

HOUSE BILL No. 2335

By Committee on Federal and State Affairs

2-12

9 AN ACT concerning crimes, punishment and criminal procedure; relat-
10 ing to domestic violence; amending K.S.A. 20-369, 21-4603d, 22-2307,
11 22-2401, 22-3210 and 60-3107 and K.S.A. 2008 Supp. 12-4104, 21-
12 3110, 21-4704, 72-1397, 72-5445 and 74-5602 and repealing the exist-
13 ing sections; also repealing K.S.A. 21-3412a.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 New Section 1. (a) Cover sheets of all legal criminal documents, be-
17 ginning with the arrest and continuing through disposition, generated in
18 connection with a domestic violence offense shall clearly and specifically
19 contain a domestic violence designation. This requirement is applicable
20 to law enforcement officers, prosecuting attorneys, court officials and any
21 other individual drafting legal documentation in connection with a do-
22 mestic violence offense.

23 (b) The term “domestic violence offense” shall have the meaning
24 ascribed thereto in K.S.A. 21-3110, and amendments thereto.

25 (c) This section shall be a part of and supplemental to the Kansas
26 code for criminal procedure.

27 Sec. 2. K.S.A. 2008 Supp. 12-4104 is hereby amended to read as
28 follows: 12-4104. (a) The municipal court of each city shall have jurisdic-
29 tion to hear and determine cases involving violations of the ordinances of
30 the city, including concurrent jurisdiction to hear and determine a vio-
31 lation of an ordinance when the elements of such ordinance violation are
32 the same as the elements of a violation of one of the following state
33 statutes and would constitute, and be punished as, a felony if charged in
34 district court:

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

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

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

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

42 (5) K.S.A. 65-4162, and amendments thereto, possession of
43 marijuana.

- 1 (b) Search warrants shall not issue out of a municipal court.
- 2 Sec. 3. K.S.A. 20-369 is hereby amended to read as follows: 20-369.
- 3 (a) If a judicial district creates a local fund ~~under this act~~, the court may
4 impose a fee as provided in this section against any defendant for ~~crimes~~
5 ~~involving a family or household member as provided in K.S.A. 21-3412a~~
6 *violation of any criminal offense that includes the domestic violence des-*
7 *ignation, pursuant to section 1, and amendments thereto.* The chief judge
8 of each judicial district where such fee is imposed shall set the amount
9 of such fee by rules adopted in such judicial district in an amount not to
10 exceed \$100 per case.
- 11 (b) Such fees shall be deposited into the local fund and disbursed
12 pursuant to recommendations of the chief judge under this act. All mon-
13 eys collected by this section shall be paid into the domestic violence spe-
14 cial programs fund in the county where the fee is collected, as established
15 by the judicial district ~~and as authorized by this act~~.
- 16 (c) Expenditures made in each judicial district shall be determined
17 by the chief judge and shall be paid to domestic violence programs ad-
18 ministered by the court and to local programs within the judicial district
19 that enhance a coordinated community justice response to the issue of
20 domestic violence.
- 21 Sec. 4. K.S.A. 2008 Supp. 21-3110 is hereby amended to read as
22 follows: 21-3110. The following definitions shall apply when the words
23 and phrases defined are used in this code, except when a particular con-
24 text clearly requires a different meaning.
- 25 (1) "Act" includes a failure or omission to take action.
- 26 (2) "Another" means a person or persons as defined in this code other
27 than the person whose act is claimed to be criminal.
- 28 (3) "Conduct" means an act or a series of acts, and the accompanying
29 mental state.
- 30 (4) "Conviction" includes a judgment of guilt entered upon a plea of
31 guilty.
- 32 (5) "Deception" means knowingly and willfully making a false state-
33 ment or representation, express or implied, pertaining to a present or past
34 existing fact.
- 35 (6) To "deprive permanently" means to:
- 36 (a) Take from the owner the possession, use or benefit of property,
37 without an intent to restore the same; or
- 38 (b) Retain property without intent to restore the same or with intent
39 to restore it to the owner only if the owner purchases or leases it back,
40 or pays a reward or other compensation for its return; or
- 41 (c) Sell, give, pledge or otherwise dispose of any interest in property
42 or subject it to the claim of a person other than the owner.
- 43 (7) "*Domestic violence*" means *an act or threatened act of violence*

- 1 *against a person with whom the offender is involved or has been involved*
2 *in an intimate relationship. Domestic violence also includes any other*
3 *crime committed against a person or against property, or any municipal*
4 *ordinance violation against a person or against property, when used as a*
5 *method of coercion, control, punishment, intimidation or revenge directed*
6 *against a person with whom the offender is involved or has been involved*
7 *in an intimate relationship. For the purposes of this definition, the of-*
8 *fender shall be 18 years of age or older.*
- 9 (8) “Domestic violence offender” means a person who has been con-
10 victed of or entered into a diversion agreement for any domestic violence
11 offense.
- 12 (9) “Domestic violence offense” means any crime committed whereby
13 the underlying factual basis includes an act of domestic violence.
- 14 ~~(7)~~ (10) “Dwelling” means a building or portion thereof, a tent, a
15 vehicle or other enclosed space which is used or intended for use as a
16 human habitation, home or residence.
- 17 ~~(8)~~ (11) “Firearm” means any weapon designed or having the capacity
18 to propel a projectile by force of an explosion or combustion.
- 19 ~~(9)~~ (12) “Forcible felony” includes any treason, murder, voluntary
20 manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated bat-
21 tery, aggravated sodomy and any other felony which involves the use or
22 threat of physical force or violence against any person.
- 23 ~~(10)~~ (13) “Intent to defraud” means an intention to deceive another
24 person, and to induce such other person, in reliance upon such deception,
25 to assume, create, transfer, alter or terminate a right, obligation or power
26 with reference to property.
- 27 (14) “Intimate relationship” means a relationship between spouses,
28 former spouses, past or present unmarried couples, or persons who share
29 the parentage of a child. Sharing a residence, either past or present, is
30 not required to qualify as an intimate relationship pursuant to this defi-
31 nition.
- 32 ~~(11)~~ (15) “Law enforcement officer” means:
- 33 (a) Any person who by virtue of such person’s office or public em-
34 ployment is vested by law with a duty to maintain public order or to make
35 arrests for crimes, whether that duty extends to all crimes or is limited to
36 specific crimes;
- 37 (b) any officer of the Kansas department of corrections or, for the
38 purposes of K.S.A. 21-3409, 21-3411 and 21-3415, and amendments
39 thereto, any employee of the Kansas department of corrections; or
- 40 (c) any university police officer or campus police officer, as defined
41 in K.S.A. 22-2401a, and amendments thereto.
- 42 ~~(12)~~ (16) “Obtain” means to bring about a transfer of interest in or
43 possession of property, whether to the offender or to another.

1 ~~(13)~~ (17) “Obtains or exerts control” over property includes but is not
2 limited to, the taking, carrying away, or the sale, conveyance, or transfer
3 of title to, interest in, or possession of property.
4 ~~(14)~~ (18) “Owner” means a person who has any interest in property.
5 ~~(15)~~ (19) “Person” means an individual, public or private corporation,
6 government, partnership, or unincorporated association.
7 ~~(16)~~ (20) “Personal property” means goods, chattels, effects, evi-
8 dences of rights in action and all written instruments by which any pe-
9 cuniary obligation, or any right or title to property real or personal, shall
10 be created, acknowledged, assigned, transferred, increased, defeated, dis-
11 charged, or dismissed.
12 ~~(17)~~ (21) “Property” means anything of value, tangible or intangible,
13 real or personal.
14 ~~(18)~~ (22) “Prosecution” means all legal proceedings by which a per-
15 son’s liability for a crime is determined.
16 ~~(19)~~ (23) “Public employee” is a person employed by or acting for
17 the state or by or for a county, municipality or other subdivision or gov-
18 ernmental instrumentality of the state for the purpose of exercising their
19 respective powers and performing their respective duties, and who is not
20 a “public officer.”
21 ~~(20)~~ (24) “Public officer” includes the following, whether elected or
22 appointed:
23 (a) An executive or administrative officer of the state, or a county,
24 municipality or other subdivision or governmental instrumentality of or
25 within the state.
26 (b) A member of the legislature or of a governing board of a county,
27 municipality, or other subdivision of or within the state.
28 (c) A judicial officer, which shall include a judge of the district court,
29 juror, master or any other person appointed by a judge or court to hear
30 or determine a cause or controversy.
31 (d) A hearing officer or presiding officer, which shall include any
32 person authorized by law or private agreement, to hear or determine a
33 cause or controversy and who is not a judicial officer.
34 (e) A law enforcement officer.
35 (f) Any other person exercising the functions of a public officer under
36 color of right.
37 ~~(21)~~ (25) “Real property” or “real estate” means every estate, interest,
38 and right in lands, tenements and hereditaments.
39 ~~(22)~~ (26) “Solicit” or “solicitation” means to command, authorize,
40 urge, incite, request, or advise another to commit a crime.
41 ~~(23)~~ (27) “State” or “this state” means the state of Kansas and all land
42 and water in respect to which the state of Kansas has either exclusive or
43 concurrent jurisdiction, and the air space above such land and water.

1 “Other state” means any state or territory of the United States, the Dis-
2 trict of Columbia and the Commonwealth of Puerto Rico.

3 ~~(24)~~ (28) “Stolen property” means property over which control has
4 been obtained by theft.

5 ~~(25)~~ (29) “Threat” means a communicated intent to inflict physical
6 or other harm on any person or on property.

7 ~~(26)~~ (30) “Written instrument” means any paper, document or other
8 instrument containing written or printed matter or the equivalent thereof,
9 used for purposes of reciting, embodying, conveying or recording infor-
10 mation, and any money, token, stamp, seal, badge, trademark, or other
11 evidence or symbol of value, right, privilege or identification, which is
12 capable of being used to the advantage or disadvantage of some person.

13 Sec. 5. K.S.A. 21-4603d is hereby amended to read as follows: 21-
14 4603d. (a) Whenever any person has been found guilty of a crime, the
15 court may adjudge any of the following:

16 (1) Commit the defendant to the custody of the secretary of correc-
17 tions if the current crime of conviction is a felony and the sentence pre-
18 sumes imprisonment, or the sentence imposed is a dispositional departure
19 to imprisonment; or, if confinement is for a misdemeanor, to jail for the
20 term provided by law;

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

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

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

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

41 (6) assign the defendant to a house arrest program pursuant to K.S.A.
42 21-4603b and amendments thereto;

43 (7) order the defendant to attend and satisfactorily complete an al-

1 cohol or drug education or training program as provided by subsection
2 (3) of K.S.A. 21-4502, and amendments thereto;

3 (8) order the defendant to repay the amount of any reward paid by
4 any crime stoppers chapter, individual, corporation or public entity which
5 materially aided in the apprehension or conviction of the defendant; repay
6 the amount of any costs and expenses incurred by any law enforcement
7 agency in the apprehension of the defendant, if one of the current crimes
8 of conviction of the defendant includes escape, as defined in K.S.A. 21-
9 3809, and amendments thereto, or aggravated escape, as defined in K.S.A.
10 21-3810, and amendments thereto; repay expenses incurred by a fire dis-
11 trict, fire department or fire company responding to a fire which has been
12 determined to be arson under K.S.A. 21-3718 or 21-3719, and amend-
13 ments thereto, if the defendant is convicted of such crime; repay the
14 amount of any public funds utilized by a law enforcement agency to pur-
15 chase controlled substances from the defendant during the investigation
16 which leads to the defendant's conviction; or repay the amount of any
17 medical costs and expenses incurred by any law enforcement agency or
18 county. Such repayment of the amount of any such costs and expenses
19 incurred by a county, law enforcement agency, fire district, fire depart-
20 ment or fire company or any public funds utilized by a law enforcement
21 agency shall be deposited and credited to the same fund from which the
22 public funds were credited to prior to use by the county, law enforcement
23 agency, fire district, fire department or fire company;

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

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

28 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6),
29 (7), (8), (9) and (10); or

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

31 (b) (1) In addition to or in lieu of any of the above, the court shall
32 order the defendant to pay restitution, which shall include, but not be
33 limited to, damage or loss caused by the defendant's crime, unless the
34 court finds compelling circumstances which would render a plan of res-
35 titution unworkable. In regard to a violation of K.S.A. 21-4018, and
36 amendments thereto, such damage or loss shall include, but not be limited
37 to, attorney fees and costs incurred to repair the credit history or rating
38 of the person whose personal identification documents were obtained and
39 used in violation of such section, and to satisfy a debt, lien or other ob-
40 ligation incurred by the person whose personal identification documents
41 were obtained and used in violation of such section. If the court finds a
42 plan of restitution unworkable, the court shall state on the record in detail
43 the reasons therefor.

1 (2) If the court orders restitution, the restitution shall be a judgment
2 against the defendant which may be collected by the court by garnishment
3 or other execution as on judgments in civil cases. If, after 60 days from
4 the date restitution is ordered by the court, a defendant is found to be in
5 noncompliance with the plan established by the court for payment of
6 restitution, and the victim to whom restitution is ordered paid has not
7 initiated proceedings in accordance with K.S.A. 60-4301 et seq., and
8 amendments thereto, the court shall assign an agent procured by the
9 attorney general pursuant to K.S.A. 75-719, and amendments thereto, to
10 collect the restitution on behalf of the victim. The administrative judge
11 of each judicial district may assign such cases to an appropriate division
12 of the court for the conduct of civil collection proceedings.

13 (c) In addition to or in lieu of any of the above, the court shall order
14 the defendant to submit to and complete an alcohol and drug evaluation,
15 and pay a fee therefor, when required by subsection (4) of K.S.A. 21-
16 4502, and amendments thereto.

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

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

40 (f) (1) When a new felony is committed while the offender is incar-
41 cerated and serving a sentence for a felony, or while the offender is on
42 probation, assignment to a community correctional services program, pa-
43 role, conditional release, or postrelease supervision for a felony, a new

1 sentence shall be imposed pursuant to the consecutive sentencing
2 requirements of K.S.A. 21-4608, and amendments thereto, and the court
3 may sentence the offender to imprisonment for the new conviction, even
4 when the new crime of conviction otherwise presumes a nonprison sen-
5 tence. In this event, imposition of a prison sentence for the new crime
6 does not constitute a departure.

7 (2) When a new felony is committed while the offender is incarcer-
8 ated in a juvenile correctional facility pursuant to K.S.A. 38-1671 prior to
9 its repeal or K.S.A. 2008 Supp. 38-2373, and amendments thereto, for an
10 offense, which if committed by an adult would constitute the commission
11 of a felony, upon conviction, the court shall sentence the offender to
12 imprisonment for the new conviction, even when the new crime of con-
13 viction otherwise presumes a nonprison sentence. In this event, imposi-
14 tion of a prison sentence for the new crime does not constitute a depart-
15 ure. The conviction shall operate as a full and complete discharge from
16 any obligations, except for an order of restitution, imposed on the of-
17 fender arising from the offense for which the offender was committed to
18 a juvenile correctional facility.

19 (3) When a new felony is committed while the offender is on release
20 for a felony pursuant to the provisions of article 28 of chapter 22 of the
21 Kansas Statutes Annotated, or similar provisions of the laws of another
22 jurisdiction, a new sentence may be imposed pursuant to the consecutive
23 sentencing requirements of K.S.A. 21-4608, and amendments thereto,
24 and the court may sentence the offender to imprisonment for the new
25 conviction, even when the new crime of conviction otherwise presumes
26 a nonprison sentence. In this event, imposition of a prison sentence for
27 the new crime does not constitute a departure.

28 (g) Prior to imposing a dispositional departure for a defendant whose
29 offense is classified in the presumptive nonprison grid block of either
30 sentencing guideline grid, prior to sentencing a defendant to incarceration
31 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing
32 guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H
33 or 3-I of the sentencing guidelines grid for drug crimes, prior to sen-
34 tencing a defendant to incarceration whose offense is classified in grid
35 blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and
36 whose offense does not meet the requirements of K.S.A. 21-4729, and
37 amendments thereto, prior to revocation of a nonprison sanction of a
38 defendant whose offense is classified in grid blocks 4-E or 4-F of the
39 sentencing guideline grid for drug crimes and whose offense does not
40 meet the requirements of K.S.A. 21-4729, and amendments thereto, or
41 prior to revocation of a nonprison sanction of a defendant whose offense
42 is classified in the presumptive nonprison grid block of either sentencing
43 guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines

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

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

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

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

41 (k) An application for or acceptance of probation or assignment to a
42 community correctional services program shall not constitute an acqui-
43 escence in the judgment for purpose of appeal, and any convicted person

1 may appeal from such conviction, as provided by law, without regard to
2 whether such person has applied for probation, suspended sentence or
3 assignment to a community correctional services program.

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

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

27 (n) Except as provided by subsection (f) of K.S.A. 21-4705, and
28 amendments thereto, in addition to any of the above, for felony violations
29 of K.S.A. 65-4160 or 65-4162, and amendments thereto, the court shall
30 require the defendant who meets the requirements established in K.S.A.
31 21-4729, and amendments thereto, to participate in a certified drug abuse
32 treatment program, as provided in K.S.A. 2008 Supp. 75-52,144, and
33 amendments thereto, including but not limited to, an approved after-care
34 plan. If the defendant fails to participate in or has a pattern of intentional
35 conduct that demonstrates the offender's refusal to comply with or par-
36 ticipate in the treatment program, as established by judicial finding, the
37 defendant shall be subject to revocation of probation and the defendant
38 shall serve the underlying prison sentence as established in K.S.A. 21-
39 4705, and amendments thereto. For those offenders who are convicted
40 on or after the effective date of this act, upon completion of the under-
41 lying prison sentence, the defendant shall not be subject to a period of
42 postrelease supervision. The amount of time spent participating in such
43 program shall not be credited as service on the underlying prison

1 sentence.

2 (o) *In addition to any sentence imposed upon an offender for violation*
3 *of any criminal offense that includes the domestic violence designation,*
4 *pursuant to section 1, and amendments thereto, an offender shall also be*
5 *ordered to undergo a domestic violence offender assessment and complete*
6 *all recommendations. The court may order an assessment prior to sen-*
7 *tencing if an assessment would assist the court in determining an appro-*
8 *priate sentence. The court may order a domestic violence offender assess-*
9 *ment and recommendations to be followed in any appropriate case. An*
10 *offender ordered to undergo a domestic violence offender assessment and*
11 *recommendations shall be required to pay for such assessment and rec-*
12 *ommendations. The court may also order any evaluation prior to sen-*
13 *tencing if an evaluation would assist the court in determining an appro-*
14 *priate sentence. The court may order any evaluation and*
15 *recommendations to be followed in any appropriate case. An offender*
16 *ordered to undergo any evaluation and recommendations shall be re-*
17 *quired to pay for such evaluation and recommendations.*

18 Sec. 6. K.S.A. 2008 Supp. 21-4704 is hereby amended to read as
19 follows: 21-4704. (a) For purposes of sentencing, the following sentencing
20 guidelines grid for nondrug crimes shall be applied in felony cases for
21 crimes committed on or after July 1, 1993:

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SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 33 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	6 5 5

LEGEND
Presumptive Probation
Non-Record
Presumptive Imprisonment

1 (b) The provisions of this section shall be applicable to the sentencing
2 guidelines grid for nondrug crimes. Sentences expressed in such grid
3 represent months of imprisonment.

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

9 (d) The sentencing guidelines grid for nondrug crimes as provided in
10 this section defines presumptive punishments for felony convictions, sub-
11 ject to judicial discretion to deviate for substantial and compelling reasons
12 and impose a different sentence in recognition of aggravating and miti-
13 gating factors as provided in this act. The appropriate punishment for a
14 felony conviction should depend on the severity of the crime of conviction
15 when compared to all other crimes and the offender's criminal history.

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

20 (2) In presumptive imprisonment cases, the sentencing court shall
21 pronounce the complete sentence which shall include the prison sen-
22 tence, the maximum potential reduction to such sentence as a result of
23 good time and the period of postrelease supervision at the sentencing
24 hearing. Failure to pronounce the period of postrelease supervision shall
25 not negate the existence of such period of postrelease supervision.

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

29 (f) Each grid block states the presumptive sentencing range for an
30 offender whose crime of conviction and criminal history place such of-
31 fender in that grid block. If an offense is classified in a grid block below
32 the dispositional line, the presumptive disposition shall be nonimprison-
33 ment. If an offense is classified in a grid block above the dispositional
34 line, the presumptive disposition shall be imprisonment. If an offense is
35 classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional
36 nonprison sentence upon making the following findings on the record:

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

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

43 (3) the nonprison sanction will serve community safety interests by

1 promoting offender reformation.

2 Any decision made by the court regarding the imposition of an optional
3 nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or
4 6-G shall not be considered a departure and shall not be subject to appeal.

5 (g) The sentence for the violation of K.S.A. 21-3415, and amend-
6 ments thereto, aggravated battery against a law enforcement officer com-
7 mitted prior to July 1, 2006, or K.S.A. 21-3411, and amendments thereto,
8 aggravated assault against a law enforcement officer, which places the
9 defendant's sentence in grid block 6-H or 6-I shall be presumed impris-
10 onment. The court may impose an optional nonprison sentence upon
11 making a finding on the record that the nonprison sanction will serve
12 community safety interests by promoting offender reformation. Any deci-
13 sion made by the court regarding the imposition of the optional non-
14 prison sentence, if the offense is classified in grid block 6-H or 6-I, shall
15 not be considered departure and shall not be subject to appeal.

16 (h) When a firearm is used to commit any person felony, the of-
17 fender's sentence shall be presumed imprisonment. The court may im-
18 pose an optional nonprison sentence upon making a finding on the record
19 that the nonprison sanction will serve community safety interests by pro-
20 moting offender reformation. Any decision made by the court regarding
21 the imposition of the optional nonprison sentence shall not be considered
22 a departure and shall not be subject to appeal.

23 (i) The sentence for the violation of the felony provision of K.S.A. 8-
24 1567, ~~subsection (b)(3) of K.S.A. 21-3412a~~, subsections (b)(3) and (b)(4)
25 of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments
26 thereto, shall be as provided by the specific mandatory sentencing
27 requirements of that section and shall not be subject to the provisions of
28 this section or K.S.A. 21-4707 and amendments thereto. If because of the
29 offender's criminal history classification the offender is subject to pre-
30 sumptive imprisonment or if the judge departs from a presumptive pro-
31 bation sentence and the offender is subject to imprisonment, the provi-
32 sions of this section and K.S.A. 21-4707, and amendments thereto, shall
33 apply and the offender shall not be subject to the mandatory sentence as
34 provided in K.S.A. 21-3710, and amendments thereto. Notwithstanding
35 the provisions of any other section, the term of imprisonment imposed
36 for the violation of the felony provision of K.S.A. 8-1567, ~~subsection (b)(3)~~
37 ~~of K.S.A. 21-3412a~~, subsections (b)(3) and (b)(4) of K.S.A. 21-3710,
38 K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall not
39 be served in a state facility in the custody of the secretary of corrections,
40 except that the term of imprisonment for felony violations of K.S.A. 8-
41 1567, and amendments thereto, may be served in a state correctional
42 facility designated by the secretary of corrections if the secretary deter-
43 mines that substance abuse treatment resources and facility capacity is

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

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

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

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

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

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

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

5 (m) The sentence for a violation of K.S.A. 22-4903 or subsection (d)
6 of K.S.A. 21-3812, and amendments thereto, shall be presumptive im-
7 prisonment. If an offense under such sections is classified in grid blocks
8 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison
9 sentence upon making the following findings on the record:

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

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

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

19 (n) The sentence for a third or subsequent violation of subsection (b)
20 of K.S.A. 21-3705, and amendments thereto, shall be presumptive im-
21 prisonment. Such sentence shall not be considered a departure and shall
22 not be subject to appeal.

23 (o) The sentence for a felony violation of K.S.A. 21-3701 or 21-3715,
24 and amendments thereto, when such person being sentenced has no prior
25 convictions for a violation of K.S.A. 21-3701 or 21-3715, and amendments
26 thereto; or the sentence for a felony violation of K.S.A. 21-3701, and
27 amendments thereto, when such person being sentenced has one or two
28 prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-
29 3716, and amendments thereto; or the sentence for a felony violation of
30 K.S.A. 21-3715, and amendments thereto, when such person being sen-
31 tenced has one prior felony conviction for a violation of K.S.A. 21-3701,
32 21-3715 or 21-3716, and amendments thereto, shall be the sentence as
33 provided by this section, except that the court may order an optional
34 nonprison sentence for a defendant to participate in a drug treatment
35 program, including, but not limited to, an approved after-care plan, if the
36 court makes the following findings on the record:

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

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

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

1 A defendant sentenced to an optional nonprison sentence under this
2 subsection shall be supervised by community correctional services. The
3 provisions of subsection (f)(1) of K.S.A. 21-4729, and amendments
4 thereto, shall apply to a defendant sentenced under this subsection.

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

7 (p) The sentence for a felony violation of K.S.A. 21-3701, and amend-
8 ments thereto, when such person being sentenced has any combination
9 of three or more prior felony convictions for violations of K.S.A. 21-3701,
10 21-3715 or 21-3716 and amendments thereto, or the sentence for a vio-
11 lation of K.S.A. 21-3715, and amendments thereto, when such person
12 being sentenced has any combination of two or more prior convictions
13 for violations of K.S.A. 21-3701, 21-3715 and 21-3716, and amendments
14 thereto, shall be presumed imprisonment and the defendant shall be sen-
15 tenced to prison as provided by this section, except that the court may
16 recommend that an offender be placed in the custody of the secretary of
17 corrections, in a facility designated by the secretary to participate in an
18 intensive substance abuse treatment program, upon making the following
19 findings on the record:

20 (1) Substance abuse was an underlying factor in the commission of
21 the crime;

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

25 (3) participation in an intensive substance abuse treatment program
26 with the possibility of an early release from imprisonment will serve com-
27 munity safety interests by promoting offender reformation.

28 The intensive substance abuse treatment program shall be determined
29 by the secretary of corrections, but shall be for a period of at least four
30 months. Upon the successful completion of such intensive treatment pro-
31 gram, the offender shall be returned to the court and the court may
32 modify the sentence by directing that a less severe penalty be imposed
33 in lieu of that originally adjudged within statutory limits. If the offender's
34 term of imprisonment expires, the offender shall be placed under the
35 applicable period of postrelease supervision.

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

38 Sec. 7. K.S.A. 22-2307 is hereby amended to read as follows: 22-
39 2307. (a) All law enforcement agencies in this state shall adopt written
40 policies regarding domestic violence calls as provided in subsection (b).
41 These policies shall be made available to all officers of such agency.

42 (b) Such written policies shall include, but not be limited to, the
43 following:

- 1 (1) A statement directing that the officers shall make an arrest when
2 they have probable cause to believe that a crime is being committed or
3 has been committed *in accordance with K.S.A. 22-2401, and amendments*
4 *thereto*;
- 5 (2) a statement defining domestic violence *in accordance with K.S.A.*
6 *21-3110, and amendments thereto*;
- 7 (3) a statement describing the dispatchers' responsibilities;
- 8 (4) a statement describing the responding officers' responsibilities
9 and procedures to follow when responding to a domestic violence call
10 and the suspect is at the scene;
- 11 (5) a statement regarding procedures when the suspect has left the
12 scene of the crime;
- 13 (6) procedures for both misdemeanor and felony cases;
- 14 (7) procedures for law enforcement officers to follow when handling
15 domestic violence calls involving court orders, including protection from
16 abuse orders, restraining orders and a protective order issued by a court
17 of any state or Indian tribe;
- 18 (8) a statement that the law enforcement agency shall provide the
19 following information to victims, in writing:
- 20 (A) Availability of emergency and medical telephone numbers, if
21 needed;
- 22 (B) the law enforcement agency's report number;
- 23 (C) the address and telephone number of the prosecutor's office the
24 victim should contact to obtain information about victims' rights pursuant
25 to K.S.A. 74-7333 and 74-7335 and amendments thereto;
- 26 (D) the name and address of the crime victims' compensation board
27 and information about possible compensation benefits;
- 28 (E) advise the victim that the details of the crime may be made
29 public;
- 30 (F) advise the victim of such victims' rights under K.S.A. 74-7333 and
31 74-7335 and amendments thereto; and
- 32 (G) advise the victim of known available resources which may assist
33 the victim; and
- 34 (9) whether an arrest is made or not, a standard offense report shall
35 be completed on all such incidents and sent to the Kansas bureau of
36 investigation.
- 37 Sec. 8. K.S.A. 22-2401 is hereby amended to read as follows: 22-
38 2401. (a) A law enforcement officer may arrest a person under any of the
39 following circumstances:
- 40 ~~(a)~~ (1) The officer has a warrant commanding that the person be
41 arrested.
- 42 ~~(b)~~ (2) The officer has probable cause to believe that a warrant for
43 the person's arrest has been issued in this state or in another jurisdiction

- 1 for a felony committed therein.
- 2 ~~(c)~~ (3) The officer has probable cause to believe that the person is
 3 committing or has committed:
- 4 ~~(1)~~ (A) A felony; or
- 5 ~~(2)~~ (B) a misdemeanor, and the law enforcement officer has probable
 6 cause to believe that:
- 7 ~~(A)~~ (i) The person will not be apprehended or evidence of the crime
 8 will be irretrievably lost unless the person is immediately arrested;
- 9 ~~(B)~~ (ii) the person may cause injury to self or others or damage to
 10 property unless immediately arrested; or
- 11 ~~(C)~~ (iii) the person has intentionally inflicted bodily harm to another
 12 person.
- 13 ~~(4)~~ (4) Any crime, except a traffic infraction or a cigarette or tobacco
 14 infraction, has been or is being committed by the person in the officer's
 15 view.
- 16 (b) (1) *When a law enforcement officer determines that there is prob-*
 17 *able cause to believe that a crime or offense involving domestic violence,*
 18 *as defined in K.S.A. 21-3110, and amendments thereto, has been com-*
 19 *mitted, the officer shall, without undue delay, arrest the person suspected*
 20 *of its commission pursuant to the provisions of paragraph (2). Nothing in*
 21 *this subsection shall be construed to require a law enforcement officer to*
 22 *arrest both parties involved in an alleged act of domestic violence when*
 23 *both claim to have been victims of such domestic violence. Additionally,*
 24 *nothing in this subsection shall be construed to require a law enforcement*
 25 *officer to arrest either party involved in an alleged act of domestic violence*
 26 *when the law enforcement officer determines there is no probable cause*
 27 *to believe that a crime or offense has been committed.*
- 28 (2) *If a law enforcement officer receives complaints of domestic vio-*
 29 *lence from two or more opposing persons, the officer shall evaluate each*
 30 *complaint separately to determine if a crime has been committed by the*
 31 *predominant aggressor. In determining whether a crime has been com-*
 32 *mitted by a predominant aggressor, the officer shall consider the*
 33 *following:*
- 34 (A) *The possibility that one of the persons acted in self-defense;*
- 35 (B) *any prior complaints of domestic violence;*
- 36 (C) *the relative severity of the injuries inflicted on each person;*
- 37 (D) *the likelihood of future injury to each person;*
- 38 (E) *information from witnesses; and*
- 39 (F) *physical evidence.*
- 40 Sec. 9. K.S.A. 22-3210 is hereby amended to read as follows: 22-
 41 3210. (a) Before or during trial a plea of guilty or *nolo contendere* may
 42 be accepted when:
- 43 (1) The defendant or counsel for the defendant enters such plea in

1 open court; and

2 (2) in felony cases the court has informed the defendant of the con-
3 sequences of the plea, including the specific sentencing guidelines level
4 of any crime committed on or after July 1, 1993, and of the maximum
5 penalty provided by law which may be imposed upon acceptance of such
6 plea; and

7 (3) in felony cases the court has addressed the defendant personally
8 and determined that the plea is made voluntarily with understanding of
9 the nature of the charge and the consequences of the plea; and

10 (4) the court is satisfied that there is a factual basis for the plea.

11 (b) In felony cases the defendant must appear and plead personally
12 and a verbatim record of all proceedings at the plea and entry of judgment
13 thereon shall be made.

14 (c) In traffic infraction, cigarette or tobacco infraction and misde-
15 meanor cases the court may allow the defendant to appear and plead by
16 counsel.

17 (d) A plea of guilty or *nolo contendere*, for good cause shown and
18 within the discretion of the court, may be withdrawn at any time before
19 sentence is adjudged. To correct manifest injustice the court after sen-
20 tence may set aside the judgment of conviction and permit the defendant
21 to withdraw the plea.

22 (e) *A defendant charged with committing a crime, the underlying fac-*
23 *tual basis of which includes an act of domestic violence, as defined in*
24 *K.S.A. 21-3110, and amendments thereto, shall not be allowed to plead*
25 *guilty or nolo contendere to an offense that does not include the domestic*
26 *violence designation, pursuant to section 1, and amendments thereto, un-*
27 *less the prosecuting attorney, in good faith, cannot establish a prima facie*
28 *case that an intimate relationship currently exists or previously existed*
29 *between the defendant and the complaining witness. The prosecuting at-*
30 *torney shall state such assertion on the record. The court's findings shall*
31 *specify the relationship between the defendant and the complaining*
32 *witness.*

33 (f) *A court shall not accept a plea of guilty or nolo contendere to an*
34 *offense that does not include the domestic violence designation when the*
35 *underlying factual basis of the original offense includes an act of domestic*
36 *violence unless there is a good faith representation by the prosecuting*
37 *attorney to the court that the prosecuting attorney is unable to establish*
38 *a prima facie case if the defendant charged were brought to trial on the*
39 *original offense.*

40 Sec. 10. K.S.A. 60-3107 is hereby amended to read as follows: 60-
41 3107. (a) The court may approve any consent agreement to bring about
42 a cessation of abuse of the plaintiff or minor children or grant any of the
43 following orders:

- 1 (1) Restraining the defendant from abusing, molesting or interfering
2 with the privacy or rights of the plaintiff or of any minor children of the
3 parties. Such order shall contain a statement that if such order is violated,
4 such violation may constitute assault as provided in K.S.A. 21-3408, and
5 amendments thereto, battery as provided in K.S.A. 21-3412, and amend-
6 ments thereto, ~~domestic battery as provided in K.S.A. 2005 Supp. 21-~~
7 ~~3412a, and amendments thereto~~ and violation of a protective order as
8 provided in K.S.A. ~~2005 Supp.~~ 21-3843, and amendments thereto.
- 9 (2) Granting possession of the residence or household to the plaintiff
10 to the exclusion of the defendant, and further restraining the defendant
11 from entering or remaining upon or in such residence or household, sub-
12 ject to the limitation of subsection (d). Such order shall contain a state-
13 ment that if such order is violated, such violation shall constitute criminal
14 trespass as provided in subsection (c) of K.S.A. 21-3721, and amendments
15 thereto, and violation of a protective order as provided in K.S.A. ~~2005~~
16 ~~Supp.~~ 21-3843, and amendments thereto. The court may grant an order,
17 which shall expire 60 days following the date of issuance, restraining the
18 defendant from cancelling utility service to the residence or household.
- 19 (3) Requiring defendant to provide suitable, alternate housing for the
20 plaintiff and any minor children of the parties.
- 21 (4) Awarding temporary custody and residency and establishing tem-
22 porary parenting time with regard to minor children.
- 23 (5) Ordering a law enforcement officer to evict the defendant from
24 the residence or household.
- 25 (6) Ordering support payments by a party for the support of a party's
26 minor child, if the party is the father or mother of the child, or the plain-
27 tiff, if the plaintiff is married to the defendant. Such support orders shall
28 remain in effect until modified or dismissed by the court or until expi-
29 ration and shall be for a fixed period of time not to exceed one year. On
30 the motion of the plaintiff, the court may extend the effect of such order
31 for 12 months.
- 32 (7) Awarding costs and attorney fees to either party.
- 33 (8) Making provision for the possession of personal property of the
34 parties and ordering a law enforcement officer to assist in securing pos-
35 session of that property, if necessary.
- 36 (9) Requiring any person against whom an order is issued to seek
37 counseling to aid in the cessation of abuse.
- 38 (10) Ordering or restraining any other acts deemed necessary to pro-
39 mote the safety of the plaintiff or of any minor children of the parties.
- 40 (b) No protection from abuse order shall be entered against the plain-
41 tiff unless:
- 42 (1) The defendant properly files a written cross or counter petition
43 seeking such a protection order;

- 1 (2) the plaintiff had reasonable notice of the written cross or counter
2 petition by personal service as provided in subsection (d) of K.S.A. 60-
3 3104, and amendments thereto; and
- 4 (3) the issuing court made specific findings of abuse against both the
5 plaintiff and the defendant and determined that both parties acted pri-
6 marily as aggressors and neither party acted primarily in self-defense.
- 7 (c) Any order entered under the protection from abuse act shall not
8 be subject to modification on ex parte application or on motion for tem-
9 porary orders in any action filed pursuant to K.S.A. 60-1601 et seq., or
10 K.S.A. 38-1101 et seq., and amendments thereto. Orders previously is-
11 sued in an action filed pursuant to K.S.A. 60-1601 et seq., or K.S.A. 38-
12 1101 et seq., and amendments thereto, shall be subject to modification
13 under the protection from abuse act only as to those matters subject to
14 modification by the terms of K.S.A. 60-1610 et seq., and amendments
15 thereto, and on sworn testimony to support a showing of good cause.
16 Immediate and present danger of abuse to the plaintiff or minor children
17 shall constitute good cause. If an action is filed pursuant to K.S.A. 60-
18 1610 et seq., or K.S.A. 38-1101 et seq., and amendments thereto, during
19 the pendency of a proceeding filed under the protection from abuse act
20 or while an order issued under the protection from abuse act is in effect,
21 the court, on final hearing or on agreement of the parties, may issue final
22 orders authorized by K.S.A. 60-1610, and amendments thereto, that are
23 inconsistent with orders entered under the protection from abuse act.
24 Any inconsistent order entered pursuant to this subsection shall be spe-
25 cific in its terms, reference the protection from abuse order and parts
26 thereof being modified and a copy thereof shall be filed in both actions.
27 The court shall consider whether the actions should be consolidated in
28 accordance with K.S.A. 60-242, and amendments thereto.
- 29 (d) If the parties to an action under the protection from abuse act
30 are not married to each other and one party owns the residence or house-
31 hold, the court shall not have the authority to grant possession of the
32 residence or household under subsection (a)(2) to the exclusion of the
33 party who owns it.
- 34 (e) Subject to the provisions of subsections (b), (c) and (d), a protec-
35 tive order or approved consent agreement shall remain in effect until
36 modified or dismissed by the court and shall be for a fixed period of time
37 not to exceed one year, except that, on motion of the plaintiff, such period
38 may be extended for one additional year.
- 39 (f) The court may amend its order or agreement at any time upon
40 motion filed by either party.
- 41 (g) No order or agreement under the protection from abuse act shall
42 in any manner affect title to any real property.
- 43 (h) If a person enters or remains on premises or property violating

1 an order issued pursuant to subsection (a)(2), such violation shall consti-
2 tute criminal trespass as provided in subsection (c) of K.S.A. 21-3721, and
3 amendments thereto, and violation of a protective order as provided in
4 K.S.A. ~~2005 Supp. 21-3843~~, and amendments thereto. If a person abuses,
5 molests or interferes with the privacy or rights of another violating an
6 order issued pursuant to subsection (a)(1), such violation may constitute
7 assault as provided in K.S.A. 21-3408, and amendments thereto, battery
8 as provided in K.S.A. 21-3412, and amendments thereto, ~~domestic battery~~
9 ~~as provided in K.S.A. 2005 Supp. 21-3412a~~, and amendments thereto,
10 and violation of a protective order as provided in K.S.A. ~~2005 Supp. 21-~~
11 ~~3843~~, and amendments thereto.

12 Sec. 11. K.S.A. 2008 Supp. 72-1397 is hereby amended to read as
13 follows: 72-1397. (a) The state board of education shall not knowingly
14 issue a license to or renew the license of any person who has been con-
15 victed of:

- 16 (1) Rape, as defined in K.S.A. 21-3502, and amendments thereto;
- 17 (2) indecent liberties with a child, as defined in K.S.A. 21-3503, and
18 amendments thereto;
- 19 (3) aggravated indecent liberties with a child, as defined in K.S.A. 21-
20 3504, and amendments thereto;
- 21 (4) criminal sodomy, as defined in subsection (a)(2) or (a)(3) of K.S.A.
22 21-3505, and amendments thereto;
- 23 (5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, and
24 amendments thereto;
- 25 (6) indecent solicitation of a child, as defined in K.S.A. 21-3510, and
26 amendments thereto;
- 27 (7) aggravated indecent solicitation of a child, as defined in K.S.A.
28 21-3511, and amendments thereto;
- 29 (8) sexual exploitation of a child, as defined in K.S.A. 21-3516, and
30 amendments thereto;
- 31 (9) aggravated incest, as defined in K.S.A. 21-3603, and amendments
32 thereto;
- 33 (10) aggravated endangering a child, as defined in K.S.A. 21-3608a,
34 and amendments thereto;
- 35 (11) abuse of a child, as defined in K.S.A. 21-3609, and amendments
36 thereto;
- 37 (12) capital murder, as defined in K.S.A. 21-3439, and amendments
38 thereto;
- 39 (13) murder in the first degree, as defined in K.S.A. 21-3401, and
40 amendments thereto;
- 41 (14) murder in the second degree, as defined in K.S.A. 21-3402, and
42 amendments thereto;
- 43 (15) voluntary manslaughter, as defined in K.S.A. 21-3403, and

- 1 amendments thereto;
- 2 (16) involuntary manslaughter, as defined in K.S.A. 21-3404, and
3 amendments thereto;
- 4 (17) involuntary manslaughter while driving under the influence of
5 alcohol or drugs, as defined in K.S.A. 21-3442, and amendments thereto;
- 6 (18) sexual battery, as defined in K.S.A. 21-3517, and amendments
7 thereto, when, at the time the crime was committed, the victim was less
8 than 18 years of age or a student of the person committing such crime;
- 9 (19) aggravated sexual battery, as defined in K.S.A. 21-3518, and
10 amendments thereto;
- 11 (20) attempt under K.S.A. 21-3301, and amendments thereto, to
12 commit any act specified in this subsection;
- 13 (21) conspiracy under K.S.A. 21-3302, and amendments thereto, to
14 commit any act specified in this subsection;
- 15 (22) an act in another state or by the federal government that is com-
16 parable to any act described in this subsection; or
- 17 (23) an offense in effect at any time prior to the effective date of this
18 act that is comparable to an offense as provided in this subsection.
- 19 (b) Except as provided in subsection (c), the state board of education
20 shall not knowingly issue a license to or renew the license of any person
21 who has been convicted of, or has entered into a criminal diversion agree-
22 ment after having been charged with:
- 23 (1) A felony under the uniform controlled substances act;
- 24 (2) a felony described in any section of article 34 of chapter 21 of the
25 Kansas Statutes Annotated, other than an act specified in subsection (a),
26 or a battery, as described in K.S.A. 21-3412, and amendments thereto,
27 ~~or domestic battery, as described in K.S.A. 21-3412a, and amendments~~
28 ~~thereto~~, if the victim is a minor or student;
- 29 (3) a felony described in any section of article 35 of chapter 21 of the
30 Kansas Statutes Annotated, other than an act specified in subsection (a);
- 31 (4) any act described in any section of article 36 of chapter 21 of the
32 Kansas Statutes Annotated, other than an act specified in subsection (a);
- 33 (5) a felony described in article 37 of chapter 21 of the Kansas Stat-
34 utes Annotated;
- 35 (6) promoting obscenity, as described in K.S.A. 21-4301, and amend-
36 ments thereto, promoting obscenity to minors, as described in K.S.A. 21-
37 4301a, and amendments thereto, or promoting to minors obscenity harm-
38 ful to minors, as described in K.S.A. 21-4301c, and amendments thereto;
- 39 (7) endangering a child, as defined in K.S.A. 21-3608, and amend-
40 ments thereto;
- 41 (8) driving under the influence of alcohol or drugs in violation of
42 K.S.A. 8-1567 or 8-2,144, and amendments thereto, when the violation
43 is punishable as a felony;

1 (9) attempt under K.S.A. 21-3301, and amendments thereto, to com-
2 mit any act specified in this subsection;

3 (10) conspiracy under K.S.A. 21-3302, and amendments thereto, to
4 commit any act specified in this subsection; or

5 (11) an act committed in violation of a federal law or in violation of
6 another state's law that is comparable to any act described in this
7 subsection.

8 (c) The state board of education may issue a license to or renew the
9 license of a person who has been convicted of committing an offense or
10 act described in subsection (b) or who has entered into a criminal diver-
11 sion agreement after having been charged with an offense or act described
12 in subsection (b) if the state board determines, following a hearing, that
13 the person has been rehabilitated for a period of at least five years from
14 the date of conviction of the offense or commission of the act or, in the
15 case of a person who has entered into a criminal diversion agreement,
16 that the person has satisfied the terms and conditions of the agreement.
17 The state board of education may consider factors including, but not
18 limited to, the following in determining whether to grant a license:

19 (1) The nature and seriousness of the offense or act;

20 (2) the conduct of the person subsequent to commission of the of-
21 fense or act;

22 (3) the time elapsed since the commission of the offense or act;

23 (4) the age of the person at the time of the offense or act;

24 (5) whether the offense or act was an isolated or recurring incident;
25 and

26 (6) discharge from probation, pardon or expungement.

27 (d) Before any license is denied by the state board of education for
28 any of the offenses or acts specified in subsections (a) and (b), the person
29 shall be given notice and an opportunity for a hearing in accordance with
30 the provisions of the Kansas administrative procedure act.

31 (e) The county or district attorney shall file a report with the state
32 board of education indicating the name, address and social security num-
33 ber of any person who has been determined to have committed any of-
34 fense or act specified in subsection (a) or (b) or to have entered into a
35 criminal diversion agreement after having been charged with any offense
36 or act specified in subsection (b). Such report shall be filed within 30
37 days of the date of the determination that the person has committed any
38 such act or entered into any such diversion agreement.

39 (f) The state board of education shall not be liable for civil damages
40 to any person refused issuance or renewal of a license by reason of the
41 state board's compliance, in good faith, with the provisions of this section.

42 Sec. 12. K.S.A. 2008 Supp. 72-5445 is hereby amended to read as
43 follows: 72-5445. (a) (1) Subject to the provisions of subsection (b), the

1 provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto,
2 apply only to: (A) Teachers who have completed not less than three con-
3 secutive years of employment, and been offered a fourth contract, in the
4 school district, area vocational-technical school or community college by
5 which any such teacher is currently employed; and (B) teachers who have
6 completed not less than two consecutive years of employment, and been
7 offered a third contract, in the school district, area vocational-technical
8 school or community college by which any such teacher is currently em-
9 ployed if at any time prior to the current employment the teacher has
10 completed the years of employment requirement of subpart (A) in any
11 school district, area vocational-technical school or community college in
12 this state.

13 (2) Any board may waive, at any time, the years of employment
14 requirements of provision (1) for any teachers employed by it.

15 (3) The provisions of this subsection are subject to the provisions of
16 K.S.A. 72-5446, and amendments thereto.

17 (b) The provisions of K.S.A. 72-5438 through 72-5443, and amend-
18 ments thereto, do not apply to any teacher whose license has been non-
19 renewed or revoked by the state board of education for the reason that
20 the teacher: (1) Has been convicted of a felony under the uniform con-
21 trolled substances act; (2) has been convicted of a felony described in any
22 section of article 34 of chapter 21 of the Kansas Statutes Annotated or an
23 act described in K.S.A. 21-3412 ~~or K.S.A. 21-3412a~~, and amendments
24 thereto, if the victim is a minor or student; (3) has been convicted of a
25 felony described in any section of article 35 of chapter 21 of the Kansas
26 Statutes Annotated, or has been convicted of an act described in K.S.A.
27 21-3517, and amendments thereto, if the victim is a minor or student; (4)
28 has been convicted of any act described in any section of article 36 of
29 chapter 21 of the Kansas Statutes Annotated; (5) has been convicted of a
30 felony described in article 37 of chapter 21 of the Kansas Statutes An-
31 notated; (6) has been convicted of an attempt under K.S.A. 21-3301, and
32 amendments thereto, to commit any act specified in this subsection; (7)
33 has been convicted of any act which is described in K.S.A. 21-4301, 21-
34 4301a or 21-4301c, and amendments thereto; (8) has been convicted in
35 another state or by the federal government of an act similar to any act
36 described in this subsection; or (9) has entered into a criminal diversion
37 agreement after having been charged with any offense described in this
38 subsection.

39 Sec. 13. K.S.A. 2008 Supp. 74-5602 is hereby amended to read as
40 follows: 74-5602. As used in the Kansas law enforcement training act:

41 (a) "Training center" means the law enforcement training center
42 within the division of continuing education of the university of Kansas,
43 created by K.S.A. 74-5603 and amendments thereto.

- 1 (b) "Commission" means the Kansas commission on peace officers'
2 standards and training, created by K.S.A. 74-5606 and amendments
3 thereto.
- 4 (c) "Dean" means the dean of continuing education of the university
5 of Kansas.
- 6 (d) "Director of police training" means the director of police training
7 at the law enforcement training center.
- 8 (e) "Director" means the executive director of the Kansas commis-
9 sion on peace officers' standards and training.
- 10 (f) "Law enforcement" means the prevention or detection of crime
11 and the enforcement of the criminal or traffic laws of this state or of any
12 municipality thereof.
- 13 (g) "Police officer" or "law enforcement officer" means a full-time or
14 part-time salaried officer or employee of the state, a county or a city,
15 whose duties include the prevention or detection of crime and the en-
16 forcement of the criminal or traffic laws of this state or of any municipality
17 thereof. Such terms shall include, but not be limited to, the sheriff, un-
18 dersheriff and full-time or part-time salaried deputies in the sheriff's of-
19 fice in each county; deputy sheriffs deputized pursuant to K.S.A. 19-2858
20 and amendments thereto; conservation officers of the Kansas department
21 of wildlife and parks; university police officers, as defined in K.S.A. 22-
22 2401a, and amendments thereto; campus police officers, as defined in
23 K.S.A. 22-2401a, and amendments thereto; law enforcement agents of
24 the director of alcoholic beverage control; law enforcement agents des-
25 ignated by the secretary of revenue pursuant to K.S.A. 2007 Supp. 75-
26 5157, and amendments thereto; law enforcement agents of the Kansas
27 lottery; law enforcement agents of the Kansas racing commission; depu-
28 ties and assistants of the state fire marshal having law enforcement au-
29 thority; capitol police, existing under the authority of K.S.A. 75-4503 and
30 amendments thereto; and law enforcement officers appointed by the ad-
31 jutant general pursuant to K.S.A. 48-204, and amendments thereto. Such
32 terms shall also include railroad policemen appointed pursuant to K.S.A.
33 66-524 and amendments thereto; school security officers designated as
34 school law enforcement officers pursuant to K.S.A. 72-8222 and amend-
35 ments thereto; and the director of the Kansas commission on peace of-
36 ficers' standards and training and any other employee of such commission
37 designated by the director pursuant to K.S.A. 74-5603, and amendments
38 thereto, as a law enforcement officer. Such terms shall not include any
39 elected official, other than a sheriff, serving in the capacity of a law en-
40 forcement or police officer solely by virtue of such official's elected po-
41 sition; any attorney-at-law having responsibility for law enforcement and
42 discharging such responsibility solely in the capacity of an attorney; any
43 employee of the commissioner of juvenile justice, the secretary of cor-

1 rections or the secretary of social and rehabilitation services; any deputy
2 conservation officer of the Kansas department of wildlife and parks; or
3 any employee of a city or county who is employed solely to perform
4 correctional duties related to jail inmates and the administration and op-
5 eration of a jail; or any full-time or part-time salaried officer or employee
6 whose duties include the issuance of a citation or notice to appear pro-
7 vided such officer or employee is not vested by law with the authority to
8 make an arrest for violation of the laws of this state or any municipality
9 thereof, and is not authorized to carry firearms when discharging the
10 duties of such person's office or employment. Such term shall include
11 any officer appointed or elected on a provisional basis.

12 (h) "Full-time" means employment requiring at least 1,000 hours of
13 law enforcement related work per year.

14 (i) "Part-time" means employment on a regular schedule or employ-
15 ment which requires a minimum number of hours each payroll period,
16 but in any case requiring less than 1,000 hours of law enforcement related
17 work per year.

18 (j) "Misdemeanor crime of domestic violence" means a violation of
19 ~~domestic battery as provided by K.S.A. 21-3412a~~ K.S.A. 21-3412, and
20 amendments thereto, or any other misdemeanor under federal, municipal
21 or state law that has as an element the use or attempted use of physical
22 force, or the threatened use of a deadly weapon, committed by a current
23 or former spouse, parent, or guardian of the victim, by a person with
24 whom the victim shares a child in common, by a person who is cohabiting
25 with or has cohabited with the victim as a spouse, parent or guardian, or
26 by a person similarly situated to a spouse, parent or guardian of the victim.

27 (k) "Auxiliary personnel" means members of organized nonsalaried
28 groups which operate as an adjunct to a police or sheriff's department,
29 including reserve officers, posses and search and rescue groups.

30 (l) "Active law enforcement certificate" means a certificate which at-
31 tests to the qualification of a person to perform the duties of a law en-
32 forcement officer and which has not been suspended or revoked by action
33 of the Kansas commission on peace officers' standards and training and
34 has not lapsed by operation of law as provided in K.S.A. 74-5622, and
35 amendments thereto.

36 Sec. 14. K.S.A. 20-369, 21-3412a, 21-4603d, 22-2307, 22-2401, 22-
37 3210 and 60-3107 and K.S.A. 2008 Supp. 12-4104, 21-3110, 21-4704, 72-
38 1397, 72-5445 and 74-5602 are hereby repealed.

39 Sec. 15. This act shall take effect and be in force from and after April
40 1, 2010, and its publication in the statute book.