

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

The Committee on **Judiciary** recommends **HB 2377**, as amended by House Committee, be amended on page 10, in line 15, after "hours" by inserting "of"; in line 22, after "hours" by inserting "of"; in line 27, after "hours" by inserting "of"; in line 29, after "hours" by inserting "of"; also in line 29, after "thereafter" by inserting a comma;

On page 11, in line 18, after the stricken material by inserting "The following conditions shall apply to such sentence:

(i) As a condition of any probation granted under this subsection, the person shall serve at least 30 days of confinement. After at least 48 consecutive hours of imprisonment, the remainder of the period of confinement may be served by a combination of: Imprisonment; a work release program, provided such work release program requires such person to return to the confinement at the end of each day in the work release program; or a house arrest program pursuant to K.S.A. 2020 Supp. 21-6609, and amendments thereto; and

(ii) (a) if the person is placed into a work release program or placed under a house arrest program for any portion of the minimum 30 days of confinement mandated by this subsection, the person shall receive hour-for-hour credit for time served in such program for the first 240 hours of confinement, and thereafter, the person shall receive day-for-day credit for time served in such program unless otherwise ordered by the court; and

(b) when in a work release program, the person shall only be given credit for the time served in confinement at the end of and continuing to the beginning of the person's work day. When under a house arrest program, the person shall be monitored by an electronic monitoring

device that verifies the person's location and shall only be given credit for the time served within the boundaries of the person's residence.";

On page 18, in line 17, by striking "three standard violations" and inserting "one standard violation";

On page 21, in line 26, by striking "300%" and inserting "150%"; in line 35, by striking "the following amounts, and" and inserting "50% of the program costs."; in line 37, by striking the colon; by striking all in lines 38 through 43;

On page 22, by striking all in lines 1 through 7; in line 8, by striking all before the period;

On page 23, in line 25, after "hours" by inserting "of"; in line 32, after "hours" by inserting "of"; in line 37, after "hours" by inserting "of"; in line 39, after "hours" by inserting "of confinement";

On page 24, in line 33, after "hours" by inserting "of"; also in line 33, after "imprisonment" by inserting a comma; in line 40, after "days" by inserting "of"; in line 42, after "hours" by inserting "of confinement"; in line 43, after "thereafter" by inserting a comma; also in line 43, by striking "day-for day-credit" and inserting "day-for-day credit";

On page 25, in line 33, before the semicolon by inserting ". The following conditions shall apply to such sentence:

(i) As a condition of any probation granted under this subsection, the person shall serve at least 30 days of confinement. After at least 48 consecutive hours of imprisonment, the remainder of the period of confinement may be served by a combination of: Imprisonment; a work release program, provided such work release program requires such person to return to the confinement at the end of each day in the work release program; or a house arrest program pursuant to K.S.A. 2020 Supp. 21-6609, and amendments thereto; and

(ii) (a) if the person is placed into a work release program or placed under a house arrest

program for any portion of the minimum 30 days of confinement mandated by this subsection, the person shall receive hour-for-hour credit for time served in such program for the first 240 hours of confinement, and thereafter, the person shall receive day-for-day credit for time served in such program unless otherwise ordered by the court; and

(b) when in a work release program, the person shall only be given credit for the time served in confinement at the end of and continuing to the beginning of the person's work day. When under a house arrest program, the person shall be monitored by an electronic monitoring device that verifies the person's location and shall only be given credit for the time served within the boundaries of the person's residence";

On page 26, in line 14, after the stricken material by inserting "The following conditions shall apply to such sentence:

(i) As a condition of any probation granted under this subsection, the person shall serve at least 30 days of confinement. After at least 48 consecutive hours of imprisonment, the remainder of the period of confinement may be served by a combination of: Imprisonment; a work release program, provided such work release program requires such person to return to the confinement at the end of each day in the work release program; or a house arrest program pursuant to K.S.A. 2020 Supp. 21-6609, and amendments thereto; and

(ii) (a) if the person is placed into a work release program or placed under a house arrest program for any portion of the minimum 30 days of confinement mandated by this subsection, the person shall receive hour-for-hour credit for time served in such program for the first 240 hours of confinement, and thereafter, the person shall receive day-for-day credit for time served in such program unless otherwise ordered by the court; and

(b) when in a work release program, the person shall only be given credit for the time served in confinement at the end of and continuing to the beginning of the person's work day.

When under a house arrest program, the person shall be monitored by an electronic monitoring device that verifies the person's location and shall only be given credit for the time served within the boundaries of the person's residence.";

On page 35, following line 33, by inserting:

"Sec. 10. K.S.A. 2020 Supp. 21-6604 is hereby amended to read as follows: 21-6604.

(a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

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

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

(3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases ~~except for violations of K.S.A. 8-1567 or 8-2,144, and amendments thereto~~, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence;

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

(5) assign the defendant to a conservation camp for a period not to exceed six months

as a condition of probation followed by a six-month period of follow-up through adult intensive supervision by a community correctional services program, if the offender successfully completes the conservation camp program;

(6) assign the defendant to a house arrest program pursuant to K.S.A. 2020 Supp. 21-6609, and amendments thereto;

(7) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by K.S.A. 2020 Supp. 21-6602(c), and amendments thereto;

(8) order the defendant to repay the amount of any reward paid by any crime stoppers chapter, individual, corporation or public entity that materially aided in the apprehension or conviction of the defendant; repay the amount of any costs and expenses incurred by any law enforcement agency in the apprehension of the defendant, if one of the current crimes of conviction of the defendant includes escape from custody or aggravated escape from custody, as defined in K.S.A. 2020 Supp. 21-5911, and amendments thereto; repay expenses incurred by a fire district, fire department or fire company responding to a fire that has been determined to be arson or aggravated arson as defined in K.S.A. 2020 Supp. 21-5812, and amendments thereto, if the defendant is convicted of such crime; repay the amount of any public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation that leads to the defendant's conviction; or repay the amount of any medical costs and expenses incurred by any law enforcement agency or county. Such repayment of the amount of any such costs and expenses incurred by a county, law enforcement agency, fire district, fire department or fire company or any public funds utilized by a law enforcement agency shall be deposited and credited to the same fund from which the public funds were credited to prior to use by the county, law enforcement agency, fire district, fire department or fire company;

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

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

(11) if the defendant is convicted of a misdemeanor or convicted of a felony specified in K.S.A. 2020 Supp. 21-6804(i), and amendments thereto, assign the defendant to a work release program, other than a program at a correctional institution under the control of the secretary of corrections as defined in K.S.A. 75-5202, and amendments thereto, provided such work release program requires such defendant to return to confinement at the end of each day in the work release program. On a second or subsequent conviction of K.S.A. 8-1567, and amendments thereto, an offender placed into a work release program shall serve the total number of hours of confinement mandated by that section;

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

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

(14) suspend imposition of sentence in misdemeanor cases.

(b) (1) In addition to or in lieu of any of the above, the court shall order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime. Restitution shall be due immediately unless: (A) The court orders that the defendant be given a specified time to pay or be allowed to pay in specified installments; or (B) the court finds compelling circumstances that would render restitution unworkable, either in whole or in part. In regard to a violation of K.S.A. 2020 Supp. 21-6107, and amendments thereto, such damage or loss shall include, but not be limited to, attorney fees and costs incurred

to repair the credit history or rating of the person whose personal identification documents were obtained and used in violation of such section, and to satisfy a debt, lien or other obligation incurred by the person whose personal identification documents were obtained and used in violation of such section. In regard to a violation of K.S.A. 2020 Supp. 21-5801, 21-5807 or 21-5813, and amendments thereto, such damage or loss shall include the cost of repair or replacement of the property that was damaged, the reasonable cost of any loss of production, crops and livestock, reasonable labor costs of any kind, reasonable material costs of any kind and any reasonable costs that are attributed to equipment that is used to abate or repair the damage to the property. If the court finds restitution unworkable, either in whole or in part, the court shall state on the record in detail the reasons therefor.

(2) If the court orders restitution, the restitution shall be a judgment against the defendant that may be collected by the court by garnishment or other execution as on judgments in civil cases. If, after 60 days from the date restitution is ordered by the court, a defendant is found to be in noncompliance with the restitution order, and the victim to whom restitution is ordered paid has not initiated proceedings in accordance with K.S.A. 60-4301 et seq., and amendments thereto, the court shall assign an agent procured by the judicial administrator pursuant to K.S.A. 20-169, and amendments thereto, to collect the restitution on behalf of the victim. The chief judge of each judicial district may assign such cases to an appropriate division of the court for the conduct of civil collection proceedings.

(3) If a restitution order entered prior to the effective date of this act does not give the defendant a specified time to pay or set payment in specified installments, the defendant may file a motion with the court prior to December 31, 2020, proposing payment of restitution in specified installments. The court may recall the restitution order from the agent assigned pursuant to K.S.A. 20-169, and amendments thereto, until the court rules on such motion. If the

court does not order payment in specified installments or if the defendant does not file a motion prior to December 31, 2020, the restitution shall be due immediately.

(c) In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by K.S.A. 2020 Supp. 21-6602(d), and amendments thereto.

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

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

(f) (1) When a new felony is committed while the offender is incarcerated and serving a sentence for a felony, or while the offender is on probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision for a felony,

a new sentence shall be imposed consecutively pursuant to the provisions of K.S.A. 2020 Supp. 21-6606, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(2) When a new felony is committed during a period of time when the ~~defendant~~ offender would have been on probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision for a felony had the ~~defendant~~ offender not been granted release by the court pursuant to K.S.A. 2020 Supp. 21-6608(d), and amendments thereto, or the prisoner review board pursuant to K.S.A. 22-3717, and amendments thereto, the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(3) When a new felony is committed while the offender is incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671, prior to its repeal, or K.S.A. 2020 Supp. 38-2373, and amendments thereto, for an offense, which if committed by an adult would constitute the commission of a felony, upon conviction, the court shall sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure. The conviction shall operate as a full and complete discharge from any obligations, except for an order of restitution, imposed on the offender arising from the offense for which the offender was committed to a juvenile correctional facility.

(4) When a new felony is committed while the offender is on release for a felony pursuant to the provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, and

amendments thereto, or similar provisions of the laws of another jurisdiction, a new sentence may be imposed consecutively pursuant to the provisions of K.S.A. 2020 Supp. 21-6606, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(g) Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, and whose offense does not meet the requirements of K.S.A. 2020 Supp. 21-6824, and amendments thereto, prior to revocation of a nonprison sanction of a defendant whose offense is classified in grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, and whose offense does not meet the requirements of K.S.A. 2020 Supp. 21-6824, and amendments thereto, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid

blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, the court shall consider placement of the defendant in the Labette correctional conservation camp, conservation camps established by the secretary of corrections pursuant to K.S.A. 75-52,127, and amendments thereto, or a community intermediate sanction center. Pursuant to this subsection the defendant shall not be sentenced to imprisonment if space is available in a conservation camp or community intermediate sanction center and the defendant meets all of the conservation camp's or community intermediate sanction center's placement criteria unless the court states on the record the reasons for not placing the defendant in a conservation camp or community intermediate sanction center.

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

(i) In addition to any of the above, the court shall order the defendant to reimburse the state general fund for all or part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court that sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. The amount of attorney fees to be included in the court order for

reimbursement shall be the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less.

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

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

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

(1) Has been sentenced to the secretary for a probation revocation, as a departure from the presumptive nonimprisonment grid block of either sentencing grid, for an offense that is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, or for an offense that is classified in grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, and such offense does not meet the requirements of K.S.A. 2020 Supp.

21-6824, and amendments thereto; and

(2) otherwise meets admission criteria of the camp.

If the inmate successfully completes a conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district attorney. The inmate shall then be assigned by the court to six months of follow-up supervision conducted by the appropriate community corrections services program. The court may also order that supervision continue thereafter for the length of time authorized by K.S.A. 2020 Supp. 21-6608, and amendments thereto.

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

(n) (1) Except as provided by K.S.A. 2020 Supp. 21-6630 and 21-6805(f), and amendments thereto, in addition to any of the above, for felony violations of K.S.A. 2020 Supp. 21-5706, and amendments thereto, the court shall require the defendant who meets the requirements established in K.S.A. 2020 Supp. 21-6824, and amendments thereto, to participate in a certified drug abuse treatment program, as provided in K.S.A. 75-52,144, and amendments thereto, including, but not limited to, an approved after-care plan. The amount of time spent participating in such program shall not be credited as service on the underlying prison sentence.

(2) If the defendant fails to participate in or has a pattern of intentional conduct that demonstrates the defendant's refusal to comply with or participate in the treatment program, as established by judicial finding, the defendant shall be subject to sanction or revocation pursuant to the provisions of K.S.A. 22-3716, and amendments thereto. If the defendant's probation is revoked, the defendant shall serve the underlying prison sentence as established in K.S.A. 2020 Supp. 21-6805, and amendments thereto.

(A) Except as provided in subsection (n)(2)(B), for those offenders who are convicted

on or after July 1, 2003, but prior to July 1, 2013, upon completion of the underlying prison sentence, the offender shall not be subject to a period of postrelease supervision.

(B) Offenders whose crime of conviction was committed on or after July 1, 2013, and whose probation is revoked pursuant to K.S.A. 22-3716(c), and amendments thereto, or whose underlying prison term expires while serving a sanction pursuant to K.S.A. 22-3716(c)(1), and amendments thereto, shall serve a period of postrelease supervision upon the completion of the underlying prison term.

(o) (1) Except as provided in paragraph (3), in addition to any other penalty or disposition imposed by law, upon a conviction for unlawful possession of a controlled substance or controlled substance analog in violation of K.S.A. 2020 Supp. 21-5706, and amendments thereto, in which the trier of fact makes a finding that the unlawful possession occurred while transporting the controlled substance or controlled substance analog in any vehicle upon a highway or street, the offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state shall be suspended for one year.

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

(3) (A) In lieu of suspending the driver's license or privilege to operate a motor vehicle on the highways of this state of any person as provided in paragraph (1), the judge of the court in

which such person was convicted may enter an order that places conditions on such person's privilege of operating a motor vehicle on the highways of this state, a certified copy of which such person shall be required to carry any time such person is operating a motor vehicle on the highways of this state. Any such order shall prescribe the duration of the conditions imposed, which in no event shall be for a period of more than one year.

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

(C) Upon expiration of the period of time for which conditions are imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by such licensee. In the event such license has expired, such person may apply to the division for a new license, which shall be issued immediately by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless such person's privilege to operate a motor vehicle on the highways of this state has been suspended or revoked

prior thereto. If any person shall violate any of the conditions imposed under this paragraph, such person's driver's license or privilege to operate a motor vehicle on the highways of this state shall be revoked for a period of not less than 60 days nor more than one year by the judge of the court in which such person is convicted of violating such conditions.

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

(p) In addition to any of the above, for any criminal offense that includes the domestic violence designation pursuant to K.S.A. 2020 Supp. 22-4616, and amendments thereto, the court shall require the defendant to: (1) Undergo a domestic violence offender assessment conducted by a certified batterer intervention program; and (2) follow all recommendations made by such program, unless otherwise ordered by the court or the department of corrections. The court may order a domestic violence offender assessment and any other evaluation prior to sentencing if the assessment or evaluation would assist the court in determining an appropriate sentence. The entity completing the assessment or evaluation shall provide the assessment or evaluation and recommendations to the court and the court shall provide the domestic violence offender assessment to any entity responsible for supervising such defendant. A defendant ordered to undergo a domestic violence offender assessment shall be required to pay for the assessment and, unless otherwise ordered by the court or the department of corrections, for completion of all recommendations.

(q) In imposing a fine, the court may authorize the payment thereof in installments. In lieu of payment of any fine imposed, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed by the later of one

year after the fine is imposed or one year after release from imprisonment or jail, or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance shall become due on that date. If conditional reduction of any fine is rescinded by the court for any reason, then pursuant to the court's order the person may be ordered to perform community service by one year after the date of such rescission or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date. All credits for community service shall be subject to review and approval by the court.

(r) In addition to any other penalty or disposition imposed by law, for any defendant sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2020 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, the court shall order that the defendant be electronically monitored upon release from imprisonment for the duration of the defendant's natural life and that the defendant shall reimburse the state for all or part of the cost of such monitoring as determined by the prisoner review board.

(s) Whenever the court has released the defendant on probation pursuant to subsection (a)(3), the defendant's supervising court services officer, with the concurrence of the chief court services officer, may impose the violation sanctions as provided in K.S.A. 22-3716(c)(1)(B), and amendments thereto, without further order of the court, unless the defendant, after being apprised of the right to a revocation hearing before the court pursuant to K.S.A. 22-3716(b), and amendments thereto, refuses to waive such right.

(t) Whenever the court has assigned the defendant to a community correctional services program pursuant to subsection (a)(4), the defendant's community corrections officer, with the

concurrence of the community corrections director, may impose the violation sanctions as provided in K.S.A. 22-3716(c)(1)(B), and amendments thereto, without further order of the court unless the defendant, after being apprised of the right to a revocation hearing before the court pursuant to K.S.A. 22-3716(b), and amendments thereto, refuses to waive such right.

(u) In addition to any of the above, the court shall authorize an additional 18 days of confinement in a county jail to be reserved for sanctions as set forth in K.S.A. 22-3716(b)(3)(B), (b)(4) or (c)(1)(B), and amendments thereto.

(v) The amendments made to this section by ~~this act~~ section 1 of chapter 9 of the 2020 Session Laws of Kansas are procedural in nature and shall be construed and applied retroactively.

Sec. 11. K.S.A. 2020 Supp. 21-6804 is hereby amended to read as follows: 21-6804. (a) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. The following 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 Felonies	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felonies	2 + Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

LEGEND
Presumptive Probation
Boiler Box
Presumptive Imprisonment

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

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

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

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

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

(A) Prison sentence;

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

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

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

(A) Prison sentence; and

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

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

(g) The sentence for a violation of K.S.A. 21-3415, prior to its repeal, aggravated battery against a law enforcement officer committed prior to July 1, 2006, or a violation of K.S.A. 2020 Supp. 21-5412(d), and amendments thereto, aggravated assault against a law enforcement officer, which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

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

(i) (1) The sentence for the violation of the felony provision of ~~K.S.A. 8-2-144 and 8-1567~~ and K.S.A. 2020 Supp. 21-5414(b)(3), 21-5823(b)(3) and (b)(4), 21-6412 and 21-6416, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or K.S.A. 2020 Supp. 21-6807, and amendments thereto.

(2) If because of the offender's criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the offender is subject to imprisonment, the provisions of this section and K.S.A. 2020 Supp. 21-

6807, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in K.S.A. 2020 Supp. 21-5823, and amendments thereto.

(3) Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of ~~K.S.A. 8-2,144, and 8-1567~~ and K.S.A. 2020 Supp. 21-5414(b)(3), 21-5823(b)(3) and (b)(4), 21-6412 and 21-6416, and amendments thereto, shall not be served in a state facility in the custody of the secretary of corrections, ~~except that the term of imprisonment for felony violations of K.S.A. 8-2,144 or 8-1567, and amendments thereto, may be served in a state correctional facility designated by the secretary of corrections if the secretary determines that substance abuse treatment resources and facility capacity is available. The secretary's determination regarding the availability of treatment resources and facility capacity shall not be subject to review.~~ Prior to imposing any sentence pursuant to this subsection, the court may consider assigning the defendant to a house arrest program pursuant to K.S.A. 2020 Supp. 21-6609, and amendments thereto.

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

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

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

(ii) at the time of the conviction under subsection (j)(2)(A)(i) has at least one conviction for a sexually violent crime, as defined in K.S.A. 22-3717, and amendments thereto, in this state

or comparable felony under the laws of another state, the federal government or a foreign government; or

(B) (i) has been convicted of rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2020 Supp. 21-5503, and amendments thereto; and

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

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

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

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

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

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

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

(D) its members, individually or collectively, engage in or have engaged in the

commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009, or any substantially similar offense from another jurisdiction.

(l) Except as provided in subsection (o), the sentence for a violation of K.S.A. 2020 Supp. 21-5807(a)(1), and amendments thereto, or any attempt or conspiracy, as defined in K.S.A. 2020 Supp. 21-5301 and 21-5302, and amendments thereto, to commit such offense, when such person being sentenced has a prior conviction for a violation of K.S.A. 21-3715(a) or (b), prior to its repeal, 21-3716, prior to its repeal, K.S.A. 2020 Supp. 21-5807(a)(1) or (a)(2) or 21-5807(b), and amendments thereto, or any attempt or conspiracy to commit such offense, shall be presumptive imprisonment.

(m) The sentence for a violation of K.S.A. 22-4903 or K.S.A. 2020 Supp. 21-5913(a)(2), and amendments thereto, shall be presumptive imprisonment. If an offense under such sections is classified in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison sentence as provided in subsection (q).

(n) The sentence for a violation of criminal deprivation of property, as defined in K.S.A. 2020 Supp. 21-5803, and amendments thereto, when such property is a motor vehicle, and when such person being sentenced has any combination of two or more prior convictions of K.S.A. 21-3705(b), prior to its repeal, or of criminal deprivation of property, as defined in K.S.A. 2020 Supp. 21-5803, and amendments thereto, when such property is a motor vehicle, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(o) The sentence for a felony violation of theft of property as defined in K.S.A. 2020

Supp. 21-5801, and amendments thereto, or burglary as defined in K.S.A. 2020 Supp. 21-5807(a), and amendments thereto, when such person being sentenced has no prior convictions for a violation of K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of property as defined in K.S.A. 2020 Supp. 21-5801, and amendments thereto, or burglary as defined in K.S.A. 2020 Supp. 21-5807(a), and amendments thereto; or the sentence for a felony violation of theft of property as defined in K.S.A. 2020 Supp. 21-5801, and amendments thereto, when such person being sentenced has one or two prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in K.S.A. 2020 Supp. 21-5801, and amendments thereto, or burglary or aggravated burglary as defined in K.S.A. 2020 Supp. 21-5807, and amendments thereto; or the sentence for a felony violation of burglary as defined in K.S.A. 2020 Supp. 21-5807(a), and amendments thereto, when such person being sentenced has one prior felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in K.S.A. 2020 Supp. 21-5801, and amendments thereto, or burglary or aggravated burglary as defined in K.S.A. 2020 Supp. 21-5807, and amendments thereto, shall be the sentence as provided by this section, except that the court may order an optional nonprison sentence for a defendant to participate in a drug treatment program, including, but not limited to, an approved ~~after-care~~ aftercare plan, if the court makes the following findings on the record:

- (1) Substance abuse was an underlying factor in the commission of the crime;
- (2) substance abuse treatment in the community is likely to be more effective than a prison term in reducing the risk of offender recidivism; and
- (3) participation in an intensive substance abuse treatment program will serve community safety interests.

A defendant sentenced to an optional nonprison sentence under this subsection shall be

supervised by community correctional services. The provisions of K.S.A. 2020 Supp. 21-6824(f) (1), and amendments thereto, shall apply to a defendant sentenced under this subsection. The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(p) The sentence for a felony violation of theft of property as defined in K.S.A. 2020 Supp. 21-5801, and amendments thereto, when such person being sentenced has any combination of three or more prior felony convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in K.S.A. 2020 Supp. 21-5801, and amendments thereto, or burglary or aggravated burglary as defined in K.S.A. 2020 Supp. 21-5807, and amendments thereto; or the sentence for a violation of burglary as defined in K.S.A. 2020 Supp. 21-5807(a), and amendments thereto, when such person being sentenced has any combination of two or more prior convictions for violations of K.S.A. 21-3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as defined in K.S.A. 2020 Supp. 21-5801, and amendments thereto, or burglary or aggravated burglary as defined in K.S.A. 2020 Supp. 21-5807, and amendments thereto, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section, except that the court may recommend that an offender be placed in the custody of the secretary of corrections, in a facility designated by the secretary to participate in an intensive substance abuse treatment program, upon making the following findings on the record:

- (1) Substance abuse was an underlying factor in the commission of the crime;
- (2) substance abuse treatment with a possibility of an early release from imprisonment is likely to be more effective than a prison term in reducing the risk of offender recidivism; and
- (3) participation in an intensive substance abuse treatment program with the possibility of an early release from imprisonment will serve community safety interests by promoting

offender reformation.

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

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

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

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

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

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

(r) The sentence for a violation of K.S.A. 2020 Supp. 21-5413(c)(2), and amendments thereto, shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

(s) The sentence for a violation of K.S.A. 2020 Supp. 21-5512, and amendments

thereto, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

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

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

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

(u) The sentence for a violation of K.S.A. 2020 Supp. 21-6107, and amendments thereto, or any attempt or conspiracy, as defined in K.S.A. 2020 Supp. 21-5301 and 21-5302, and amendments thereto, to commit such offense, when such person being sentenced has a prior conviction for a violation of K.S.A. 21-4018, prior to its repeal, or K.S.A. 2020 Supp. 21-6107, and amendments thereto, or any attempt or conspiracy to commit such offense, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

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

not be subject to appeal.

(w) The sentence for aggravated criminal damage to property as defined in K.S.A. 2020 Supp. 21-5813(b), and amendments thereto, when such person being sentenced has a prior conviction for any nonperson felony shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(x) The sentence for a violation of K.S.A. 2020 Supp. 21-5807(a)(1), and amendments thereto, shall be presumptive imprisonment if the offense under such paragraph is classified in grid blocks 7-C, 7-D or 7-E. Such sentence shall not be considered a departure and shall not be subject to appeal.

(y) (1) Except as provided in subsection (y)(3), if the trier of fact makes a finding beyond a reasonable doubt that an offender committed a nondrug felony offense, or any attempt or conspiracy, as defined in K.S.A. 2020 Supp. 21-5301 and 21-5302, and amendments thereto, to commit a nondrug felony offense, against a law enforcement officer, as defined in K.S.A. 2020 Supp. 21-5111(p)(1) and (3), and amendments thereto, while such officer was engaged in the performance of such officer's duty, or in whole or in any part because of such officer's status as a law enforcement officer, the sentence for such offense shall be:

(A) If such offense is classified in severity level 2 through 10, one severity level above the appropriate level for such offense; and

(B) (i) if such offense is classified in severity level 1, except as otherwise provided in subsection (y)(1)(B)(ii), imprisonment for life, and such offender shall not be eligible for probation or suspension, modification or reduction of sentence. In addition, such offender shall not be eligible for parole prior to serving 25 years' imprisonment, and such 25 years' imprisonment shall not be reduced by the application of good time credits. No other sentence shall be permitted.

(ii) The provisions of subsection (y)(1)(B)(i) requiring the court to impose a mandatory minimum term of imprisonment of 25 years shall not apply if the court finds the offender, because of the offender's criminal history classification, is subject to presumptive imprisonment and the sentencing range exceeds 300 months. In such case, the offender is required to serve a mandatory minimum term equal to the sentence established pursuant to the sentencing range.

(2) The sentence imposed pursuant to subsection (y)(1) shall not be considered a departure and shall not be subject to appeal.

(3) The provisions of this subsection shall not apply to an offense described in subsection (y)(1) if the factual aspect concerning a law enforcement officer is a statutory element of such offense.";

On page 37, in line 25, after "12-4415" by inserting ", 21-6604, 21-6804";

And by renumbering sections accordingly;

On page 1, in the title, in line 24, after "12-4415" by inserting ", 21-6604, 21-6804"; and the bill be passed as amended.

Chairperson