the court shall require the defendant to
4 undergo a domestic violence offender assessment and follow all
5 recommendations unless otherwise ordered by the court or the department
6 of corrections. The court may order a domestic violence offender
7 assessment and any other evaluation prior to sentencing if the assessment
8 or evaluation would assist the court in determining an appropriate
9 sentence. The entity completing the assessment or evaluation shall provide
10 the assessment or evaluation and recommendations to the court and the
11 court shall provide the domestic violence assessment and any other
12 evaluation to any entity responsible for supervising such defendant. A
13 defendant ordered to undergo a domestic violence offender assessment
14 shall be required to pay for the assessment and, unless otherwise ordered
15 by the court or the department of corrections, for completion of all
16 recommendations.

17 (q) In imposing a fine, the court may authorize the payment thereof in
18 installments. In lieu of payment of any fine imposed, the court may order
19 that the person perform community service specified by the court. The
20 person shall receive a credit on the fine imposed in an amount equal to \$5
21 for each full hour spent by the person in the specified community service.
22 The community service ordered by the court shall be required to be
23 performed by the later of one year after the fine is imposed or one year
24 after release from imprisonment or jail, or by an earlier date specified by
25 the court. If by the required date the person performs an insufficient
26 amount of community service to reduce to zero the portion of the fine
27 required to be paid by the person, the remaining balance shall become due
28 on that date. If conditional reduction of any fine is rescinded by the court
29 for any reason, then pursuant to the court's order the person may be
30 ordered to perform community service by one year after the date of such
31 rescission or by an earlier date specified by the court. If by the required date
32 the person performs an insufficient amount of community service to
33 reduce to zero the portion of the fine required to be paid by the person, the
34 remaining balance of the fine shall become due on that date. All credits for
35 community service shall be subject to review and approval by the court.

36 Sec. 2. K.S.A. 2011 Supp. 21-6805 is hereby amended to read as
37 follows: 21-6805. (a) The provisions of this section shall be applicable
38 to the sentencing guidelines grid for drug crimes. The following
39 sentencing guidelines grid for drug crimes shall be applicable to felony
40 crimes under K.S.A. 2011 Supp. 21-5701 through 21-5717, and
41 amendments thereto, except as otherwise provided by law:
42
43

SENTENCING RANGE - DRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level I	3 + Person Felony	2 Person Felony	1 Person & 1 Nonperson Felony	1 Person Felony	3 + Nonperson Felony	2 Nonperson Felony	1 Nonperson Felony	2+ Misdemeanor	1 Misdemeanor No Record
I	204 184 186 185	187 186 176	178 169	179 170 161	167 162 154	159 150	162 154 146	161 150 142	154 146 138
II	83 78 74	77 73 69	72 68	68 64 60	62 58 55	59 56 52	57 54 51	54 51 49	51 49 46
III	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	29 28 26	28 26 24	26 24 23	24 23 21
IV	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	11 10

LEGEND
Presumptive Probation
Presumptive Imprisonment

SENTENCING RANGE - DRUG OFFENSES

Category ↓	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
III	51 49 46	47 44 41	44 40 37	43 39 36	42 38 35	41 37 34	40 36 33	39 35 32	38 34 31
IV	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
Presumptive Imprisonment

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

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

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

13 (A) Prison sentence;

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

16 (C) period of postrelease supervision at the sentencing hearing.
17 Failure to pronounce the period of postrelease supervision shall not negate
18 the existence of such period of postrelease supervision.

19 (3) In presumptive nonprison cases, the sentencing court shall
20 pronounce the prison sentence as well as the duration of the nonprison
21 sanction at the sentencing hearing.

22 (d) Each grid block states the presumptive sentencing range for an
23 offender whose crime of conviction and criminal history place such
24 offender in that grid block. If an offense is classified in a grid block below
25 the dispositional line, the presumptive disposition shall be
26 nonimprisonment. If an offense is classified in a grid block above the
27 dispositional line, the presumptive disposition shall be imprisonment. If an
28 offense is classified in grid blocks 3-C, 3-D, 3-E, 3-F, 3-G, 3-H or 3-I, the
29 court may impose an optional nonprison sentence as provided in
30 subsection (q) of K.S.A. 2011 Supp. 21-6804, and amendments thereto.

31 (e) The sentence for a second or subsequent conviction of K.S.A. 65-
32 4159, prior to its repeal, or K.S.A. 2010 Supp. 21-36a03, and amendments
33 thereto, manufacture of any controlled substance or controlled substance
34 analog shall be a presumptive term of imprisonment of two times the
35 maximum duration of the presumptive term of imprisonment. The court
36 may impose an optional reduction in such sentence of not to exceed 50%
37 of the mandatory increase provided by this subsection upon making a
38 finding on the record that one or more of the mitigating factors as specified
39 in K.S.A. 2011 Supp. 21-6815, and amendments thereto, justify such a
40 reduction in sentence. Any decision made by the court regarding the
41 reduction in such sentence shall not be considered a departure and shall
42 not be subject to appeal.

43 (f) (1) The sentence for a third or subsequent felony conviction of

1 K.S.A. 65-4160 or 65-4162, prior to their repeal, or K.S.A. 2010 Supp. 21-
2 36a06, and amendments thereto, shall be a presumptive term of
3 imprisonment and the defendant shall be sentenced to prison as provided
4 by this section. The defendant's term of imprisonment shall be served in
5 the custody of the secretary of corrections in a facility designated by the
6 secretary. Subject to appropriations therefore, the defendant shall
7 participate in an intensive substance abuse treatment program, of at least
8 four months duration, selected by the secretary of corrections. If the
9 secretary determines that substance abuse treatment resources are
10 otherwise available, such term of imprisonment may be served in a facility
11 designated by the secretary of corrections in the custody of the secretary of
12 corrections to participate in an intensive substance abuse treatment
13 program. The secretary's determination regarding the availability of
14 treatment resources shall not be subject to review. Upon the successful
15 completion of such intensive treatment program, the offender shall be
16 returned to the court and the court may modify the sentence by directing
17 that a less severe penalty be imposed in lieu of that originally adjudged. If
18 the offender's term of imprisonment expires, the offender shall be placed
19 under the applicable period of postrelease supervision.

20 (2) Such defendant's term of imprisonment shall not be subject to
21 modification under paragraph (1) if:

22 (A) The defendant has previously completed a certified drug abuse
23 treatment program, as provided in K.S.A. 2011 Supp. 75-52,144, and
24 amendments thereto;

25 (B) has been discharged or refused to participate in a certified drug
26 abuse treatment program, as provided in K.S.A. 2011 Supp. 75-52,144,
27 and amendments thereto;

28 (C) has completed an intensive substance abuse treatment program
29 under paragraph (1); or

30 (D) has been discharged or refused to participate in an intensive
31 substance abuse treatment program under paragraph (1).

32 The sentence under this subsection shall not be considered a departure
33 and shall not be subject to appeal.

34 (g) (1) Except as provided further, if the trier of fact makes a finding
35 that an offender carried a firearm to commit a drug felony, or in
36 furtherance of a drug felony, possessed a firearm, in addition to the
37 sentence imposed pursuant to K.S.A. 2011 Supp. 21-6801 through 21-
38 6824, and amendments thereto, the offender shall be sentenced to:

39 (A) Except as provided in subsection (g)(1)(B), an additional 6
40 months' imprisonment; and

41 (B) if the trier of fact makes a finding that the firearm was
42 discharged, an additional 18 months' imprisonment.

43 (2) The sentence imposed pursuant to subsection (g)(1) shall be

1 presumptive imprisonment. Such sentence shall not be considered a
2 departure and shall not be subject to appeal.

3 (3) The provisions of this subsection shall not apply to violations of
4 K.S.A. 2011 Supp. 21-5706 or 21-5713, and amendments thereto.

5 Sec. 3. K.S.A. 2011 Supp. 21-6824 is hereby amended to read as
6 follows: 21-6824. (a) There is hereby established a nonprison sanction of
7 certified drug abuse treatment programs for certain offenders who are
8 sentenced on or after November 1, 2003. Placement of offenders in
9 certified drug abuse treatment programs by the court shall be limited to
10 placement of adult offenders, convicted of a felony violation of K.S.A. 65-
11 4160 or 65-4162, prior to their repeal ~~or~~, K.S.A. 2010 Supp. 21-36a06,
12 *prior to its transfer; or K.S.A. 2011 Supp. 21-5706*, and amendments
13 thereto:

14 (1) Whose offense is classified in grid blocks 4-C, 4-D, 4-E, 4-F, 4-G,
15 4-H or 4-I of the sentencing guidelines grid for drug crimes and such
16 offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161,
17 65-4163 or 65-4164, prior to their repeal ~~or~~, K.S.A. 2010 Supp. 21-36a03,
18 21-36a05 or 21-36a16, *prior to their transfer; or K.S.A. 2011 Supp. 21-
19 5703, 21-5705 or 21-5716*, and amendments thereto, or any substantially
20 similar offense from another jurisdiction; or

21 (2) whose offense is classified in grid blocks 4-A; ~~or 4-B; 4-C or 4-D~~
22 of the sentencing guidelines grid for drug crimes, such offender has no
23 felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-
24 4164, prior to their repeal, ~~or~~ K.S.A. 2010 Supp. 21-36a03, 21-36a05 or
25 21-36a16, *prior to their transfer; or K.S.A. 2011 Supp. 21-5703, 21-5705
26 or 21-5716*, and amendments thereto, or any substantially similar offense
27 from another jurisdiction, if the person felonies in the offender's criminal
28 history were severity level 8, 9 or 10 or nongrid offenses of the sentencing
29 guidelines grid for nondrug crimes, and the court finds and sets forth with
30 particularity the reasons for finding that the safety of the members of the
31 public will not be jeopardized by such placement in a drug abuse treatment
32 program.

33 (b) As a part of the presentence investigation pursuant to K.S.A. 2011
34 Supp. 21-6813, and amendments thereto, offenders who meet the
35 requirements of subsection (a), *unless otherwise specifically ordered by
36 the court*, shall be subject to:

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

40 (2) a criminal risk-need assessment; ~~unless otherwise specifically
41 ordered by the court~~. The criminal risk-need assessment shall assign a high
42 or low risk status to the offender.

43 (c) *If the offender is assigned a high risk status as determined by the*

1 *drug abuse assessment performed pursuant to subsection (b)(1) and a*
2 *moderate or high risk status as determined by the criminal risk-need*
3 *assessment performed pursuant to subsection (b)(2), the sentencing court*
4 *shall commit the offender to treatment in a drug abuse treatment program*
5 *until the court determines the offender is suitable for discharge by the*
6 *court. The term of treatment shall not exceed 18 months. The court may*
7 *extend the term of probation, pursuant to subsection (c)(3) of K.S.A. 2011*
8 *Supp. 21-6608, and amendments thereto. The term of treatment may not*
9 *exceed the term of probation.*

10 (d) (1) *Offenders who are committed to a drug abuse treatment*
11 *program pursuant to subsection (c) shall be supervised by community*
12 *correctional services.*

13 (2) *Offenders who are not committed to a drug abuse treatment*
14 *program pursuant to subsection (c) shall be supervised by community*
15 *correctional services or court services based on the result of the criminal*
16 *risk assessment.*

17 (e) Placement of offenders under subsection (a)(2) shall be subject to
18 the departure sentencing statutes of the revised Kansas sentencing
19 guidelines act.

20 (f) (1) Offenders in drug abuse treatment programs shall be
21 discharged from such program if the offender:

22 (A) Is convicted of a new felony; or

23 (B) has a pattern of intentional conduct that demonstrates the
24 offender's refusal to comply with or participate in the treatment program,
25 as established by judicial finding.

26 (2) Offenders who are discharged from such program shall be subject
27 to the revocation provisions of subsection (n) of K.S.A. 2011 Supp. 21-
28 6604, and amendments thereto.

29 (g) As used in this section, "mental health professional" includes
30 licensed social workers, licensed psychiatrists, licensed psychologists,
31 licensed professional counselors or registered alcohol and other drug abuse
32 counselors licensed or certified as addiction counselors who have been
33 certified by the secretary of corrections to treat offenders pursuant to
34 K.S.A. 2011 Supp. 75-52,144, and amendments thereto.

35 (h) (1) ~~The following~~ Offenders who meet the requirements of
36 subsection (a) shall not be subject to the provisions of this section and
37 shall be sentenced as otherwise provided by law, *if such offenders*:

38 (A) ~~Offenders who~~ Are residents of another state and are returning to
39 such state pursuant to the interstate corrections compact or the interstate
40 compact for adult offender supervision; ~~or~~

41 (B) ~~offenders who~~ are not lawfully present in the United States and
42 being detained for deportation; *or*

43 (C) *do not meet the risk assessment levels provided in subsection (c).*

1 (2) Such sentence shall not be considered a departure and shall not be
2 subject to appeal.

3 Sec. 4. K.S.A. 2011 Supp. 75-5291 is hereby amended to read as
4 follows: 75-5291. (a) (1) The secretary of corrections may make grants to
5 counties for the development, implementation, operation and improvement
6 of community correctional services that address the criminogenic needs of
7 felony offenders including, but not limited to, adult intensive supervision,
8 substance abuse and mental health services, employment and residential
9 services, and facilities for the detention or confinement, care or treatment
10 of offenders as provided in this section except that no community
11 corrections funds shall be expended by the secretary for the purpose of
12 establishing or operating a conservation camp as provided by K.S.A. 75-
13 52,127, and amendments thereto.

14 (2) Except as otherwise provided, placement of offenders in *a*
15 community correctional services ~~programs~~ *program* by the court shall be
16 limited to placement of adult offenders, convicted of a felony offense:

17 (A) Whose offense is classified in grid blocks 5-H, 5-I or 6-G of the
18 sentencing guidelines grid for nondrug crimes or in grid blocks 3-C, 3-D,
19 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes.
20 In addition, the court may place in a community correctional services
21 program adult offenders, convicted of a felony offense, whose offense is
22 classified in grid blocks 6-H, 6-I, 7-C, 7-D, 7-E, 7-F, 7-G, 7-H or 7-I of the
23 sentencing guidelines grid for nondrug crimes;

24 (B) whose severity level and criminal history score designate a
25 presumptive prison sentence on either sentencing guidelines grid but
26 receive a nonprison sentence as a result of departure;

27 (C) all offenders convicted of an offense which satisfies the definition
28 of offender pursuant to K.S.A. 22-4902, and amendments thereto, and
29 which is classified as a severity level 7 or higher offense and who receive a
30 nonprison sentence, regardless of the manner in which the sentence is
31 imposed;

32 (D) any offender for whom a violation of conditions of release or
33 assignment or a nonprison sanction has been established as provided in
34 K.S.A. 22-3716, and amendments thereto, prior to revocation resulting in
35 the offender being required to serve any time for the sentence imposed or
36 which might originally have been imposed in a state facility in the custody
37 of the secretary of corrections;

38 (E) on and after January 1, 2011, for offenders who are expected to be
39 subject to supervision in Kansas, who are determined to be "high risk or
40 needs, or both" by the use of a statewide, mandatory, standardized risk
41 assessment tool or instrument which shall be specified by the Kansas
42 sentencing commission;

43 (F) placed in *a* community correctional services ~~programs~~ *program* as

1 a condition of supervision following the successful completion of a
2 conservation camp program; ~~or~~

3 (G) who ~~has~~ have been sentenced to community corrections
4 supervision pursuant to K.S.A. 21-4729, prior to its repeal, or K.S.A. 2011
5 Supp. 21-6824, and amendments thereto; *or*

6 (H) *who have been placed in a community correctional services*
7 *program for supervision by the court pursuant to K.S.A. 8-1567, and*
8 *amendments thereto.*

9 (3) Notwithstanding any law to the contrary and subject to the
10 availability of funding therefor, adult offenders sentenced to community
11 supervision in Johnson county for felony crimes that occurred on or after
12 July 1, 2002, but before July 1, 2013, shall be placed under court services
13 or community corrections supervision based upon court rules issued by the
14 chief judge of the 10th judicial district. The provisions contained in this
15 subsection shall not apply to offenders transferred by the assigned agency
16 to an agency located outside of Johnson county. The provisions of this
17 paragraph shall expire on July 1, 2013.

18 (4) Nothing in this act shall prohibit a community correctional
19 services program from providing services to juvenile offenders upon
20 approval by the local community corrections advisory board. Grants from
21 community corrections funds administered by the secretary of corrections
22 shall not be expended for such services.

23 (5) The court may require an offender for whom a violation of
24 conditions of release or assignment or a nonprison sanction has been
25 established, as provided in K.S.A. 22-3716, and amendments thereto, to
26 serve any time for the sentence imposed or which might originally have
27 been imposed in a state facility in the custody of the secretary of
28 corrections without a prior assignment to a community correctional
29 services program if the court finds and sets forth with particularity the
30 reasons for finding that the safety of the members of the public will be
31 jeopardized or that the welfare of the inmate will not be served by such
32 assignment to a community correctional services program.

33 (b) (1) In order to establish a mechanism for community correctional
34 services to participate in the department of corrections annual budget
35 planning process, the secretary of corrections shall establish a community
36 corrections advisory committee to identify new or enhanced correctional
37 or treatment interventions designed to divert offenders from prison.

38 (2) The secretary shall appoint one member from the southeast
39 community corrections region, one member from the northeast community
40 corrections region, one member from the central community corrections
41 region and one member from the western community corrections region.
42 The deputy secretary of community and field services shall designate two
43 members from the state at large. The secretary shall have final

1 appointment approval of the members designated by the deputy secretary.
 2 The committee shall reflect the diversity of community correctional
 3 services with respect to geographical location and average daily population
 4 of offenders under supervision.

5 (3) Each member shall be appointed for a term of three years and
 6 such terms shall be staggered as determined by the secretary. Members
 7 shall be eligible for reappointment.

8 (4) The committee, in collaboration with the deputy secretary of
 9 community and field services or the deputy secretary's designee, shall
 10 routinely examine and report to the secretary on the following issues:

11 (A) Efficiencies in the delivery of field supervision services;

12 (B) effectiveness and enhancement of existing interventions;

13 (C) identification of new interventions; and

14 (D) statewide performance indicators.

15 (5) The committee's report concerning enhanced or new interventions
 16 shall address:

17 (A) Goals and measurable objectives;

18 (B) projected costs;

19 (C) the impact on public safety; and

20 (D) the evaluation process.

21 (6) The committee shall submit its report to the secretary annually on
 22 or before July 15 in order for the enhanced or new interventions to be
 23 considered for inclusion within the department of corrections budget
 24 request for community correctional services or in the department's
 25 enhanced services budget request for the subsequent fiscal year.

26 Sec. 5. K.S.A. 2011 Supp. 75-52,144 is hereby amended to read as
 27 follows: 75-52,144. (a) Drug abuse treatment programs certified in
 28 accordance with subsection (b) shall provide:

29 (1) Presentence drug abuse assessments of any person who is
 30 convicted of a felony violation of K.S.A. 65-4160 or 65-4162, prior to
 31 such ~~sections~~ *section's* repeal ~~or~~, K.S.A. 2010 Supp. 21-36a06, *prior to its*
 32 *transfer; or K.S.A. 2011 Supp. 21-5706*, and amendments thereto, and
 33 meets the requirements of K.S.A. 21-4729, prior to its repeal, or
 34 *subsection (a) of K.S.A. 2011 Supp. 21-6824*, and amendments thereto;

35 (2) treatment of all persons who are convicted of a felony violation of
 36 K.S.A. 65-4160 or 65-4162, prior to such ~~sections~~ *section's* repeal ~~or~~,
 37 K.S.A. 2010 Supp. 21-36a06, *prior to its transfer; or K.S.A. 2011 Supp.*
 38 *21-5706*, and amendments thereto, meet the requirements of K.S.A. 21-
 39 4729, prior to its repeal, or K.S.A. 2011 Supp. 21-6824, and amendments
 40 thereto, and whose sentence requires completion of a certified drug abuse
 41 treatment program, as provided in this section;

42 (3) one or more treatment options in the continuum of services
 43 needed to reach recovery: Detoxification, rehabilitation, continuing care

1 and aftercare, and relapse prevention;

2 (4) treatment options to incorporate family and auxiliary support
3 services; and

4 (5) treatment options for alcohol abuse when indicated by the
5 assessment of the offender or required by the court.

6 (b) The presentence criminal risk-need assessment shall be conducted
7 by a court services officer or a community corrections officer. The
8 presentence drug abuse treatment program placement assessment shall be
9 conducted by a drug abuse treatment program certified in accordance with
10 the provisions of this subsection to provide assessment and treatment
11 services. A drug abuse treatment program shall be certified by the
12 secretary of corrections. The secretary may establish qualifications for the
13 certification of programs, which may include requirements for supervision
14 and monitoring of clients; fee reimbursement procedures; handling of
15 conflicts of interest; delivery of services to clients unable to pay; and other
16 matters relating to quality and delivery of services by the program. Drug
17 abuse treatment may include community based and faith based programs.
18 The certification shall be for a four-year period. Recertification of a
19 program shall be by the secretary. To be eligible for certification under this
20 subsection, the secretary shall determine that a drug abuse treatment
21 program: (1) Meets the qualifications established by the secretary; (2) is
22 capable of providing the assessments, supervision and monitoring required
23 under subsection (a); (3) has employed or contracted with certified
24 treatment providers; and (4) meets any other functions and duties specified
25 by law.

26 (c) Any treatment provider who is employed or has contracted with a
27 certified drug abuse treatment program who provides services to offenders
28 shall be certified by the secretary of corrections. The secretary shall
29 require education and training which shall include, but not be limited to,
30 case management and cognitive behavior training. The duties of providers
31 who prepare the presentence drug abuse assessment may also include
32 appearing at sentencing and probation hearings in accordance with the
33 orders of the court, monitoring offenders in the treatment programs,
34 notifying the probation department and the court of any offender failing to
35 meet the conditions of probation or referrals to treatment, appearing at
36 revocation hearings as may be required and providing assistance and data
37 reporting and program evaluation.

38 (d) The cost for all drug abuse assessments ~~and performed pursuant~~
39 *to subsection (a)(1), and the cost for all certified drug abuse treatment*
40 *programs for any person who meets the requirements of K.S.A. 2011 Supp.*
41 *21-6824, and amendments thereto,* shall be paid by the Kansas sentencing
42 commission from funds appropriated for such purpose. The Kansas
43 sentencing commission shall contract for payment for such services with

1 the supervising agency. The sentencing court shall determine the extent, if
2 any, that such person is able to pay for such assessment and treatment.
3 Such payments shall be used by the supervising agency to offset costs to
4 the state. If such financial obligations are not met or cannot be met, the
5 sentencing court shall be notified for the purpose of collection or review
6 and further action on the offender's sentence.

7 (e) The community corrections staff shall work with the substance
8 abuse treatment staff to ensure effective supervision and monitoring of the
9 offender.

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

12 Sec. 6. K.S.A. 2011 Supp. 21-6604, 21-6805, 21-6824, 75-5291, 75-
13 5291b and 75-52,144 are hereby repealed.

14 Sec. 7. This act shall take effect and be in force from and after its
15 publication in the statute book.