KANSAS

SENTENCING GUIDELINES

DESK REFERENCE MANUAL

2016

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Available on the Kansas Sentencing Commission website www.sentencing.ks.gov:

Time Line of Selected Events Related to the KSGA

Selected Attorney General Opinions on Topics Related to the KSGA and Sentencing Issues

Approved and Disapproved Non-Statutory Departure Reasons Cited by Sentencing Courts

2016 DESK REFERENCE MANUAL

INTRODUCTION

The Kansas Sentencing Guidelines Desk Reference Manual (DRM) provides general instructions for application of the provisions of the Kansas Sentencing Guidelines Act (KSGA), K.S.A. 2016 Supp. 21-6801 *et seq.* The DRM contains features that we hope will not only inform users of the latest developments in 2016 sentencing law but also help to facilitate more efficient understanding and application of the law.

The Kansas Sentencing Commission (KSC) encourages criminal justice professionals to contact our staff for further information and assistance concerning the Desk Reference Manual or the Kansas Sentencing Guidelines Act. Questions may be directed to our staff at (785) 296-0923, or by e-mail at kssc.office@ks.gov

In July of 2011 the Kansas Criminal Code was moved from K.S.A. 21-3101 *et seq.* to K.S.A. 21-5101 *et seq*. statutory citations within the DRM cite to the new, recodified statute numbers. The Kansas Sentencing Commission's website also offers a cross-reference document between the new and former statute numbers.

The statutory listings of felonies and misdemeanors in Appendix D have also been modified to reflect the specific statutory violations based upon the 2016 Legislative Changes. In a departure from previous versions of the manual, the felony and misdemeanor appendices have been combined and organized according to statute number. As a reference, there is a new alphabetical index of crimes to help users locate the correct statute number. The complete versions of both the felony and misdemeanor statute files are posted under the "Agency Publications" link of the website.

In order to reduce the size of the Manual, the Time Line of KSGA Selected Events is posted, along with other Appendices, on the KSC website at www.sentencing.ks.gov. Posting these documents on our website rather than publishing them in the Manual allows us to easily update the material as new information becomes available. All of the 2016 legislative changes relative to the sentencing guidelines remain in the Manual and are summarized in the first section.

ADDITIONAL COPIES

Copies of the Manual in hard copy and electronic form may be ordered from the Kansas Sentencing Commission at www.sentencing.ks.gov or may be accessed and printed free of charge at the KSC website.

 The Desk Reference Manual should always be used in consultation with the applicable Kansas statutes and related case law, the language of which controls.

TIME LINE OF KSGA SELECTED EVENTS

In the 2016 Legislative Session, the Legislature enacted several significant statutory changes affecting the general practice of criminal law and those specifically affecting sentencing law and procedure. We highlight the following:

1) **HB 2463 sets out decay provisions of juvenile adjudications if the current crime of conviction is committed after the offender reaches age 25, changes courts ability to impose prison sanctions on absconders, and changes violations of the Kansas Offender Registration Act to person or nonperson depending on the underlying crime.**

2) **HB 2447 increases program credits.**
   The bill allows:
   - ●increases maximum number of days from 90 days to 120 days. This provision is to be applied retroactively.
   - ●Allows for dismissal of parole conditional release, or postrelease supervision violations charges to be conditioned upon the release inmate agreeing to credit being withheld.

3) **SB 367 creates and amends law related to the Kansas juvenile justice system.**
   The bill does the following:
   - ●Creates a Kansas Juvenile Justice Oversight Committee
   - ●Provides for mandatory training of Juvenile CSO, Corrections Officers, judges, prosecutors and defense attorneys.
   - ●Requires the Attorney General to promulgate rules and regulations for responding effectively to misconduct in school while minimizing student exposure to the juvenile justice system.
   - ●Amends the School Safety and Security Act.
   - ●Creates Corrections Advisory Boards.
   - ●Changes procedures concerning IIP plans and their administration.
   - ●Changes Probation terms, extension procedures, and violations.
   - ●Changes warrant procedures, criteria for detention and community-based alternatives to detention.
   - ●Sets forth jail placement, discharge criteria and limits youth residential facilities.
   - ●Provides for a Juvenile Detention Fund, Juvenile Justice Improvement Fund.

4) **HB 2462 creates a special sentencing rule for burglary, changes amount for a felony theft, and changes the penalties for possession of marijuana.**
   - ●Special Rule #47 states burglary of a dwelling is presumptive prison if the offender has a criminal history score of 7C (one previous person felony and one previous nonperson felony), 7D (one pervious person felony) or 7E (three or more nonperson felonies).
   - ●Theft is now:
     - ○Level 9 nonperson felony from $1000 to $1500
     - ○Class A non person misdemeanor <$1500
   - ●First offense possession of marijuana is now a Class B nonperson misdemeanor, second offense is a Class A nonperson misdemeanor and a third or subsequent offense is a drug severity level 5 felony.

5) **SB 362 creates a hearsay exception to allow for KCJIS central repository records to be admitted into court.**

2016 LEGISLATIVE CHANGES TO THE KSGA AND RELATED CRIMINAL LAW

This summary is by no means exhaustive in its coverage of the session but contains criminal sentencing and relevant collateral issues that may be of interest to criminal justice stakeholders. Bills referenced here can be found at www.kslegislature.org under the Bills and Laws tab.

Sub. for Senate Bill 22
Public Records; Open Records—Law Enforcement Recordings; Definitions; Exceptions

Sub. for SB 22 creates and amends law relating to public records and the Kansas Open Records Act (KORA). The bill creates new law allowing every audio or video recording made and retained by law enforcement using a body camera or a vehicle camera shall be considered a criminal investigation record. The bill defines body camera, vehicle camera and amends the definition of criminal investigation records in KORA to accommodate the new law. All provisions of the bill will expire on July 1, 2021 unless reviewed and reenacted prior to that date. In addition to the existing disclosures under KORA applicable to such recordings, the bill allows certain persons, subjects of the video or recording, to request to listen to an audio recording or to view a video recording made by a body camera or vehicle camera, and the law enforcement agency shall be required to allow such listening or viewing subject to a reasonable fee.

Senate Bill 133
Minor in Possession of Alcohol—Immunity from Liability for Seeking Medical Assistance

SB 133 amends the crime of possessing, consuming, obtaining, purchasing, or attempting to obtain or purchase alcohol by a person under 21 to include immunity from prosecution for a person and, if applicable, one or two other persons acting in concert with such person, who initiated contact with law enforcement or emergency medical services; requested medical assistance on such person's behalf because such person reasonably believed he or she was in need of medical assistance; and cooperated with emergency medical services personnel and law enforcement officers in providing medical assistance. The bill also allow immunity from prosecution to the person requiring medical attention. Law enforcement have immunity if they fail to comply with the new provisions.

House Sub. for Senate Bill 255
Court Docket Fees; Electronic Filing and Management Fund

House Sub for SB 255 creates new law and amends, revives and amends, or repeals various statutes related to Kansas court docket fees. The bill creates the Electronic Filing and Management Fund. All expenditures from this fund shall be for the purposes of creating, implementing, and managing an electronic filing and centralized case management system for the state court system. A number of statutes were revived allowing for various funds to be reinstated and changed to take into account the Management Fund. A statute regarding expungement is amended to resolve a conflict with other versions of the statute regarding the sunset date, June 30, 2017, for the Judicial Branch surcharge.

Senate Bill 319
Public Speech Protection Act; Habeas Corpus; Protection from Stalking Act

SB 319 makes changes to the Protection from Stalking Act. Under the bill, the definition of "harassment" is expanded to include any course of conduct carried out through the use of an unmanned aerial system, commonly known as a drone. The bill defines unmanned aerial system. This bill also amends law concerning motions to vacate, set aside, or correct a sentence.

Senate Bill 362
Criminal Justice Information System; Electronically Stored Information; Hearsay Evidence Exception—Official Record or Absence of Record

SB 362 amends law relating to the Kansas Criminal Justice Information System (KCJIS). The bill allows the Kansas Bureau of Investigation to enter into agreements with state agencies and municipalities to share and authenticate electronically stored information to the KCJIS central repository. The definition of "criminal justice information system" is amended to incorporate such electronically stored information, and a definition for "electronically stored information" is added. The bill amends K.S.A. 60-465 to include KCJIS central repository records within the hearsay evidence exception for content of official records or absence of records.

Senate Bill 367
Juvenile Justice System

SB 367 creates and amends law related to the Kansas juvenile justice system.

Kansas Juvenile Justice Oversight Committee (KJJCO) (New Sec. 4)

The bill establishes the Kansas Juvenile Justice Oversight Committee (KJJOC) to oversee the implementation of reforms in the juvenile justice system. The Committee is charged with various duties related to the performance, evaluation, and improvement of the juvenile justice system. An annual report must be made on or before November 30, beginning in 2017. Appointed members of the Committee shall serve two-year terms and are eligible for reappointment.

The Oversight Committee's consists of:

- The governor or the governor's designee;
- one member of the house of representatives appointed by the speaker of the house of representatives;
- one member of the house of representatives appointed by the minority leader of the house of representatives;
- one member of the senate appointed by the president of the senate;
- one member of the senate appointed by the minority leader of the senate;
- the secretary of corrections or the secretary's designee;
- the secretary for children and families or the secretary's designee;

- the commissioner of education or the commissioner's designee;
- the deputy secretary of juvenile services at the department of corrections or the deputy's designee;
- the director of community-based services at the department of corrections, or the director's designee;
- two district court judges appointed by the chief justice of the supreme court;
- one chief court services officer appointed by the chief justice of the supreme court;
- one member of the office of judicial administration appointed by the chief justice of the supreme court;
- one juvenile defense attorney appointed by the chief justice of the supreme court;
- one juvenile crime victim advocate appointed by the governor;
- one member from a local law enforcement agency appointed by the attorney general;
- one attorney from a prosecuting attorney's office appointed by the attorney general; and
- one member from a community corrections agency appointed by the governor.

These appointments must be made by September 1, 2016. The Committee is to meet quarterly. (New Sec. 4(c)).

Data Exchange (New. Sec. 15)

KDOC and the Committee are required to explore methods of exchanging confidential data among all parts of the juvenile justice system under certain conditions and constraints specified by the bill.

KDOC is authorized to use grant funds, allocated state funds, or any other accessible funding necessary to create a data exchange system.

All state and local programs involved in the care of juveniles involved in the juvenile justice system or the child in need of care system must cooperate in the development and utilization of such system.

Training (New Sec. 5)

Individuals Working with Juveniles-CSO, Corrections Officers, Etc.

Mandatory training provided not less than semiannually on evidence-based programs and practices will be determined by KDOC, in conjunction with Office of Judicial Administration (OJA). Evidence-based is defined as practices, policies, procedures and programs demonstrated by research to produce reduction in the likelihood of reoffending.

Judges, Prosecutors, Defense Attorneys (New Sec. 5(b) & New Sec. 10)

OJA must designate or develop a training protocol.

Annual reports to the legislature and the KJJOC for this type of training will include number of persons who completed and who did NOT complete training.

Misconduct in Schools Training (New Sec. 14)

The Attorney General must collaborate with the Kansas Law Enforcement Training Center and the State Board of Education (SBOE) to promulgate rules and regulations by January 1, 2017, creating skill development training for responding effectively to misconduct in school while minimizing student exposure to the juvenile justice system.

The superintendent or designee of each school district and any law enforcement officer assigned primarily to a school must complete this training.

Such training must include information on adolescent development, risk and needs assessments, mental health, diversity, youth crisis intervention, substance abuse prevention, trauma-informed responses, and other evidence-based practices in school policing to mitigate student juvenile justice exposure.

School Safety and Security Act (Sec. 58 (d) & (i)) is amended as follows:

- requires boards of education to include in their annual school safety and security reports information regarding arrests and referrals to law enforcement or juvenile intake and assessment services made in connection to criminal acts the school is required to report under continuing law.
- adds a requirement that the data in the report include an analysis according to race, gender, and any other relevant information.
- directs the State Board of Education (SBOE) to require the superintendent of schools or designee in each school district to develop, approve, and submit to the SBOE a memorandum of understanding developed in collaboration with relevant stakeholders (including law enforcement agencies, the courts, and the county and district attorneys), establishing clear guidelines for referral of school-based behaviors to law enforcement or the juvenile justice system, with the goal of reducing such referrals and protecting public safety.
- The SBOE must provide an annual report to KDOC and OJA compiling school district compliance and summarizing the content of each memorandum of understanding. Statutory provisions governing reporting of certain student behavior to law enforcement, reporting of certain criminal behavior on school property or at a school-supervised activity, powers of campus police officers, and reporting of inexcusable absences from school are amended to make such provisions subject to the terms of the memorandum of understanding.

Juvenile Corrections Advisory Boards (New Sec. 16, 64(b)(9) & 66)

Juvenile corrections advisory boards are to include a juvenile defense representative, who shall be a practicing juvenile defense attorney in the judicial district and be selected by the judge of the district court who is assigned the juvenile court docket.

These boards are to adhere to the goals of the Juvenile Code and coordination with the KJJOC. The boards should consider annually the availability of treatment programs, programs creating alternatives to incarceration for juvenile offenders, mental health treatment, and the development of risk assessment tools for use in determining pretrial release and probation supervision levels. “Risk assessment tool” is defined in Sec. 29(e).
An annual report is to be provided by each board by October 1 to KDOC and the KJJOC detailing the costs of programs needed in the board’s judicial district to reduce the out-of-home placement of juvenile offenders and improve the recidivism rate of juvenile offenders.

Case Length Limits (New Sec. 1 (a-f))
Jurisdiction of the Court-Effective July 1, 2017

The following overall case length limits for juvenile offenders to remain under the jurisdiction of the court:

- Misdemeanors, up to 12 months;
- Felonies, low-risk and moderate-risk offenders, up to 15 months (subject to provision below); and;
- Felonies-high-risk offenders, up to 18 months (subject to provision below).
- Offgrid felony and nondrug severity level 1 through 4 if committed by an adult-- no overall case length limit is set.
- Multiple counts-maximum overall case length is calculated on the most severe count or any other count at the court's discretion.

Multiple adjudicated counts will not run consecutive. If a juvenile is adjudicated for multiple cases simultaneously the court shall run those concurrently.

Once the overall case length limit expires, the court's jurisdiction terminates and may not be extended. The court is required to establish a specific term of detention when placing a juvenile in detention, which may not exceed the overall case length limit. There is a cumulative detention limit of 45 days over the course of the offender's case, except there is no cumulative detention limit for juveniles adjudicated for an offgrid felony or nondrug severity level 1 through 4 person felony. (New Sec. 1 (h))

Case Plan (New Sec. 2 (c))

When appropriate the CSO responsible for oversight of a juvenile on probation is required to develop a case plan with the juvenile and the juvenile's family. The case plan shall incorporate the results of the risk and needs assessment, referrals to programs, and documentation of violations and graduated responses, and it shall clearly define the role of each person or agency working with the juvenile. The Department for Children and Families (DCF) and the local board of education may participate in the development of the case plan when appropriate. If the juvenile is later committed to the custody of the secretary the plan shall be shared with the juvenile correction facility.

Juvenile Intake and Assessment (Sec. 63)-Effective January 1, 2017

The statute governing the juvenile intake and assessment system is amended to require a juvenile intake and assessment worker to make both release and referral determinations once a juvenile is taken into custody. Stay in a shelter facility or a licensed attendant care center is limited to a maximum of 72 hours. The bill adds immediate intervention programs to the possible referrals by the worker and specifies in the continuing option to refer to the county or district attorney that such referral may be made with or without a recommendation for consideration for alternative adjudication or immediate intervention. The assessment is required for each youth under consideration for detention and may be conducted only by a trained worker.

First Appearance and Immediate Intervention (Sec. 39)-Effective January 1, 2017

Immediate intervention means all programs or practices developed by the county to hold juvenile offenders accountable while allowing such offenders to be diverted from formal court processing**.** See Sec. 29(j).

By January 1, 2017, KDOC must collaborate with the OJA to develop standards and procedures to guide the administration of an immediate intervention plan (IIP) and programs and alternative means of adjudication.

Each director of juvenile intake and assessment services in collaboration with the county or district attorney shall adopt a policy and establish guidelines for an IIP process by which a juvenile may avoid prosecution. In addition to juvenile intake and assessment services adopting policies and guidelines for immediate intervention process, the court the county or district attorney, the director of the intake and assessment center, and other relevant individuals or organizations, pursuant to a written agreement shall collaboratively develop local programs to:

(1) Provide for the direct referral of cases to IIPs by the county or district attorney or the intake and assessment worker, or both, to youth courts, restorative justice centers, hearing officers or other local programs as sanctioned by the court.

(2) Allow intake and assessment workers to issue a summons, and if the county or district attorney juvenile intake and assessment services has adopted appropriate policies and guidelines, allow law enforcement officers to issue such a summons.

(3) Allow the intake and assessment centers and other IIP providers to directly purchase services for the juvenile and the juvenile's family.

(4) Allow intake and assessment workers to direct the release of a juvenile prior to a detention hearing after the completion of the intake and assessment process pursuant to K.S.A. 75-7023, and amendments thereto.

A juvenile who goes through the juvenile intake and assessment shall be offered the opportunity to participate in an IIP, and avoid prosecution if the juvenile is charged with a misdemeanor or a violation of unlawful voluntary sexual relations, the juvenile has no prior adjudications, and the offer is made pursuant to the guidelines developed pursuant to this section. A juvenile may also participate in an IIP if the juvenile is referred for immediate intervention by the county or district attorney.

Any juvenile referred shall, upon acceptance, work together with court services, community corrections, juvenile intake and assessment services or any other entity designated as a part of the written agreement. Such plan may be supervised or unsupervised. The county or district attorney's office shall not be required to supervise juveniles participating in an immediate intervention program.

The IIP plan shall last no longer than 6 months, unless the plan requires the juvenile to complete an evidence-based mental health or substance abuse program. This plan can be extended 2 additional months.

If the juvenile complies with the IIP they will be discharged. However, if the juvenile fails to satisfactorily comply the case will be referred to a multidisciplinary team for review.

Multidisciplinary Team (New Sec. 3)

A court must appoint a multidisciplinary team to review cases where a juvenile fails to substantially comply with the development of the IIP. The Supreme Court must appoint a multidisciplinary team facilitator in each judicial district, and may appoint a convener and facilitator for a multiple-district multidisciplinary team.

The team facilitator must invite the following to be part of the team:

- juvenile;
- juvenile's parents, guardians, or custodial relative;
- superintendent of schools or designee;
- clinician who has training and experience coordinating behavioral or mental health treatment for juveniles, if such clinician is available; and
- any other person or agency representative who is needed to assist.

Immediate Intervention Development/Grants (New Sec. 11)-Effective January 1, 2017

KDOC must create a plan and provide funding to incentivize the development of IIPs. Funds allocated for such plan may be used only to make grants to IIPs that adhere to the standards and procedures for such programs and must be based on the number of persons served and other requirements established by KDOC.

Probation (New Sec. 1 (g))

Term

The court shall establish a specific probation term based on the most serious adjudicated count and the results of the risk and needs assessment. The probation term may not exceed the overall case length limit.

The probation term limits do not apply to adjudications for any offgrid crime, rape, aggravated criminal sodomy, or second-degree murder. Offenders with these adjudications may be placed on probation for a term consistent with the overall case length limit.

The bill establishes the following probation length limits:

- Low-risk and moderate-risk offenders adjudicated for a misdemeanor and low risk offenders adjudicated for a felony, up to 6 months;
- High-risk offenders adjudicated for a misdemeanor and moderate-risk offenders adjudicated for a felony, up to 9 months; and
- High-risk offenders adjudicated for a felony, up to 12 months.

Probation Extension (New Sec. 1 (g)(2))

Probation may be extended if a juvenile needs time to complete an evidence-based program determined to be necessary based on the results of a validated risk and needs assessment.

Prior to the initial extension, the court is required to find and enter into the written record the criteria permitting extension. Extensions will be granted incrementally and may not exceed the overall case length limit.

Probation also may be extended for good cause, as follows:

- Low-risk offenders, up to one month;
- Moderate-risk offenders, up to three months; and
- High-risk offenders, up to six months.

CSOs shall report the reasons for extension to OJA. Community correctional services officers shall report reasons for extension to KDOC. These reports shall be submitted by OJA and KDOC to the KJJOC on a quarterly basis.

Violations of Probation-Graduated Responses (New Sec. 2(a))

By January 1, 2017, KDOC is required to consult with the Supreme Court in adopting rules and regulations for a statewide system of structured community-based graduated responses for technical probation violations, conditional release violations, and sentence condition violations to be used by community supervision officers. The responses shall include sanctions that are swift and certain to address violations based on the severity of the violation and incentives to encourage positive behaviors, while taking into account the juvenile's risks and needs.

Technical Violations (New Sec. 2(b), 36 & 45)

Unless a juvenile poses a significant risk of physical harm to another or damage to property, community supervision officers shall issue a summons rather than request a warrant on a third or subsequent technical violation subject to review by the court.

A technical probation violation may be considered by the court for revocation only if:

- it is a third or subsequent technical violation;
- there are prior documented failed responses; and
- the community supervision officer has determined and documented that graduated responses will not suffice.

Juvenile Taken Into Custody (Sec. 33)

K.S.A. 38-2330 is amended to remove the current authority given a court services officer, juvenile community corrections officer, or other person authorized to supervise juveniles to take a juvenile into custody when there is probable cause to believe the juvenile has violated a term of probation or placement.

Persons authorized to supervise juveniles may request a warrant by giving the court a written statement the juvenile has violated a condition of release from detention or probation for the third or subsequent time and that the juvenile poses a significant risk of physical harm to another or damage to property.

Once the court issues the warrant, the juvenile will be brought to the custody of the juvenile's parent or

other custodian unless there are reasonable grounds to believe such action would not be in the best interests of the child or would pose a risk to public safety or property.

If the juvenile cannot be so delivered to parent or guardian, the officer may issue a notice to appear or contact and deliver the juvenile to an intake and assessment worker for completion of the intake and assessment process.

Warrants (Sec. 33, 36 & 35)

K.S.A. 38-2330 is amended to require when a warrant is issued, the requirement for placement has been removed and the child shall be given to the custody of the juvenile's parent or other custodian, unless there are reasonable grounds to believe that such action would not be in the best interests of the child or would pose a risk to public safety.

Effective January 1, 2017, the authority to arrest and take into custody a juvenile who has violated the terms of probation by a CSO, juvenile community corrections officer or other person authorized to supervise juveniles, is removed and replaced with authority to request a warrant to be issued by the court. The CSO shall give a written statement to the court indicating the juvenile has violated a condition of conditional release from detention or probation for the third or subsequent time and that the juvenile poses a significant risk of physical harm to another or damage to property.

A juvenile taken into custody by a law enforcement officer or other person authorized shall be brought without delay to the custody of the juvenile's parent or other custodian, unless there are reasonable grounds to believe that such action would not be in the best interests of the child or would pose a risk to public safety or property. If the juvenile cannot be placed with parent or custodian, the officer may:

- Issue a notice to appear; or
- contact or deliver the juvenile to an intake and assessment worker for completion of the intake and assessment process.

Provisions giving certain officials and workers discretionary authority to release the juvenile in the absence of court order or upon completion of the intake and assessment process is amended to require mandatory release.

Criteria for Detention (Sec. 34 & 42)-Effective July 1, 2017

Commitment to detention is limited to violation of sentencing conditions where all other alternatives have been exhausted, and the court must find the juvenile poses a significant risk of harm to another or damage to property, is charged with a new felony offense, or violates conditional release. Detention will not be permitted for solely technical violations of probation, contempt, a violation of a valid court order, to protect from self-harm, or due to any state or county failure to find adequate alternatives. Cumulative detention use is limited to a maximum of 45 days and the overall case length.

Placement in a juvenile detention center is <u>prohibited</u> where it is due solely to a lack of supervision alternatives or service options; a parent avoiding legal responsibility; a risk of self-harm; contempt of court; violation of a valid court order; or technical violations of conditional release, unless there is probable cause the juvenile poses a significant risk of harm to others or damage to property, or the applicable graduated responses or sanctions protocol allows such placement.

A court may not order removal from a parent's custody without first in writing finds:

- a detention risk assessment has assessed the juvenile as detention-eligible, or
- there are grounds to override the results of the detention risk assessment and
- probable cause that community-based alternatives to detention are insufficient to secure the presence of the juvenile at the next hearing (as shown by the record) or
- protect the safety of another person or property.

Community-based alternatives to detention may include release:

- on a promise to appear;
- to a parent, guardian, or custodian upon the youth's assurance;
- with reasonable restrictions;
- to a voluntary or mandatory court-ordered community supervision program; or
- with electronic monitoring with various levels of restriction.

A detention review hearing is required at least every 14 days a juvenile is in detention, except for juveniles charged with an offgrid felony or nondrug severity level 1 through 4 felony. Detention risk assessment tool results are allowed to be considered by the court at the detention hearing and requires the court to record any reasons for overriding a detention risk assessment tool score.

Juvenile Alternatives to Detention Fund (Sec. 67)

The Juvenile Detention Facilities Fund will now be called "Juvenile Alternatives to Detention Fund." The purpose of the fund now is the development and operation of community-based alternatives to detention.

Kansas Juvenile Justice Improvement Fund (New Sec. 13)

Creation of the Kansas Juvenile Justice Improvement Fund, to be administered by KDOC. The purpose shall be for the development and implementation of evidence-based community programs and practices for juvenile offenders and their families by community supervision offices, including juvenile intake and assessment, court services, and community corrections. It is funded by a calculation by DOC of actual or projected cost savings due to cost avoidance from decreased reliance on incarceration or residential placement. For 2017 and 2018, KDOC will transfer approximately $8 million to the fund.

Placement in Jail (Sec. 33)-Effective January 1, 2017

Placement in a jail may be used only for a person over the age of 18 who is eligible for detention, when all suitable alternatives have been exhausted. The statute also is amended to remove a reference to youth residential facilities.

Time and Earned Discharge (New Sec. 8, 9 & Sec. 48)

Computation of sentence is amended to incorporate the addition of overall case length limits and to require earned time calculations be incorporated in sentence calculation. Secretary of Corrections is required to promulgate rules and regulations by January 1, 2017, regarding earned time calculations for purposes of determining a juvenile's release date.

The Supreme Court must consult with KDOC to establish rules for a system of earned discharge for juvenile probationers, to be applied by all community supervision officers. Earned discharge credits will be awarded to a probationer for each full calendar month of compliance with terms of supervised probation, pursuant to these rules.

Youth Residential Facilities (Sec. 17)-Effective January 1, 2018

The Secretary of Corrections may contract for up to 50 nonfoster home beds in youth residential facilities for placement of juvenile offenders under certain circumstances specified elsewhere in the bill (and described later in this summary). The Secretary is directed to contract with facilities that have high success rates and that decrease recidivism rates, consider contracting for bed space across the entire state, and give priority to existing facilities that are able to meet the Secretary's requirements.

Reintegration Plan (New Sec. 7)-Effective July 1, 2017

Effective July 1, 2017, if the court places a juvenile outside the home at a dispositional hearing and no reintegration plan is part of the record of the hearing, a written reintegration plan shall be prepared by the person with custody (or, if directed by the court, a community supervision officer) and submitted to the court within 15 days of the initial order of the court. If the persons necessary for the success of the plan do not agree, the person or entity with custody is required to notify the court and the court shall set a hearing.

''Reintegration plan'' is defined in Sec. 29. A reintegration plan means a written document prepared in consultation with the child's parent or guardian that:

1) Describes the reintegration goal, which, if achieved, will most likely give the juvenile and the victim of the juvenile a permanent and safe living arrangement;
2) describes the child's level of physical health, mental and emotional health and educational functioning;
3) provides an assessment of the needs of the child and family;
4) describes the services to be provided to the child, the child's family and the child's foster parents, if appropriate;
5) includes a description of the tasks and responsibilities designed to achieve the plan and to whom assigned;
6) includes measurable objectives and time schedules for achieving the plan; and (7) if the child is in an out of home placement:
    (A) Provides a statement for the basis of determining that reintegration is determined not to be a viable option if such a determination is made and includes a plan for another permanent living arrangement;
    (B) describes available alternatives;
    (C) justifies the alternative placement selected, including a description of the safety and appropriateness of such placement; and
    (D) describes the programs and services that will help the child prepare to live independently as an adult.

Sentencing Alternatives (Sec. 42)-Effective July 1, 2017

A sentencing alternative may be imposed for a fixed period (which may not extend beyond the overall case length limit) pursuant to the placement matrix and the probation terms set by the bill. A provision

regarding findings and determinations made pursuant to statutes repealed by the bill is removed.

The sentencing alternatives are amended as follows:

- The probation alternative is made subject to the new probation provisions established by the bill and requires any juvenile placed on probation be supervised according to the results of the risk and needs assessment. Placement of juveniles to community corrections for probation supervision is limited to juveniles who are determined to be moderate, high, or very high risk on an assessment using the cutoff scores established by the Secretary and OJA;
- The alternative to place the juvenile in the custody of a parent or other suitable person is amended to exclude placement in a group home or other licensed child care facility;
- The alternative to place the child in the custody of the Secretary of Corrections for placement and permanency planning is amended to sunset on January 1, 2018;
- The sanctions house alternative is changed to commitment to detention for no longer than 30 days for a violation of a non-technical condition of sentence; and
- The alternative to commit the juvenile to confinement in a JCF is amended to allow placement in a JCF or a youth residential facility. (Placement in a youth residential facility is subject to a rebuttable presumption created in the placement matrix statute.) This alternative also is amended to require the judge to make a written finding that the juvenile poses a significant risk of harm to another or damage to property. The juvenile must otherwise be eligible for commitment under the placement matrix, and an order for a period of conditional release is changed from mandatory to the court's discretion. Conditional release is limited to a maximum of six months and are subject to graduated responses. A provision requiring a permanency hearing within seven days after the juvenile's release is removed.

The required use of a risk assessment tool is expanded to all sentencing, and the bill requires the results of the assessment be used to inform orders made pursuant to the placement matrix or the new probation provisions. Provisions related to commitment to a sanctions house are changed to provisions for detention. "Risk assessment tool" is defined in Sec. 29(e).

Senate Bill 392
Disposition of Detainers

SB 392 amends the Uniform Mandatory Disposition of Detainer Act by specifying it is to apply to an inmate in the custody of the Secretary of Corrections. Provisions are added specifying detainers shall be disposed of in the order in which they are placed with the Secretary. The existing 180-day time limit is clarified to provide for detainers from multiple jurisdictions. Any continuances on detainer actions were also clarified when delays were caused by the inmate.

Senate Bill 407
Kansas Offender Registration Act—Conditional Release

SB 407 amends statutes related to registration under the Kansas Offender Registration Act to require a court committing an offender under the Kansas Sexually Violent Predator Act for control, care, and treatment by the Kansas Department for Aging and Disability Services to notify the registering law enforcement agency of the county where the offender resides during commitment. The Attorney General

is required to prepare this notice for electronic transmittal by the court. Timelines are set for a committed offender to register as well as update registration. The bill also revives a statute in the Sexually Violent Predator Act requiring annual examination and court review of persons in transitional release, providing procedures for hearings on whether such person is safe to be placed in conditional release, and setting the standard for court determination of whether the person is appropriate for conditional release.

Senate Bill 408
Duties and Powers of Attorney General—Abuse, Neglect, and Exploitation of Persons

SB 408 amends law relating to the abuse, neglect, and exploitation of persons and law relating to the duties and powers of the Attorney General. The bill changes reporting and authorizing various agencies to investigate at various institutions. The bill further defines the duties of the Abuse, Neglect, and Exploitation of Persons Unit within the Office of the Attorney General and granting that Unit certain discretionary authority.

Senate Bill 325
Search and Seizure—Parole and Postrelease Supervision

SB 325 requires parolees and persons on postrelease supervision to agree in writing to be subject to searches of the persons and the persons' effect, vehicle, residence and property by a parole officer, or a department of corrections enforcement, apprehension and investigation officer at any time of the day or night with or without a search warrant and with or without cause. A law enforcement officer may search a person, their effects, vehicle, residence and property if the officer based on reasonable suspicion of the person violating conditions of parole or post release supervision or reasonable suspicion of criminal activity.

Senate Bill 418
Access to Child in Need of Care Files; Human Trafficking; Sexual Exploitation of a Child; Children in Need of Care; Juvenile Offenders

SB 418 establishes access to files in child in need of care proceedings.

The bill enacts new law in the CINC Code requiring the Secretary for Children and Families to report to law enforcement agencies of jurisdiction information that a child has been identified as a victim of human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child, immediately after receiving such information and in no case later than 24 hours after receiving such information.

The bill amends the definition of "child in need of care" in the CINC Code to include a person less than 18 years of age at the time of filing of the petition or issuance of an ex parte protective custody order who has been subjected to an act that would constitute human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child, or who has committed an act that, if committed by an adult,

would constitute selling sexual relations.

The statute governing the juvenile intake and assessment system is amended to prohibit records, reports, and information obtained as a part of the juvenile intake and assessment process from being used in a juvenile offender proceeding, except in regard to the possible trafficking of a runaway. Such records, reports, and information shall be made available to the appropriate county or district attorney and the court, to be used only for diagnostic and referral purposes.

Senate Sub for House Bill 2056
Sureties—Applications; Authorization; Continuing Education; Bail Enforcement Agents—Licensing; Regulation

Senate Sub for HB 2056 creates and amends law relating to sureties and bail enforcement agents. It gives distinction between compensated and uncompensated sureties and specifies how District Courts should deal with various sureties thru local rules. It sets parameters for hearing if a district court suspends or terminate authorization of sureties. Compensated sureties are required by January 2017 to complete continuing education credits provided by the Kansas Bail Agents Association. This bill allows the Attorney General to conduct background checks, give or suspend licenses of agents as well as charge fees for these services. A Bail Enforcement Agents Fee Fund is created by the bill.

House Bill 2275
Uniform Controlled Substances Act—Adding Certain Drugs and Drug Classes to Schedules of Controlled Substances

HB 2275 adds several additional drugs or drug classes to the schedules of controlled substances in the Uniform Controlled Substances Act and makes other technical changes to the UCSA.

Substitute for House Bill 2289
Driver License Suspension Hearings

Sub HB 2289 requires a law enforcement officer's certification and notice of suspension (DC-27) for test refusal and test failure to inform the licensee the constitutional issues for the vehicle being stopped will not be decided at the administrative hearing but may be preserved on a petition for review of the hearing. The bill allows the court to consider constitutional issues even if such issue was not raised before in the administrative hearing. The bill also requires the Division of Vehicles to issue an order allowing the licensee to review any law enforcement reports either at the location where they are kept or request copies for a reasonable fee. See K.S.A. 8-1002 and K.S.A. 8-1020.

House Bill 2447
Program Credits; Conditional Dismissal of Postrelease Supervision or Violation Charges

HB 2447 increases the maximum number of days an inmate's sentence may be shortened for earning program credits from 90 days to 120 days. The provisions of the bill are to be construed and applied retroactively, and the bill directs the Secretary of Corrections to make the program credit calculations authorized by the bill no later than January 1, 2017.

The bill also permits the dismissal of parole, conditional release, or postrelease supervision violation charges to be conditioned upon the released inmate agreeing to credit being withheld for the period of time from the date the Secretary of Corrections issued a warrant to the date the offender was arrested or returned to Kansas. The bill requires the time to be credited to the released inmate's sentence if the violation charge was dismissed without the agreement described above or the violation was not established to the satisfaction of the Prisoner Review Board.

House Bill 2460
Consumer Protection—Identity Theft; Identity Fraud; Door-to-Door Sales; Violation of a Consumer Protection Order

HB 2460 creates and amends the Kansas Consumer Protection Act regarding identity theft and identity fraud and creates the crime of violation of a consumer protection order, regarding door-to-door sales. The bill grants the Attorney General exclusive authority to bring actions and assist victims of identity theft, identity fraud, and related crimes in pursuing various remedies. The bill creates the crime of violation of a consumer protection order, which is defined as engaging in a door-to-door sale while prohibited from doing so. Violation of a consumer protection order is a severity level 9, person felony. The bill allows the Attorney General, a county or district attorney, or both to institute criminal action to prosecute this offense. The Attorney General is also authorized to post judgments or orders of persons in violation of door-to-door sales on its website.

House Bill 2462
Amending the Crimes of Possession of Marijuana, Theft, and Burglary-- Creating a special sentencing rule

HB 2462 amends criminal code provisions governing possession of marijuana, theft, and burglary. Specifically, the bill amends penalties for possession of marijuana so that a first offense is a class B nonperson misdemeanor, a second offense is a class A nonperson misdemeanor, and a subsequent offense is a drug severity level 5 felony. Previously, a first offense was a class A nonperson misdemeanor and any subsequent offense was a drug severity level 5 felony.

The bill also amends the crime of theft to increase the floor for a severity level 9, nonperson felony theft of property or services from $1,000 to $1,500. Accordingly, the ceiling for class A nonperson misdemeanor theft of property and services is raised from "less than $1,000" to "less than $1,500," as well as the ceilings for exceptions raising the severity level for such amounts to a severity level 9,

nonperson felony when the property is taken from 3 separate mercantile establishments within a period of 72 hours as part of the same act or common scheme, or when the person committing the theft has been convicted of theft 2 or more times.

The bill also establishes a floor of $50 for the exception raising the severity level to a severity level 9, nonperson felony when the person committing the theft has been convicted of theft 2 or more times, and adds a 5-year lookback provision to this exception.

Further, the bill creates a special sentencing rule for burglary of a dwelling to make the sentence presumptive imprisonment if the offender has a criminal history score of C (one previous person felony and one previous nonperson felony), D (one previous person felony), or E (three or more nonperson felonies). The bill adjusts the penalty provisions for burglary of a dwelling with intent to commit the theft of a firearm to make it a person felony, rather than a nonperson felony. The bill amends the definition and penalties for aggravated burglary to make aggravated burglary committed by entering into or remaining in a dwelling in which there is a human being, with the required intent, a severity level 4, person felony. Entering into a non-dwelling building or structure in which there is a human being, with the required intent, remains a severity level 5, person felony.

The bill further establishes that the crimes of burglary and aggravated burglary do not apply to a person who enters or remains in retail or commercial premises, while such premises are open to the public, after having been told by the owner or manager not to enter the premises pursuant to the criminal trespass statute, except when the person enters or remains in such premises with the intent to commit a person felony or a sexually motivated crime.

House Bill 2463
Absconder Status-Kansas Offender Registration

HB 2463 amends statutes governing the determination of criminal history to add nongrid felonies, nondrug severity level 5 felonies, and any drug severity level 1 through 4 felonies committed by an adult to the list of juvenile adjudications that will decay if the current crime of conviction is committed after the offender reaches age 25.

The bill also allows a court to continue or modify conditions of release for or impose a 120- or 180-day prison sanction on an offender who absconds from supervision, without having to first impose a 2- or 3-day jail sanction.

Finally, the bill makes a violation or an aggravated violation of the Kansas Offender Registration Act, KORA, a nonperson offense if the underlying crime (for which registration is required) is a nonperson crime. Previous law designated all violations as person crimes. Those offenders with both person and nonperson offenses that violate KORA will be charged as a person felony for the violation. Previous law designated all violations as person crimes. Those offenders with both person and nonperson offenses that violate KORA will be charged as a person felony.

House Bill 2480
Livestock Brand Law Amendments

HB 2480 enacts new law relating to the livestock brand fee funds within the Kansas Department of Agriculture and makes changes to livestock brand law. The bill deems any person who willfully brands, or causes to be branded, any livestock in any unauthorized manner or causes livestock to be falsely branded as to incorrectly designate the disease control identification or owners guilty of a class A misdemeanor. A person who willfully and knowingly brands or causes to be branded any brand that is not the recorded brand of the owner will be deemed guilty of a nondrug severity level 6, nonperson felony.

House Bill 2501
Visual Depiction of a Child; Breach of Privacy, Blackmail; and Electronic Monitoring Device

HB 2501 creates crimes of unlawful transmission of a visual depiction of a child, aggravated unlawful transmission of a visual depiction of a child, and unlawful possession of a visual depiction of a child. The bill also amends the crimes of breach of privacy and blackmail. Unlawful transmission is a class A, person misdemeanor for a first conviction and a severity level 10, person felony for a subsequent conviction. Aggravated unlawful transmission is if the transmission was made for pecuniary or tangible gain or with the intent to exhibit or transmit the depiction to more than one person. Aggravated unlawful transmission is a severity level 9, person felony for a first conviction and a severity level 7, person felony for a subsequent conviction. The bill specifies it is not unlawful for a person under the age of 19 to possess a visual depiction of a child in a state of nudity who is 16 years of age or older. Unlawful possession of a visual depiction of a child is defined as the knowing possession of a visual depiction of a child at least 12 years of age but less than 16 years of age in a state of nudity, if the possessor is less than 19 years of age and received the depiction directly and exclusively from the child who is the subject of the depiction. This crime is a class B, person misdemeanor.

The crime of sexual exploitation of a child is amended to add "except the circumstances covered by the crimes created by the bill" and to add a provision stating sexual exploitation of a child shall not apply to possession of a depiction of a child in a state of nudity by the child who is the subject of the depiction.
The bill amends the crime of breach of privacy and changes the punishment to include a severity level 8, person felony or a level 5, person felony upon a second or subsequent conviction within the previous five years.

The bill amends the crime of blackmail to include disseminating any videotape, photograph, film, or image obtained in violation of these new provisions, which is a level 4, person felony.

Lastly, the bill amends the definition of a crime committed with an electronic device to add the words "including but not limited to" before the list of crimes in the statute, making the list nonexclusive. The crimes currently listed in the statute are criminal use of a financial card, unlawful acts concerning computers, identity theft and identity fraud, and electronic solicitation.

House Bill 2502
Firearms

HB 2502 amends the Weapons Free School Act to exclude air guns. The bill also allows for active duty military to apply and receive conceal carry licenses while stationed out of state and allows the Attorney General to approve satisfactory completion of out of state handgun safety courses necessary for the Personal Family Protection Act. The bill prohibits public employers from prohibiting any employee legally qualified to conceal carry from carrying a concealed handgun while engaged in employment duties outside the employer's place of business, including while in a means of conveyance. School districts are specifically exempted from the definition of public employer. Provisions for public buildings and courthouses were also changed.

House Bill 2545
Disclosure of Affidavits or Sworn Testimony Supporting Warrants;

HB 2545 requires prosecutors to inform victims of alleged crime or victim's family when a request to disclose information in affidavits or sworn testimony in the support of search warrants if they are not currently accessible to the public. Any requests for disclosure of the affidavits or sworn testimony will become part of the court record and will be accessible to the public, regardless of whether the affidavits and sworn testimony are disclosed or sealed. The bill clarifies the existing justification for redacting or sealing affidavits or sworn testimony that jeopardizes the safety or well-being of a victim, witness, confidential source, or undercover agent, includes the physical, mental, or emotional safety of such person. The bill adds provisions allowing a magistrate to redact affidavits and sworn testimony to prevent the disclosure of information that constitutes a clearly unwarranted invasion of personal privacy, as defined by the bill.

CHAPTER I: THE BASICS OF THE SENTENCING GUIDELINES

Sentencing provisions in effect at the time of the commission of the crime control the sentence for the offense of conviction. Substantive amendments that impact the sentence of an offender are not applied retroactively unless the statutory language clearly indicates the intent to apply the changes retroactively.

SENTENCING CONSIDERATIONS

The sentencing court should consider all available alternatives in determining the appropriate sentence for each offender. The sentencing guidelines seek to establish equity among like offenders in typical case scenarios. Rehabilitative measures are still an integral part of the corrections process, and criminal justice professionals will continue their efforts in reestablishing offenders within communities. The guidelines do not prohibit sentencing courts from departing from the prescribed sentence in atypical cases, but departures are only legislatively authorized when the sentencing court properly follows statutory departure procedures. K.S.A. 2016 Supp. 21-6802.

SENTENCING GUIDELINES AND GRIDS

The Kansas Sentencing Guidelines Act (KSGA) became effective July 1, 1993. K.S.A. 21-4701 *et seq.* The revised KSGA may be found at K.S.A. 2016 Supp. 21-6801 *et seq.* The KSGA provides for determinate sentencing based on sentencing charts or "grids." Each sentencing 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. The provisions for the nondrug crime grid are found in K.S.A. 2016 Supp. 21-6804. The provisions for the drug crime grid are found in K.S.A. 2016 Supp. 21-6805. The presumptive sentence is determined by two factors: the severity level of the current crime of conviction and the offender's criminal history. The grid block at the intersection of the severity level of the crime of conviction and the offender's criminal history score provides the presumed sentencing range, and includes prescribed aggravated, standard and mitigated sentences in months. Each grid also contains a dispositional line: grid blocks above the line presume a sentence of imprisonment; grid blocks below the line presume a sentence of probation. Each grid also includes border blocks or boxes, which are above the dispositional line and therefore presume imprisonment, but which provide that the court may impose an optional nonprison sentence, i.e., probation. See K.S.A. 2016 Supp. 21-6804 and K.S.A. 2016 Supp. 21-6805. The grids can be found in Appendix E, and are the final two pages of this Manual.

DRUG GRID AND NONDRUG GRID

There are two grids used for sentencing of felony convictions. The nondrug grid is used for sentencing of all felony crimes other than drug grid crimes.

The drug grid is used for sentencing of all drug crimes under article 57 of chapter 21 of the Kansas Statutes Annotated, except for K.S.A. 2016 Supp. 21-5705(d)(6)(B), 21-5707, 21-5708, 21-5713, 21-5714 and subsections of 21-5710(3)(A) and (4)(B), which are sentenced pursuant to the nondrug grid. Prior versions of the act were found in K.S.A. 65-4101 *et seq*., then briefly in K.S.A. 21-36a01 *et seq*., before being transferred to their current location in K.S.A. 2016 Supp. 21-5701 *et seq.*

The criminal history categories make up the horizontal axis and the crime severity levels make up the vertical axis. Each grid contains nine criminal history categories. The drug grid contains five severity levels while the nondrug grid contains ten severity levels. A thick, black dispositional line cuts across both grids. Above the dispositional line the grid blocks are designated as presumptive prison sentences. Below the dispositional line are shaded grid blocks, which are designated as presumptive probation sentences.

The grids also contain blocks that may have lines passing through them, or, in this manual, darker shading, which are referred to as "border boxes." The nondrug grid contains three border boxes, in levels 5-H, 5-I and 6-G. The drug grid contains seven border boxes in levels 4-E, 4-F, 4-G, 4-H, 4-I, 5-C and 5-D. See K.S.A. 2016 Supp. 21-6804 and 21-6805. The court has the power to grant border box probation without departing from the grid (which otherwise would require a finding of substantial and compelling reasons) if the court makes 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. K.S.A. 2016 Supp. 21-6804(q).

GRID BLOCKS

Within each grid block are three numbers, representing months of imprisonment. The three numbers provide the sentencing court with a range for sentencing. The sentencing court has discretion to sentence at any place within the range. The middle number in the grid block is the standard number and is intended to be the appropriate sentence for typical cases. The upper and lower numbers should be used for cases involving aggravating or mitigating factors insufficient to warrant a departure. See K.S.A. 2016 Supp. 21-6804 and 21-6805.

GENERAL RULES FOR DETERMINING SEVERITY LEVELS

The severity levels range from severity level 1 to severity level 10 on the nondrug grid. Level 1 is used to categorize the most severe crimes and level 10 is used to categorize the least severe crimes. Crimes listed within each level are considered relatively equal in severity. K.S.A. 2016 Supp. 21-6807(a).

The crime severity scale contained in the sentencing guidelines grid for drug crimes consisted of four levels of crimes between July 1, 1993 and July 1, 2012. On and after July 1, 2012, there are five levels of drug crimes. Crimes listed within each level are also considered relatively equal in severity. Level 1 is used to categorize the most severe crimes and level 5 is used to categorize the least severe crimes. K.S.A. 2016 Supp. 21-6808(a).

The following provisions shall be applicable with regard to ranking offenses according to the crime severity scale:

- The sentencing court will designate the appropriate severity level if it is not provided by statute. When considering an unranked offense in relation to the crime severity scale, the sentencing court should refer to comparable offenses on the crime severity scale. K.S.A. 2016 Supp. 21-6807(c)(1);
- Except for off-grid felony crimes, which are classified as person felonies, any felony crimes omitted from the crime severity scale shall be considered nonperson felonies. K.S.A. 2016 Supp. 21-6807(c)(2); and

- All unclassified felonies shall be scored as level 10 nonperson crimes. K.S.A. 2016 Supp. 21-6807(c)(3).

All felony crimes, with the exception of off-grid crimes and nongrid crimes, should be categorized in one or more of the crime severity levels. The severity level designation of each felony crime is included in the statutory definition of the crime. Some crimes include a broad range of conduct. In such circumstances, there may be a different severity level designated for violations of different subsections of the statute. All felonies and misdemeanors are listed in Appendix D of this Manual numerically by statute number.

OFF-GRID CRIMES

Off-grid offenses, by definition, are not subject to the classifications of the KSGA. Off-grid crimes include the most serious of criminal offenses:

- Capital murder (K.S.A. 2016 Supp. 21-5401),
- Murder in the first degree (K.S.A. 2016 Supp. 21-5402),
- Treason (K.S.A. 2016 Supp. 21-5901),
- Terrorism (K.S.A. 2016 Supp. 21-5422),
- Illegal use of Weapons of Mass Destruction (K.S.A. 2016 Supp. 21-5422) and
- Jessica's Law sex offenses involving victims less than 14 years of age and offenders 18 years of age or older. (K.S.A. 2016 Supp. 21-6627)

For such crimes, the term of imprisonment shall be imprisonment for life. K.S.A. 2016 Supp. 21-6806. However, such a life sentence does not necessarily mean that the offender will remain imprisoned for the remainder of the offender's life. Offenders who commit off-grid crimes and are released from prison are placed on supervised parole.

Off-grid crimes are classified as person felonies. K.S.A. 2016 Supp. 21-6807(c)(2)

CAPITAL MURDER

Offenders who commit capital murder may be sentenced to death pursuant to K.S.A. 2016 Supp. 21-6617. Offenders who are not sentenced to death are sentenced to imprisonment for life without the possibility of parole.

MANDATORY MINIMUMS

Generally, an offender sentenced for an off-grid crime will become eligible for parole after serving a mandatory minimum term of years in confinement. The exceptions are for aggravated habitual sex offenders and capital murder, which carry life sentences without the possibility of parole. Good time credit shall not apply to any mandatory minimum sentences for off-grid felonies.

Attempted Capital Murder

Offenders who are convicted of attempt to commit capital murder shall be sentenced to imprisonment for life, and shall not be eligible for parole prior to serving either 25 years' imprisonment, or the offender's sentence on the sentencing grid, whichever is greater. K.S.A. 2016 Supp. 21-6620(a)(2).

Premeditated First Degree Murder

For premeditated murder (K.S.A. 2016 Supp. 21-5402(a)(1)) committed on and after July 1, 2014, an offender convicted of premeditated first degree murder shall be eligible for parole after serving 50 years' imprisonment unless the sentencing judge finds substantial and compelling reasons to impose a lesser sentence after a review of mitigating circumstances. In that case, the offender shall serve 25 years pursuant before becoming eligible for parole. See K.S.A. 2016 Supp. 21-6620(c) and 21-6623. The aforementioned mandatory minimum sentences shall not apply if the offender's sentencing grid sentence is greater. Under such circumstances, the mandatory minimum shall equal the grid sentence. K.S.A. 2016 Supp. 21-6620(c).

For crimes committed on and after September 6, 2013, the provisions of K.S.A. 2016 Supp. 21-6620(d) shall apply.

For crimes committed prior to September 6, 2013, the provisions of K.S.A. 2016 Supp. 21-6620(e) shall apply.

Felony Murder

Offenders who are convicted of felony murder in the first degree (K.S.A. 2016 Supp. 21-5402(a)(2)) shall be sentenced to imprisonment for life, and shall not be eligible for parole prior to serving either 25 years' imprisonment, or the offender's sentence on the sentencing grid, whichever is greater. K.S.A. 2016 Supp. 21-6620(b)(2).

Other Off-Grid Offenses

Off-grid offenses other than those otherwise specified in statute carry terms of life imprisonment with eligibility for parole only after serving 15 years for crimes committed after July 1, 1993 but prior to July 1, 1999, and 20 years for crimes committed on or after July 1, 1999. K.S.A. 2016 Supp. 22-3717(b)(3).

Jessica's Law Sex Offenses

In 2006, Kansas' version of Jessica's Law was enacted and designated certain sex offenses involving victims less than 14 years of age and offenders 18 years of age or older as off-grid felonies. If an offender is convicted of one of these off-grid sex offenses, the sentence shall be imprisonment for life pursuant to with a mandatory minimum term of imprisonment of 25 years before parole eligibility on the first such sex offense, or a mandatory minimum term of 40 years on a second such offense. K.S.A. 2016 Supp. 21-6627.

Where a mandatory sentence of 25 or 40 years could be imposed, such sentence will not be imposed if the offender's criminal history would result in a guidelines sentence in excess of 300 or 480 months, respectively. In that case, the mandatory minimum will be the sentence as provided by the guidelines grid. K.S.A. 2016 Supp. 21-6627(b)(2)(B).

When the court finds substantial and compelling reasons to impose a downward departure, the court may impose the guidelines sentence in lieu of the mandatory minimum sentence. K.S.A. 2016 Supp. 21-6627(d)(1).

Once a " 'sentence becomes a guidelines sentence, the district court is free to depart from the sentencing grid if it states on the record findings of fact and reasons justifying a departure that are supported by evidence in the record and are substantial and compelling.' " *State v. Spencer*, 291 Kan. at 803, 248 P.3d at 263 (2011) See also *State v. Gracey*, 288 Kan. at 259, 200 P.3d 1275 (2009).

Upon release from imprisonment, offenders convicted of a crime under Jessica's Law will be subject to electronic monitoring for the remainder of the person's life and shall reimburse the state for all or part of the cost of such monitoring. K.S.A. 2016 Supp. 22-3717(u) and (v).

Juvenile Offenders

The death penalty and the sentence of life imprisonment without parole do not apply to juveniles who were under the age of 18 at the time they committed capital murder. K.S.A. 2016 Supp. 21-6618. Juveniles who are prosecuted as adults may be subject to a mandatory minimum term of imprisonment. K.S.A. 2016 Supp. 21-6621.

In *State v. Dull,* 302 Kan. 32, 351 P.3d 641 (2015) *cert. denied* 136 S.Ct. 1364 (2016), the Kansas Supreme Court found that mandatory lifetime postrelease supervision is always cruel and unusual punishment for juveniles, in part because juveniles' diminished culpability, immaturity, recklessness, poor decision-making skills, and lower risks of recidivism all diminish the punishment goals of lifetime supervision.

Offenders with Intellectual Disability

Offenders who are convicted of capital murder or premeditated first degree murder who are determined to have an intellectual disability may not be sentenced to a death, life without parole or a mandatory minimum sentence. K.S.A. 2016 Supp. 21-6622.

NONGRID CRIMES

Certain felony offenses are classified as nongrid offenses, (not to be confused with off-grid offenses) which are not assigned a severity level and are not subject to punishment pursuant to the sentencing grid. These offenses each contain specific penalties and other provisions within their respective statutes. Each of these crimes has a corresponding special sentencing rule which must be checked on the Special Rules Supplemental Page of the Journal Entry and Presentence Investigation Report when applicable.
These crimes are:

- felony driving under the influence, K.S.A. 8-1567, (Special Rule #6)
- felony test refusal, K.S.A. 2016 Supp. 8-1025, (Special Rule #39)
- felony domestic battery, K.S.A. 2016 Supp. 21-5414, (Special Rule #8)
- animal cruelty, K.S.A. 2016 Supp. 21-6412 and harming or killing certain dogs, K.S.A. 2016 Supp. 21-6416. (Special Rule #21)

CRIMINAL HISTORY

Criminal history, except as provided in each specific statute for determining whether the crime is the second, third, fourth or subsequent such offense, is not relevant to the punishment for nongrid offenses.

DUI

Certain convictions, including diversions, shall be counted in determining whether the DUI conviction is the second, third, fourth or greater. These convictions include:

- DUI occurring on or after July 1, 2001,
- test refusal, K.S.A. 8-1025,
- driving a commercial motor vehicle under the influence, K.S.A. 8-2,144,
- operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131,

- involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. 2016 Supp. 21-5405(a)(3),
- aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and
- a violation of an ordinance of any city, military justice code or resolution of any county which prohibits DUI. K.S.A. 8-1567(i).

Test Refusal

For the purpose of determining whether a test refusal conviction is a first, second, third, fourth or subsequent conviction the following convictions and diversions shall be taken into account:

1) Convictions occurring on or after July 1, 2001 AND when such person was 18 years of age or older for a violation of K.S.A. 8-1567,
2) any convictions or diversions which occurred when such person was 18 years of age or older:
   (A) K.S.A. 8-1025;
   (B) driving a commercial motor vehicle under the influence, K.S.A. 8-2,144;
   (C) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131;
   (D) involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or of K.S.A. 2016 Supp. 21-5405(a)(3);
   (E) aggravated battery, K.S.A. 2016 Supp. 21-5413(b)(3); and
   (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and a violation of an ordinance of any city, military justice code or resolution of any county which prohibits the acts that such section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations. K.S.A. 2016 Supp. 8-1025(h).

Domestic Battery

For the purpose of determining whether the domestic battery conviction is a first, second, third or subsequent conviction, only convictions and diversions within the previous 5 years shall be taken into account. K.S.A. 2016 Supp. 21-5414(c)(2).

ANTICIPATORY CRIMES

ATTEMPT

Off-grid Crimes

An attempt to commit an off-grid felony shall be ranked at nondrug severity level 1, with the following exceptions: (See K.S.A. 2016 Supp. 21-5301)

1) Terrorism, K.S.A. 2016 Supp. 21-5421;
2) Illegal use of weapons of mass destruction, K.S.A. 2016 Supp. 21-5421;
3) Capital murder, K.S.A. 2016 Supp. 21-5401;
4) An attempt to commit the following offenses, if the offender is 18 years of age or older:
   A) Rape, K.S.A. 2016 Supp. 21-5503(a)(3);
   B) Aggravated indecent liberties with a child, K.S.A. 2016 Supp. 21-5506(b)(3); and
   C) Aggravated criminal sodomy, K.S.A. 2016 Supp. 21-5504(b)(1) or (b)(2);

5) An attempt to commit the following offenses, when the offender is 18 years of age or older and the victim is less than 14 years of age, shall remain off-grid felonies (i.e. the reduction of severity level shall not apply):
    A) Aggravated human trafficking, K.S.A. 2016 Supp. 21-5426(b);
    B) Commercial sexual exploitation of a child, K.S.A. 2016 Supp. 21-6422; and
    C) Sexual exploitation of a child, K.S.A. 2016 Supp. 21-5510(a)(1) or (a)(4).

Nondrug Crimes

An attempt to commit any other nondrug felony shall be ranked on the nondrug scale at two severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for an attempt to commit a nondrug felony shall be a severity level 10. K.S.A. 2016 Supp. 21-5301(c)(1).

Drug Crimes

An attempt to commit a felony that prescribes a sentence on the drug grid shall reduce the prison term by six months, except that this does not apply in cases involving an attempt to manufacture a controlled substance under K.S.A. 2016 Supp. 21-5703. K.S.A. 2016 Supp. 21-5301(d).

Misdemeanors

An attempt to commit a class A person misdemeanor is a class B person misdemeanor. K.S.A. 2016 Supp. 21-5301(e). An attempt to commit a class A nonperson misdemeanor is a class B nonperson misdemeanor. K.S.A. 2016 Supp. 21-5301(e). An attempt to commit a class B or C misdemeanor is a class C misdemeanor. K.S.A. 2016 Supp. 21-5301(f).

Crimes where Attempt is an Element

There are certain crimes where an attempt constitutes the completed crime. In such crimes, the statutory definition will include an attempt as a means, or alternate means, of completing the crime. For example, DUI, K.S.A. 8-1567, says "No person shall operate or attempt to operate any vehicle…" In such cases, the completed crime may be charged based on the conduct described, which will not be subject to the reduction in severity level. Other such instances include K.S.A. 2016 Supp. 21-5428 - blackmail, 21-5508 - indecent solicitation of a child, and 21-5909 - witness intimidation.

CONSPIRACY

Off-grid Crimes

Conspiracy to commit an off-grid felony shall be ranked at nondrug severity level 2, with the following exceptions: (K.S.A. 2016 Supp. 21-5302)

1) Terrorism, K.S.A. 2016 Supp. 21-5421;
2) Illegal use of weapons of mass destruction, K.S.A. 2016 Supp. 21-5421;
3) Violations of the Kansas racketeer influenced and corrupt organization act, K.S.A. 2016 Supp. 21-6329;
4) An attempt to commit the following offenses, if the offender is 18 years of age or older:
    A) Rape, K.S.A. 2016 Supp. 21-5503(a)(3);
    B) Aggravated indecent liberties with a child, K.S.A. 2016 Supp. 21-5506(b)(3); and
    C) Aggravated criminal sodomy, K.S.A. 2016 Supp. 21-5504(b)(1) or (b)(2);
5) An attempt to commit the following offenses, when the offender is 18 years of age or older and the victim is less than 14 years of age, shall remain off-grid felonies (i.e. the reduction of severity level shall not apply):
    A) Aggravated human trafficking, K.S.A. 2016 Supp. 21-5426(b);

B) Commercial sexual exploitation of a child, K.S.A. 2016 Supp. 21-6422; and
C) Sexual exploitation of a child, K.S.A. 2016 Supp. 21-5510(a)(1) or (a)(4).

Nondrug Crimes
Conspiracy to commit any other nondrug felony shall be ranked on the nondrug scale at two severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for conspiracy to commit a nondrug felony shall be a severity level 10. K.S.A. 2016 Supp. 21-5302(d)(1).

Drug Crimes
Conspiracy to commit a felony that prescribes a sentence on the drug grid shall reduce the prison term prescribed in the drug grid block for an underlying or completed crime by six months. K.S.A. 2016 Supp. 21-5302(e).

Misdemeanors
Conspiracy to commit a misdemeanor is a class C misdemeanor. K.S.A. 2016 Supp. 21-5302(f).

SOLICITATION

Off-grid Crimes
Criminal solicitation to commit an off-grid felony shall be ranked at nondrug severity level 3, with the following exceptions: (See K.S.A. 2016 Supp. 21-5303)

1) Terrorism, K.S.A. 2016 Supp. 21-5421;
2) Illegal use of weapons of mass destruction, K.S.A. 2016 Supp. 21-5421;
3) An attempt to commit the following offenses, if the offender is 18 years of age or older:
    A) Rape, K.S.A. 2016 Supp. 21-5503(a)(3);
    B) Aggravated indecent liberties with a child, K.S.A. 2016 Supp. 21-5506(b)(3); and
    C) Aggravated criminal sodomy, K.S.A. 2016 Supp. 21-5504(b)(1) or (b)(2);
4) An attempt to commit the following offenses, when the offender is 18 years of age or older and the victim is less than 14 years of age, shall remain off-grid felonies (i.e. the reduction of severity level shall not apply):
    D) Aggravated human trafficking, K.S.A. 2016 Supp. 21-5426(b);
    E) Commercial sexual exploitation of a child, K.S.A. 2016 Supp. 21-6422; and
    F) Sexual exploitation of a child, K.S.A. 2016 Supp. 21-5510(a)(1) or (a)(4).

Nondrug Crimes
Criminal solicitation to commit any other nondrug felony shall be ranked on the nondrug scale at three severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for solicitation to commit a nondrug felony shall be a severity level 10. K.S.A. 2016 Supp. 21-5303(d)(1).

Drug Crimes
Criminal solicitation to commit a felony that prescribes a sentence on the drug grid shall reduce the prison term prescribed in the drug grid block for an underlying or completed crime by six months. K.S.A. 2016 Supp. 21-5303(e).

MISDEMEANORS

Punishment and disposition of misdemeanors is not provided on the drug or nondrug sentencing grids. Misdemeanors are established by class as follows:

- Class A misdemeanors, punishable by a county jail sentence of not more than 1 year;
- Class B misdemeanors, punishable by a county jail sentence of not more than 6 months;
- Class C misdemeanors, punishable by a county jail sentence of not more than 1 month; and
- Unclassified misdemeanors, which are punishable as specified by law, but if no such penalty is provided they are treated as Class C misdemeanors. See K.S.A. 2016 Supp. 21-6602.

A person convicted of a misdemeanor may be punished by a fine pursuant to K.S.A. 2016 Supp. 21-6611. Additional sentencing dispositions for misdemeanors are provided in K.S.A. 2016 Supp. 21-6604. The period of probation for a misdemeanor shall not exceed two years, subject to renewal and extension for additional fixed periods of two years. The court may terminate probation at any time. K.S.A. 2016 Supp. 21-6608(a). The district court may parole any misdemeanant sentenced to confinement in a county jail. Such period of parole shall not exceed two years and may be terminated by the court at any time. K.S.A. 2016 Supp. 21-6608(b).

DRUG DISTRIBUTION AND CULTIVATION CRIMES

DRUG DISTRIBUTION

Most drug distribution and cultivation crimes are punished on the drug grid according to the type and amount of substance distributed, possessed with the intent to distribute, or cultivated. The one exception is distribution of drugs listed in K.S.A. 65-4113 (Schedule V), which is not punished according to amount. It is either a Class A person misdemeanor, or if distributed to a minor, a nondrug severity level 7 person felony.

Distributing or possessing with intent to distribute a controlled substance within 1000 feet of school property shall increase the severity level by one level. For example, distributing 3.5 grams of heroin within 1000 feet of a school would be a level 1 drug felony.

The following tables show the amount of each drug and amount, along with the corresponding severity level of punishment. Certain substances may be measured according to "dosage units", which include discrete units such as pills, capsules and microdots. K.S.A. 2016 Supp. 21-5705.

Heroin/Meth	
Amount	**SL**
Less than 1 gram	4
1 gram but less than 3.5 grams	3
3.5 grams but less than 100 grams	2
100 grams or more	1

Marijuana	
Amount	**SL**
Less than 25 grams	4
25 grams but less than 450 grams	3
450 grams but less than 30 kilograms	2
30 kilograms or more	1

Dosage Unit	
Amount	**SL**
Less than 10 units	4
10 units but less than 100 units	3
100 units but less than 1,000 units	2
1,000 units or more	1

All Others	
Amount	**SL**
Less than 3.5 grams	4
3.5 grams but less than 100 grams	3
100 grams but less than 1 kilogram	2
1 kilogram or more	1

There is a rebuttable presumption of intent to distribute when the offender possesses the following amounts, or greater, of the following controlled substances. The burden to overcome this rebuttable presumption is upon the defendant. The quantities at which the rebuttable presumption applies are as

follows:

Type of Drug	Amount
Marijuana	450 grams
Heroin	3.5 grams
Methamphetamine	3.5 grams
Any other drug	100 grams
Dosage Units	100

See K.S.A. 2016 Supp. 21-5705(e).

DRUG CULTIVATION

It shall be unlawful for any person to cultivate any controlled substance or controlled substance analog listed in K.S.A. 2016 Supp. 21-5705(a). The severity level for drug cultivation crimes are as follows:

Number of Plants	Severity Level
More than 4 but less than 50	3
50 or more but less than 100	2
100 or more	1

See K.S.A. 2016 Supp. 21-5705(d)(7).

CHAPTER II: PROCEDURE PRIOR TO SENTENCING

DETERMINATION OF THE DATE OF OFFENSE: APPLICATION TO THE SENTENCING GUIDELINES

The Kansas Sentencing Guidelines Act (KSGA) applies to all felony crimes committed on or after July 1, 1993. All felony crimes committed prior to that date should be prosecuted under the laws existing prior to that date. A crime is committed prior to July 1, 1993, if any essential elements of the crime as then defined occurred before July 1, 1993. If it cannot be determined that the crime was committed prior to or after July 1, 1993, the offender should be prosecuted under laws existing prior to the KSGA. See K.S.A. 2016 Supp. 21-6802.

The date of offense controls selection of the Presentence Investigation (PSI) and Journal Entry (JE) forms. Each year the Kansas Sentencing Commission modifies these forms to comport with the laws and special sentencing rules in effect beginning July 1 of that year. Therefore, when completing a PSI or journal entry form make sure that the year of the form corresponds with the laws in effect for the date of offense. Examples: For an offense committed on May 1, 2001, complete the 2000 Journal entry form. For an offense committed October 7, 1996, the 1996 Journal entry form should be completed.

When using the Probation Violation Journal Entry (PVJE) form, the most recent version should be used, regardless of the date of the offense.

Forms may be found at the Kansas Sentencing Commission website: www.sentencing.ks.gov/forms.

CHARGING DOCUMENTS

All charging documents filed for crimes to be sentenced under the KSGA system should allege facts sufficient to classify the crime severity level of the offense on the guidelines grid. If a particular felony crime is sub-classified into different versions of the same offense that have been assigned different severity levels, the charge should include facts sufficient to establish the required elements of the version of the offense carrying the severity level reflected in the charging document. See K.S.A. 22-3201 for the requisites of a complaint, indictment or information.

CONSOLIDATION

Consolidation for trial of separate indictments or informations. The court may order two or more complaints, informations or indictments against a single defendant to be tried together if the crimes could have been joined in a single complaint, information or indictment. K.S.A. 22-3203.

FINGERPRINTING

MUNICIPAL COURT DUTIES

The court is required to ensure that fingerprints are taken upon conviction for a city ordinance violation comparable to a class A or B misdemeanor as defined by a Kansas criminal statute, or for an assault as defined in K.S.A. 2016 Supp. 21-5412. See K.S.A. 2016 Supp. 12-4517(a).

LAW ENFORCEMENT DUTIES

Every sheriff, police department, or countywide law enforcement agency in the state is required to make two sets of fingerprint impressions and one set of palm impressions of a person who is arrested if the person:

- is wanted for the commission of a felony. On or after July 1, 1993, fingerprints and palm prints shall also be taken if the person is wanted for the commission of a class A or B misdemeanor or a violation of a county resolution which would be the equivalent of a class A or B misdemeanor as defined by a Kansas criminal statute, or for an assault as defined in K.S.A. 2016 Supp. 21-5412;
- is believed to be a fugitive from justice;
- may be in the possession at the time of arrest of any goods or property reasonably believed to have been stolen by the person;
- is in possession of firearms or other concealed weapons, burglary tools, high explosives or other appliances believed to be used solely for criminal purposes;
- is wanted for any offense which involves sexual conduct prohibited by law or for violation of the uniform controlled substances act; or
- is suspected of being or known to be a habitual criminal or violator of the intoxicating liquor law.

See K.S.A. 2016 Supp. 21-2501(a).

COUNTY/DISTRICT COURT DUTIES

The court shall ensure, upon the accused person's first appearance, or in any event, before final disposition of a felony or a class A or B misdemeanor or a violation of a county resolution which prohibits an act which is prohibited by a class A or B misdemeanor, the offender has been processed, fingerprinted and palm printed. See K.S.A. 2016 Supp. 21-2501(b).

JUVENILE COURT DUTIES

Fingerprints or photographs shall <u>not</u> be taken of any juvenile who is taken into custody for any purpose, with the following exceptions:

- Fingerprints or photographs of a juvenile may be taken if authorized by the court having jurisdiction;
- Fingerprints and photographs shall be taken of all juvenile offenders adjudicated due to commission of an offense which if committed by an adult would constitute the commission of a felony, a class A or B misdemeanor or assault as defined in K.S.A. 2016 Supp. 21-5412(a).
- Fingerprints or photographs of a juvenile may be taken under K.S.A. 2016 Supp. 21-2501, if the juvenile has been prosecuted as an adult pursuant to K.S.A. 2016 Supp. 38-2347; and
- Fingerprints or photographs shall be taken of any juvenile admitted to a juvenile correctional facility
- Photographs may be taken of any juvenile admitted to a juvenile detention facility.

See K.S.A. 2016 Supp. 38-2313.

DNA SAMPLE COLLECTION

Offenders who are convicted of certain crimes or adjudicated of certain juvenile offenses shall be required to submit a DNA or biological sample to the Kansas Bureau of investigation. The details of this procedure are provided in K.S.A. 21-2511.

OFFICIAL RECORDS

All Kansas law enforcement agencies shall maintain a permanent record, on forms approved by the Attorney General, of all felony and misdemeanor offenses reported or known to have been committed within their respective jurisdictions. K.S.A. 21-2501a(a). All law enforcement agencies must file a report of such offenses, on a form approved by the Attorney General, with the Kansas Bureau of Investigation (KBI) within 72 hours after such offense is reported, or known to have been committed. K.S.A. 21-2501a(b). All law enforcement agencies must report within 30 days, on forms approved by the Attorney General, any methamphetamine laboratory seizures or dump sites and any theft or attempted theft of anhydrous ammonia that occurs in such agency's jurisdiction. K.S.A. 21-2501a(c).

PLEA AGREEMENT RULES

PERMISSIBLE AND IMPERMISSIBLE PLEAS

The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea to a charged offense or to a lesser or related offense, the prosecutor may do any of the following:

- Move for dismissal of other charges or counts;
- recommend a particular sentence within the sentencing range applicable to the offense or to the offense to which the offender pled guilty;
- recommend a particular sentence outside of the sentencing range only when departure factors exist and such factors are stated on the record;
- agree to file a particular charge or count;
- agree not to file charges or counts; or
- make any other promise to the defendant, except as provided below. K.S.A. 2016 Supp. 21-6812.

However, a prosecutor shall NOT:

- enter into any agreement to decline to use a prior drug conviction of the defendant to elevate or enhance the severity level of a drug crime as provided in K.S.A. 2016 Supp. 21-5703, 21-5705 or 21-5706; or
- make any agreement to exclude any prior conviction from the criminal history of the defendant. K.S.A. 2016 Supp. 21-6812(f).

DUI AND TEST REFUSAL PLEAS

No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation DUI or Test Refusal, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the same, to avoid the mandatory penalties established by statute or ordinance. K.S.A. 2016 Supp. 8-1025(l) and 8-1567(m).

ACCEPTANCE OF PLEA AND SENTENCING

At the time of acceptance of a plea of guilty or *nolo contendere*, the sentencing court must inform the offender of the specific severity level of the crime and the range of penalties associated with that severity level. See K.S.A. 2016 Supp. 22-3210.

The sentencing court is not bound to follow an agreed sentencing recommendation. It has the discretion to impose up to the maximum sentence in the applicable grid block. See K.S.A. Supp. 2016 21-6804(e)(1) and K.S.A. Supp. 2016 21-6805(c)(1), and, e.g., *State v. Johnson*, 286 Kan. 824, 190 P.3d 207 (2008).

Once the guilty or *nolo contendere* plea has been accepted by the court, the severity level of the crime cannot be elevated for sentencing purposes due to the subsequent discovery of prior convictions which would have raised the severity level of the crime; instead the prior convictions will be used in the determination of the criminal history category. See K.S.A. 2016 Supp. 21-6807(c)(4).

SB 123 DRUG TREATMENT

As part of a plea, the offender must still have the requisite LSI-R and SASSI score in order to be admitted into the SB 123 program. The court may direct the defendant to undergo criminal risk-need and drug abuse assessments required by K.S.A. 2016 Supp. 21-6824 at any time in order to determine SB 123 drug treatment eligibility. The defendant will still be responsible for payment of all assessment fees imposed by the court at sentencing.

DIVERSIONS

A diversion agreement cannot be entered into for a class A or B felony or for crimes committed on or after July 1, 1993, constituting an off-grid crime, a nondrug severity level 1, 2 or 3 felony, or a drug severity level 1 or 2 felony for drug crimes committed on or after July 1, 1993 but before July 1, 2012, or a drug severity level 1, 2, or 3 felony committed on or after July 1, 2012. K.S.A. 2016 Supp. 22-2908(b)(2).

For more information on the specific requirements of diversion agreements for certain offenses, please see K.S.A. 22-2909. No defendant shall be required to enter any plea to a criminal charge as a condition of diversion. K.S.A. 22-2910.

DUI AND TEST REFUSAL

A diversion agreement cannot be entered into for a DUI or test refusal violation if: the defendant has previously participated in a diversion for alleging a violation of that statute; has previously been convicted of or pleaded *nolo contendere* to a DUI; or, during the time of the DUI the defendant was involved in a motor vehicle accident or collision resulting in personal injury or death. K.S.A. 2016 Supp. 22-2908(b)(1).

A diversion agreement cannot be entered into for a DUI or test refusal violation more than once in a person's lifetime. K.S.A. 2016 Supp. 8-1025(h)(7) and K.S.A. 8-1567(i)(6).

DOMESTIC VIOLENCE OFFENSES

A diversion agreement cannot be entered into where the complaint alleges a domestic violence offense, as defined in K.S.A 2016 Supp. 21-5111, and the defendant has participated in two or more diversions in the previous five-year period upon complaints alleging a domestic violence offense. K.S.A. 22-2908(b)(3).

BUYING SEXUAL RELATIONS

A person may enter into a diversion agreement for a violation of buying sexual relations, or a similar ordinance, only once during the person's lifetime. K.S.A. 2016 Supp. 21-6421(c)(2).

WILDLIFE, PARKS AND TOURISM LAWS

A county or district attorney may enter into a diversion agreement in lieu of criminal proceedings on a complaint for violation of Wildlife, Parks, and Tourism laws (K.S.A. 2016 Supp. 32-1001 *et. seq*.) if the diversion carries the same penalties as the conviction for the corresponding violation. If the defendant has previously participated in one or more diversions then each subsequent diversion would carry the same penalties as the conviction for the corresponding violation. See K.S.A. 2016 Supp. 22-2908(c).

DEFERRING SENTENCE PENDING MENTAL EXAMINATION

A mental health examination may be completed on the offender as part of the presentence investigation report. The sentencing court may commit the offender to a state security hospital or suitable local mental health facility for such examination. The maximum duration of commitment that can be imposed for the examination is 120 days. K.S.A. 2016 Supp. 22-3429.

DOMESTIC VIOLENCE OFFENSE DESIGNATION

In all criminal cases filed in district or municipal court, if there is evidence that the defendant committed a domestic violence offense, the trier of fact shall determine whether the defendant committed a domestic violence offense. K.S.A. 2016 Supp. 22-4616.

If the trier of fact determines that the defendant committed a domestic violence offense, the court shall place a domestic violence designation on the criminal case and the defendant shall be subject to the provisions of subsection (p) of K.S.A. 2016 Supp. 21-6604, and amendments thereto.

The court shall not place a domestic violence designation on the criminal case and the defendant shall not be subject to the provisions of subsection (p) of K.S.A. 2016 Supp. 21-6604, only if the court finds on the record that:

- The defendant has not previously committed a domestic violence offense or participated in a diversion upon a complaint alleging a domestic violence offense; AND
- the domestic violence offense was not used to coerce, control, punish, intimidate or take revenge against a person with whom the offender is involved or has been involved in a dating relationship or against a family or household member. K.S.A. 2016 Supp. 22-4616.

The assessment may be used by the court to determine an appropriate sentence, and shall be provided to the supervising entity after sentencing. The defendant shall be required to pay for the assessment and all subsequent recommendations. K.S.A. 2016 Supp. 21-6604(p).

DOMESTIC BATTERY

The definition of the crime of domestic battery and provisions relating thereto, are provided in K.S.A. 2016 Supp. 21-5414.

CHAPTER III: CRIMINAL HISTORY

CRIMINAL HISTORY RULES

The horizontal axis or top of the grid represents the criminal history categories. Nine categories are used to designate prior criminal history. Category A is used to categorize offenders having 3 or more prior felony convictions designated as person crimes. Category I is used to categorize offenders having either no criminal record or a single conviction or juvenile adjudication for a misdemeanor. The criminal history categories classify an offender's criminal history in a quantitative as well as a qualitative manner. The categories between A and I reflect cumulative criminal history with an emphasis on whether prior convictions were for person crimes or nonperson crimes. Generally, person crimes are weighed more heavily than nonperson crimes. Within limits, prior convictions for person crimes will result in a harsher sentence for the current crime of conviction. See K.S.A. 2016 Supp. 21-6809.

The criminal history scale is represented in an abbreviated form on the horizontal axis of the nondrug grid and the drug grid. The relative severity of each criminal history category decreases from left to right on the grids, with Criminal History Category A being the most serious classification and Criminal History Category I being the least serious classification.

Criminal History Category	Descriptive Criminal History
A	The offender's criminal history includes three or more adult convictions or juvenile adjudications, in any combination, for person felonies.
B	The offender's criminal history includes two adult convictions or juvenile adjudications, in any combination, for person felonies.
C	The offender's criminal history includes one adult conviction or juvenile adjudication for a person felony, and one or more adult convictions or juvenile adjudications for nonperson felonies.
D	The offender's criminal history includes one adult conviction or juvenile adjudication for a person felony, but no adult conviction or juvenile adjudication for a nonperson felony.
E	The offender's criminal history includes three or more adult convictions or juvenile adjudications for nonperson felonies, but no adult conviction or juvenile adjudication for a person felony.
F	The offender's criminal history includes two adult convictions or juvenile adjudications for nonperson felonies, but no adult conviction or juvenile adjudication for a person felony.
G	The offender's criminal history includes one adult conviction or juvenile adjudication for a nonperson felony, but no adult conviction or juvenile adjudication for a person felony.
H	The offender's criminal history includes two or more adult convictions or juvenile adjudications for nonperson and/or select misdemeanors, and no more than two adult convictions or juvenile adjudications for person misdemeanors, but no adult conviction or juvenile adjudication for either a person or nonperson felony.
I	The offender's criminal history includes no prior record, or one adult conviction or juvenile adjudication for a person, nonperson, or a select misdemeanor, but no adult conviction or juvenile adjudication for either a person or a nonperson felony.

PERSON AND NONPERSON CRIMES

The "person" designation generally refers to crimes that inflict, or could inflict harm to another person. Examples of person crimes are robbery, rape, aggravated arson, and battery.

The "nonperson" designation generally refers to crimes committed that inflict, or could inflict, damage to property. Nonperson crimes also include offenses such as drug crimes, failure to appear, suspended driver's license, perjury, etc.

Unclassified Crimes
Unless otherwise provided by law, unclassified felonies and misdemeanors shall be considered and scored as nonperson crimes for the purpose of determining criminal history. K.S.A. 2016 Supp. 21-6810(d)(6).

Drug Crimes
Drug crimes are designated as nonperson crimes for criminal history scoring. K.S.A. 2016 Supp. 21-6811(h).

Anticipatory Crimes
A prior conviction for an attempt, conspiracy, or solicitation to commit a crime will be treated as a person or nonperson crime in accordance with the designation of the underlying crime. K.S.A. 2016 Supp. 21-6811(g).

SELECT MISDEMEANORS

The "select" designation refers to specific weapons violations. A conviction of criminal possession of a firearm as defined in subsection (a)(1) or (a)(5) of K.S.A. 21-4204, prior to its repeal, criminal use of weapons as defined in subsection (a)(10) or (a)(11) of K.S.A. 2016 Supp. 21-6301, and amendments thereto, or unlawful possession of a firearm as in effect on June 30, 2005, and as defined in K.S.A. 21-4218, prior to its repeal, will be scored as a select class B nonperson misdemeanor conviction or adjudication and shall not be scored as a person misdemeanor for criminal history purposes. See K.S.A. 2016 Supp. 21-6811(b).

CRIMINAL HISTORY CATEGORIES

Criminal history is based upon the following types of prior convictions and/or adjudications:

- person felonies;
- nonperson felonies;
- person misdemeanors and comparable municipal ordinance and county resolution violations;
- class A nonperson misdemeanors and comparable municipal ordinance and county resolution violations; and
- class B nonperson *select* misdemeanors and comparable municipal ordinance and county resolution violations. K.S.A. 2016 Supp. 21-6810.

Class B and C nonperson misdemeanor convictions/adjudications are **not** scored for criminal history purposes.

All convictions and adjudications, except as otherwise provided, should be included in the offender's criminal history. Prior convictions should be recorded in descending order by the date of conviction,

starting with the most recent conviction. An offender's criminal history classification is determined using the following rules:

- Only verified prior convictions will be considered and scored. K.S.A. 2016 Supp. 21-6810 (d)(1).
  - A prior conviction is any conviction, other than another count in the current case which was brought in the same information or complaint or which was joined for trial with other counts in the current case pursuant to K.S.A. 22-3203, which occurred prior to imposition of sentence in the current case, regardless of whether the crime that was the subject of the prior conviction was committed before or after the commission of the current crime of conviction. K.S.A. 2016 Supp. 21-6810(a).
  - The classification of a prior conviction will be made in accordance with the law applicable at the time of the conviction. See K.S.A. 2016 Supp. 21-6810(d)(9) and 21-6802(c).
- Prior convictions or adjudications, whether sentenced concurrently or consecutively, will each be counted separately. K.S.A. 2016 Supp. 21-6810(c).
- All prior adult felony convictions, including expungements, will be considered and scored. K.S.A. 2016 Supp. 21-6810(d)(2).
- Unless otherwise provided by law, unclassified felonies and misdemeanors shall be considered and scored as nonperson crimes for the purpose of determining criminal history. K.S.A. 2016 Supp. 21-6810(d)(6).
- Prior convictions of a crime defined by a statute that has since been repealed shall be scored using the classification assigned at the time of such conviction. K.S.A. 2016 Supp. 21-6810(d)(7).
- Prior convictions of a crime defined by a statute that has since been determined unconstitutional by an appellate court shall not be used for criminal history scoring purposes. K.S.A. 2016 Supp. 21-6810(d)(8).

JUVENILE ADJUDICATIONS

Except for adjudications that have decayed pursuant to K.S.A. 2016 Supp. 21-6810(d)(3) and (d)(4), prior juvenile adjudications will be treated in the same manner as adult convictions when determining criminal history classification. Out-of-state juvenile adjudications will be treated as juvenile adjudications in Kansas for criminal history purposes. K.S.A. 2016 Supp. 21-6811(f).

The parties are entitled access to the juvenile files and records of the offender in order to discover or verify criminal history. K.S.A. 2016 Supp. 22-3212(i).

DECAY

There will be no decay factor applicable to adult convictions. K.S.A. 2016 Supp. 21-6810(d)(3).

The following chart indicates the decay for juvenile adjudications according to K.S.A. 2016 Supp. 21-6810. There is no suggestion in the statute that non-drug severity Level 2, 3, or 4, are to decay. However, it is noted that Levels 2 through 4 were inadvertently deleted and should also decay. The statute also indicates these new decay provisions are procedural in nature and are to act retroactively.

FELONIES AFTER JULY 1, 2016		
PERSON	**NONDRUG**	**NONPERSON**
No Decay	Offgrid	No Decay
No Decay	1	No Decay
	2	***
	3	***
	4	***
Decay	5	Decay
Decay	6	Decay
Decay	7	Decay
Decay	8	Decay
Decay	9	Decay
Decay	10	Decay
	Nongrid	Decay
	DRUG	
	1	Decay
	2	Decay
	3	Decay
	4	Decay
	5	Decay
ALL MISDEMEANORS DECAY ***inadvertently deleted from final bill-decay was the intent of Legislature and decay should occur.		

DIVERSIONS

Diversions are not "convictions" and are therefore not included in criminal history, except as otherwise provided by law for current convictions of:

- Involuntary Manslaughter, K.S.A. 2016 Supp. 21-5405(a)(3);
- DUI, K.S.A. 8-1567;
- Test Refusal, K.S.A. 8-1025;
- Domestic Battery, K.S.A. 2016 Supp. 21-5414; and
- Buying Sexual Relations, K.S.A. 2016 Supp. 21-6421.

A person entering into a diversion agreement does not have a Sixth Amendment right to counsel, thus prior uncounseled diversions may be counted for criminal history purposes. See *State v. Tims*, 49 Kan. App. 2d 845, 317 P.3d 115 (2014).

PRIOR CONVICTION AS SENTENCE ENHANCEMENT OR ELEMENT OF PRESENT CRIME

If a prior conviction of any crime operates to enhance the severity level for the current crime of conviction, elevate the current crime of conviction from a misdemeanor to a felony, or constitute elements of the present crime of conviction, that prior conviction cannot be counted in the offender's criminal history. K.S.A. 2016 Supp. 21-6810(d)(9). Note, however, that prior convictions which elevate the penalty or punishment without raising the severity level of the current crime may be counted for criminal history purposes. *State v. Pearce*, 51 Kan. App. 2d 116, 342 P.3d 963 (2015).

Additional convictions which are not used as enhancements may be used for criminal history purposes. See *State v. Williams*, 47 Kan. App. 2d 102, 272 P.3d 1282 (2012).

Failure to Register as Offender Convictions

A prior conviction that creates the need for registration as a sex, drug or violent offender is an element of the offense of failure to register and may not be counted in determining the criminal history score on conviction of failure to register. See *State v. Pottoroff*, 32 Kan. App. 2d 1161, 96 P.3d 280 (2004).

Aggravated Escape from Custody Convictions

For a conviction of the crime of aggravated escape from custody (K.S.A. 2016 Supp. 21-5911) that requires that the offender be in custody for a felony, such felony is considered an element of the crime and may not be counted in the defendant's criminal history. See *State v. Taylor*, 262 Kan. 471, 939 P.2d 904 (1997). However, not all alternative means of the crime of aggravated escape require the element of being in custody for a felony. See *State v. Brown*, 32 Kan. App. 2d 24, 80 P.3d 404 (2003).

Tampering with Electronic Monitoring Equipment Convictions

The conviction giving rise to the order requiring the defendant be subjected to electronic monitoring equipment is not an element of the crime of tampering with electronic monitoring equipment and may be counted for criminal history purposes. (K.S.A. 2016 Supp. 21-6322). See *State v. Thacker*, 48 Kan. App. 2d 515, 292 P.3d 342 (2013).

NONGRID OFFENSES

Nongrid offenses each contain specific penalty provisions within their respective statutes. Criminal history, except as provided in each statute for determining whether the crime is the second, third, fourth or subsequent such offense, are not relevant to the punishment for nongrid offenses. For more information on nongrid offenses, please see Chapter I.

PERSON MISDEMEANORS – CONVERSION TO PERSON FELONIES

Class A and B Person Misdemeanors

Prior adult convictions and juvenile adjudications for class A person misdemeanors and class B person misdemeanors convert to person felonies at a rate of 3 to 1. If the resulting number is a fraction, do not convert the fractional portion because these figures must be in whole numbers. For example, eight person misdemeanor convictions and/or juvenile person adjudications would be converted to two person felony convictions (i.e., $8 \div 3 = 2$). Do not count the remaining "unconverted" or fractional person misdemeanor convictions and/or juvenile person adjudications in the felony score. However, the two remaining convictions and/or adjudications in the example should still be listed in the Person Misdemeanor section. See K.S.A. 2016 Supp. 21-6811(a).

The Assault Rule

Every three prior adult convictions or juvenile adjudications of misdemeanor assault (a class C person misdemeanor), as defined in K.S.A. 21-3408, prior to its repeal, or subsection (a) of K.S.A. 2016 Supp. 21-5412, that occurred within a period of three years commencing immediately prior to the date of conviction for the current crime, shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes. K.S.A. 2016 Supp. 21-6811(a).

INVOLUNTARY MANSLAUGHTER AND DUI

See Special Rule #42. If the current crime of conviction is involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 2016 Supp. 21-5405(a)(3), each prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for a violation of K.S.A. 8-2,144 (Commercial DUI), K.S.A. 8-1567 (DUI), K.S.A. 2016 Supp. 8-1025 (Test Refusal) or a violation of a law of another state or an ordinance of any city, or resolution of any county which prohibits acts described in K.S.A. 8-2,144 (Commercial DUI), 8-1567 or K.S.A. 2016 Supp. 8-1025 (Test Refusal), shall count as one person felony for criminal history purposes. K.S.A. 2016 Supp. 21-5405(a)(3) and K.S.A. 2016 Supp. 21-6811(c)(2).

LEAVING THE SCENE OF AN ACCIDENT

See Special Rule #41. If the current crime of conviction is leaving the scene of an accident when the accident involves property damage of $1000 or more, great bodily harm or the death of any person, K.S.A. 8-1602(b)(2),(3) and (4), the following prior convictions, if for an act committed on or after July 1, 2011, shall count as a person felony for criminal history purposes:

- 8-235, driving a vehicle without a license;
- 8-262, driving while license is canceled, suspended, or revoked;
- 8-287, driving while one's privileges are revoked for being a habitual violator;
- 8-291, violating restrictions on driver's license or permit;
- 8-1566, reckless driving;
- 8-1567, driving under the influence of alcohol or drugs;
- 8-1568, fleeing or attempting to elude a police officer;
- 8-1602, leaving the scene of an accident resulting in injury, great bodily harm, or death;
- 8-1605, failing to contact the owner of vehicle following an accident causing damage to unattended property;
- 40-3104, failing to obtain motor vehicle liability insurance coverage;
- K.S.A. 2016 Supp. 21-5405(a)(3), involuntary manslaughter committed while DUI;
- K.S.A. 2016 Supp. 21-5406, vehicular homicide; or
- A violation of a city ordinance or law of another state which would also constitute a violation of such sections. K.S.A. 2016 Supp. 21-6811(i).

BURGLARY

Prior adult convictions and juvenile adjudications for burglary will be scored for criminal history purposes as follows:

- As a prior person felony if the prior conviction or adjudication was classified as a burglary to a dwelling, as described in subsection (a) of K.S.A. 21-3715, prior to its repeal, or subsection (a)(1) of K.S.A. 2016 Supp. 21-5807. K.S.A. 2016 Supp. 21-6811(d)(1); or

- As a prior nonperson felony if the prior conviction or adjudication was classified as a burglary to a building other than a dwelling, as described in subsection (b) of K.S.A. 21-3715, prior to its repeal, or subsection (a)(2) of K.S.A. 2016 Supp. 21-5807 or as a burglary to a motor vehicle or other means of conveyance of persons or property, as described in subsection (c) of K.S.A. 21-3715, prior to its repeal, or subsection (a)(3) of K.S.A. 2016 Supp. 21-5807. K.S.A. 2016 Supp. 21-6811(d)(2).

The facts required to classify prior adult convictions or juvenile adjudications for burglary must be established by the State by a preponderance of the evidence. See K.S.A. 2016 Supp. 21-6811(d).

When scoring burglary prior convictions that occurred prior to the Kansas Sentencing Guidelines Act (1993), such burglary convictions are scored as nonperson because burglary of a "dwelling" is not included in the statutory elements making up the conviction. *State v. Dickey*, 301 Kan. 1018, 350 P.3d 1054 (2015), (District court was constitutionally prohibited from classifying Dickey's prior burglary adjudication as a person felony because doing so would have required the district court to make or adopt a factual finding that went beyond simply identifying the statutory elements that constituted the prior burglary adjudication).

K.S.A. 2016 Supp. 21-5807 created special rule #47 for the crime of residential burglary. The law creates a special sentencing rule for burglary of a dwelling to make the sentence presumptive imprisonment if the offender has a criminal history score of C (one previous person felony and one previous nonperson felony), D (one previous person felony), or E (three or more nonperson felonies).

OUT-OF-STATE CONVICTIONS

Prior out-of-state convictions and juvenile adjudications will also be used to determine the appropriate criminal history category classification.

Convictions or adjudications occurring within the federal system, other state systems, the District of Columbia, foreign, tribal, or military courts are considered out-of-state convictions or adjudications. K.S.A. 2016 Supp. 21-6811(e).

Deferred adjudications and other processes that result in a finding of guilt without punishment from a foreign jurisdiction may be counted in the defendant's criminal history. See *State v. Macias*, 30 Kan. App. 2d 79, 39 P.3d 85 (2002) (No matter what lenience another state may wish to show, once we are satisfied that a defendant's factual guilt was established in a foreign state, that prior crime will count in Kansas).

Classification as Felony or Misdemeanor

Out-of-state crimes will be classified as either felonies or misdemeanors according to the law of the convicting jurisdiction. K.S.A. 2016 Supp. 21-6811(e)(2). If a crime is a felony in another state, it will be counted as a felony in Kansas. If a crime is a misdemeanor in another state, the state of Kansas shall refer to the comparable offense in order to classify the out-of-state crime as a class A, B or C misdemeanor. If the comparable misdemeanor crime in the state of Kansas is a felony, the out-of-state crime shall be classified as a class A misdemeanor. If the state of Kansas does not have a comparable crime, the out-of-state crime shall not be used in classifying the offender's criminal history. K.S.A. 2016 Supp. 21-6811(e)(2)(B). The facts required to classify out-of-state adult convictions and juvenile adjudications must be established by the State by a preponderance of the evidence. K.S.A. 2016 Supp. 21-6811(e).

The Legislature intended the sentencing court to compare a prior conviction to the most comparable Kansas offense to make a felony or misdemeanor determination when such conviction occurred in a jurisdiction that does not distinguish between felonies and misdemeanors, such as a military proceeding. *State v. Hernandez,* 24 Kan. App. 2d 285, 286-289, 944 P.2d 188, 192-193 (1997).

Classification as Person or Nonperson Crime

A comparable offense need not contain elements identical to those of the out-of-state crime, but must be similar in nature and cover a similar type of criminal conduct. *State v. Schultz,* 22 Kan. App. 2d 60, 62, 911 P.2d 1119 (1996).

The court may use any comparable Kansas offense, regardless of whether the crime is a felony or a misdemeanor. For example, if the out-of-state conviction is a misdemeanor, the court could use a Kansas felony as the comparable crime in order to determine if the conviction is scored as a nonperson or person crime. *State v. LaGrange*, 21 Kan. App. 2d 477, 901 P.2d 44 (1995).

The legislature intended for all prior convictions and juvenile adjudications—including convictions and adjudications occurring before implementation of the KSGA—to be considered and scored for purposes of determining an offender's criminal history score. In order to do this, a pre-KSGA conviction and/or adjudication must be classified as either a person or nonperson offense by comparing the criminal statute under which the prior offense arose to the comparable post-KSGA criminal statute. The comparable post-KSGA Kansas criminal statute is the one in effect at the time the current crime of conviction was committed. *State v. Keel*, 302 Kan. 560, 357 P.3d 251 (2015).

If Kansas has no comparable offense, the sentencing court must classify the out-of-state conviction as a nonperson crime. K.S.A. 2016 Supp. 21-6811(e)(3).

Comparable Offenses - Examples

The crime of second-degree burglary in Missouri applies when the structure involved is "a building or inhabitable structure." Mo.Rev.Stat. § 569.170.1 (1994). An "inhabitable structure" is defined in Mo.Rev.Stat. § 569.010(2) (1994), in pertinent part, as "a ship, trailer, sleeping car, airplane, or other vehicle or structure: (a) Where any person lives or carries on business or other calling." (Emphasis *63 added.) Thus, under the Missouri burglary statute, a gas station would be an "inhabitable structure" because business is carried on there.

In contrast, the Kansas burglary statute distinguishes between structures which are or are not "dwellings." According to K.S.A. 1994 Supp. 21-3110(7), [now K.S.A. 2016 Supp. 21-5111] 'dwelling' means a building or portion thereof, a tent, a vehicle, or other enclosed space which is used or intended for use as a human habitation, home or residence." From these definitions, it is clear that normally a gas station would not be considered a "dwelling" as contemplated by our legislature absent some proof that the gas station either is used or intended for use as a human habitation, home, or residence. *State v. Schultz*, 22 Kan. App. 2d 60, 911 P.2d 1119 (1996). See also *State v. Barajas*, 43 Kan. App. 2d 639, 230 P.3d 784 (2010).

Military Convictions

When military convictions are at issue, "a specification is the allegation of a distinct offense in support of the general charge, and is comparable to a count in a civilian indictment." *Hunsaker v. Ridgely*, 85 F. Supp. 757, 758 (S.D.Me. 1949), cited in *State v. Swilley*, 25 Kan. App. 2d 492, 967 P.2d 339 (1998).

PROOF OF CRIMINAL HISTORY

CRIMINAL HISTORY WORKSHEET

Except as provided in K.S.A. 2016 Supp. 21-6814, the sentencing court may take judicial notice in a subsequent felony proceeding of an earlier criminal history worksheet included in a presentence investigation report prepared for a prior sentencing of the defendant for a felony committed on or after July 1, 1993, as verification of the criminal history reflected on the worksheet. K.S.A. 2016 Supp. 21-6813(f). See also *State v. Turner*, 22 Kan. App. 2d 564, 919 P.2d 370 (1996) and *State v. Lakey*, 22 Kan. App. 2d 585, 920 P.2d 470 (1996).

Unless disputed by the offender, the criminal history worksheet serves as adequate verification of the offender's criminal history. If the offender disputes any aspect of the criminal history worksheet portion of the presentence investigation report as prepared by the field services officer, the offender shall immediately notify the district attorney and the court with a written notice specifying the exact nature of the alleged error. The State will then have the burden of producing further evidence to satisfy its burden of proof regarding any disputed part, or parts, of the criminal history. The sentencing judge must allow the state reasonable time to produce such evidence to establish the disputed portion of the criminal history by a preponderance of the evidence. If the offender later challenges such offender's criminal history, which has been previously established, the burden of proof shall shift to the offender to prove such offender's criminal history by a preponderance of evidence. K.S.A. 2016 Supp. 21-6814.

The sentencing court has the duty and authority to correct any errors on the criminal history worksheet.

UNCOUNSELED MISDEMEANOR CONVICTIONS

A person accused of a misdemeanor has a Sixth Amendment right to counsel if the sentence to be imposed upon conviction includes a term of imprisonment, even if the jail time is suspended or conditioned upon a term of probation. *State v. Long,* 43 Kan. App. 2d 328, 225 P.3d 754 (2010). A previous misdemeanor conviction in which the defendant was denied counsel and sentenced to a term of imprisonment, even if such term of imprisonment was suspended or conditioned upon a nonprison sanction, may not be counted in the offender's criminal history. However, if the offender's sentence did not include a term of imprisonment, the previous conviction may be counted in the offender's criminal history.

CHAPTER IV: PRESENTENCE INVESTIGATION REPORTS

A copy of the Kansas Sentencing Guidelines Act Presentence Investigation Report form along with the instructions for completing the form are contained in Appendix A of this Manual.

REQUIREMENTS

The sentencing court is required to order a Presentence Investigation Report (PSI) to be prepared by a court services officer as soon as possible after every felony conviction involving crimes committed on or after July 1, 1993, including all unclassified felonies. K.S.A. 2016 Supp. 21-6813(a). All presentence investigation reports in any case in which the defendant has been convicted of a felony shall be on a form approved by the Kansas Sentencing Commission. K.S.A. 2016 Supp. 21-6813(g). This format must be used to provide consistency statewide.

A copy of the PSI, including the Criminal History Worksheet, and the Journal Entry of Judgment, all attached together, must be sent to the Kansas Sentencing Commission for each felony case within thirty days after sentencing. K.S.A. 2016 Supp. 22-3439(a).

Field services officers are responsible for preparing the Presentence Investigation Report (PSI). The PSI report is mandatory in all felony cases under the KSGA. The primary purpose of the PSI report is to provide complete and accurate information about the criminal history of the offender, because criminal history is one of the two primary determining factors of the appropriate sentence established by the guidelines for the crime of conviction. Consequently, the Criminal History Worksheet is an essential component of the PSI report. The PSI report will contain a computation of the presumptive sentence provided by the guidelines for the crime of conviction, based on the crime severity level provided by the guidelines and the criminal history of the offender.

The Criminal History Worksheet should indicate the officer's source of information for each prior conviction listed, and copies of any verifying documents available to the officer should be attached, including criminal history worksheets prepared in prior cases in which sentencing occurred after July 1, 1993, and in which the worksheet was prepared in accordance with the requirements of the KSGA.

A PSI report that has been prepared in accordance with the requirements of the KSGA after its effective date of July 1, 1993, can be the subject of judicial notice by a sentencing court in any subsequent felony proceeding. See K.S.A. 2016 Supp. 21-6814(f).

Each PSI prepared for an offender to be sentenced for one or more felonies committed on or after July 1, 1993, shall be limited to the following information:

- A summary of the factual circumstances of the crime or crimes of conviction.
- If the defendant desires to provide one, a summary of the defendant's version of the crime.
- When there is an identifiable victim, a victim report. To the extent possible, the report shall include a complete listing of restitution for damages suffered by the victim.
- An appropriate classification of each crime of conviction on the crime severity scale.
- A listing of prior adult convictions or juvenile adjudications for felony or misdemeanor crimes or violations of county resolutions or city ordinances comparable to any misdemeanor defined by state law. Such listing shall include an assessment of the appropriate classification of the criminal history on the criminal history scale, the source of information regarding each listed prior conviction and

copies of any available source of journal entries or other documents through which the listed convictions may be verified, including any prior criminal history worksheets.

- Proposed grid block classification for each crime, or crimes of conviction and the presumptive sentence for each crime, or crimes of conviction.
- If the proposed grid block classification is a grid block that presumes imprisonment, the presumptive prison term range and the presumptive duration of postrelease supervision as it relates to the crime severity.
- If the proposed grid block classification does not presume prison, the presumptive prison term range and the presumptive duration of the nonprison sanction as it relates to the crime severity scale and the court services officer's professional assessment as to recommendations for conditions to be included as part of the nonprison sanction.
- For defendants who are being sentenced for a conviction of a felony violation of K.S.A. 2016 Supp. 21-5706, and meet the requirements of K.S.A. 2016 Supp. 21-6824 (2003 Senate Bill 123), the drug abuse assessment package as provided in K.S.A. 2016 Supp. 21-6824.

The PSI will become part of the court record and is accessible to the public, except that the official version, defendant's version, victim's statement, any psychological reports, drug and alcohol reports and assessments shall be accessible only to the parties, the sentencing judge, the department of corrections, and if requested, the Kansas Sentencing Commission. If the offender is committed to the custody of the secretary of corrections, the report shall be sent to the secretary and the warden of the state correctional institution to which the defendant is conveyed in accordance with K.S.A. 2016 Supp. 75-5220. K.S.A. 2016 Supp. 21-6813(c).

If the offense requires the offender to register under the Kansas Offender Registration Act (K.S.A. 2016 Supp. 22-4901 *et seq.*), the PSI Offender Registration Supplement should be completed.

The criminal history worksheet will not substitute as a presentence investigation report. K.S.A. 2016 Supp. 21-6813(d).

The PSI will not include optional report components, which would be subject to the discretion of the sentencing court in each district except for psychological reports and drug and alcohol reports. K.S.A. 2016 Supp. 21-6813(e).

CHAPTER V: SENTENCING

SENTENCING RANGE

Each grid block states the presumptive sentencing range, in months, for an offender whose crime of conviction and criminal history place such offender in that grid block. The middle number in the grid block is the "standard" number of months, the upper number in the grid block is the "aggravated" number of months, and the lower number in the grid block is the "mitigated" number of months.

The sentencing court may impose any sentence within the presumptive sentencing range. The sentencing court should select the midpoint or standard term of months in the usual case and use the upper or lower term to take into account any aggravating and mitigating factors that do not amount to sufficient justification for a departure.

A sentence to any term, including an aggravated term, within the range in a Kansas sentencing guideline presumptive grid box is constitutional. Because a sentence that falls within a grid box is a presumptive sentence, appellate courts lack jurisdiction to consider a challenge to such sentence under K.S.A. 2016 Supp. 21-6820(c). Appellate courts lack jurisdiction even if the sentence is to the longest term in the presumptive grid box for a defendant's convictions. *State v. Johnson*, 286 Kan. 824, 190 P.3d 207 (2008).

While the sentencing grids provide presumptive punishment for felony convictions, the sentencing court may impose a durational or dispositional departure when substantial and compelling circumstances exist. See K.S.A. 2016 Supp. 21-6804 and K.S.A. 2016 Supp. 21-6815.

PRESUMPTIVE IMPRISONMENT

If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. In presumptive imprisonment cases, the sentencing court must pronounce the prison sentence, the maximum potential good time reduction to such sentence and the period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision will not negate the period of postrelease supervision. K.S.A. 2016 Supp. 21-6804(e)(2) and 21-6805(c)(2).

PRESUMPTIVE NONPRISON

If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonprison. In a presumptive nonprison case, the sentencing court shall pronounce the duration of the nonprison sanction AND the underlying prison sentence. See K.S.A. 2016 Supp. 21-6804(e)(3), 21-6805(c)(3) and K.S.A. 2016 Supp. 21-6806(b).

BORDER BOXES

If an offense is classified in grid blocks 5-H, 5-I or 6-G of the nondrug grid, or grid blocks 4-E, 4-F, 4-G, 4-H or 4-I and 5-C, or 5-D of the drug grid, the sentence is presumed imprisonment, but the court may impose an optional nonprison sentence upon making the following findings on the record:

- 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 the recommended treatment program is available and the offender can be admitted to the program within a reasonable period of time; or
- The nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the sentencing court to impose an optional nonprison sentence is not considered a departure and is not subject to appeal. K.S.A. 2016 Supp. 21-6804(f) and 21-6805(d).

SENTENCING OPTIONS

AUTHORIZED DISPOSITIONS

Whenever a person has been convicted of a crime, the sentencing court has several sentencing options available that may be imposed either alone or in combination. K.S.A. 2016 Supp. 21-6604.

The court may:

- Commit the defendant to the custody of the Secretary of Corrections if the current crime is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment;
- Commit the defendant to jail for the term provided by law if confinement is for a misdemeanor or a nongrid felony;
- Release the defendant on probation, under the supervision of a court services officer, if the defendant's crime and criminal history place such defendant in a presumptive nonprison category or, through a departure for substantial and compelling reasons and subject to conditions as the court deems appropriate which may include the imposition of a jail term of not more than 60 days;
- Impose fines applicable to the offense that may be paid in installments if authorized by the court. The court may order performance of community service in lieu of payment of any fine imposed. The credit on the fine imposed will be applied at a rate of $5 for each full hour of community service performed;
- Assign the defendant to a community correctional services program pursuant to K.S.A. 2016 Supp. 75-5291, or through a departure for substantial and compelling reasons and subject to conditions as the court deems appropriate which may include full or partial restitution;
- *Assign to a conservation camp for a period not to exceed 6 months as a condition of the probation followed by a 6 month period of follow-up through adult intensive supervision by a community correctional services program, if the offender successfully completes the conservation camp program; * This program is currently unavailable as a sentencing option.
- Assign the defendant to house arrest pursuant to K.S.A. 2016 Supp. 21-6609;
- Order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by K.S.A. 2016 Supp. 21-6602(c);
- Order the defendant to repay the amount of any reward paid to aid in defendant's apprehension, any costs and expenses incurred by law enforcement to recapture defendant due to defendant's crime of escape, expenses incurred by firefighting agencies due to defendant's crime of arson, any public funds used by law enforcement to purchase controlled substances from the defendant during the investigation, any medical costs and expenses incurred by law enforcement;
- Order the defendant to pay the administrative fee authorized by K.S.A. 2016 Supp. 22-4529 unless waived by the court;
- Order the defendant to pay a domestic violence special program fee authorized by K.S.A. 20-369;

- Order the defendant to a work release program, outside the control of the Department of Corrections, if the defendant is convicted of a felony, under K.S.A. 2016 Supp. 21-6804(i), or a misdemeanor. If work release is imposed for a second or third and subsequent DUI, the offender shall be required to serve a total of 120 or 240 hours of confinement, respectively. Such hours shall be a mandatory 48 consecutive hours confinement followed by confinement hours at the end of and continuing to the beginning of the offender's work day;
- 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. 2016 Supp. 22-2802;
- Order the defendant to pay restitution, including but not limited to, damages or loss caused by the defendant's crime unless the court finds a restitution plan unworkable due to compelling circumstances and states such on the record;
- Order the defendant to submit to and complete an alcohol and drug evaluation and pay a fee for such evaluation when required by K.S.A. 2016 Supp. 21-6602(d);
- Order the defendant to reimburse the county general fund for expenditures by the county to provide counsel and other defense services to the defendant, after any order for restitution has been paid in full;
- Order the defendant to reimburse the state general fund for all or a part of the expenditures by the state board of indigent's defense services to provide counsel and other defense services to the defendant;
- Decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty pursuant to any other Kansas statute; and
- For Jessica's Law cases, 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. 2016 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.

U.S. ARMED FORCES SERVICE TREATMENT

K.S.A. 2016 Supp. 21-6630 allows a defendant to assert that their offense was committed as a result of an injury from service in a combat zone while in the armed forces of the United States. If the court determines the defendant has met the criteria established by the statute and the defendant's current crime and criminal history fall within a presumptive non-prison category under the sentencing guidelines, the court may order the defendant to undergo inpatient or outpatient treatment or a program operated by the United States department of defense, the United States department of veterans affairs or the Kansas national guard, if the defendant is eligible for and consents to such treatment. More information, including forms for the certification of status, can be found on the KSC website at http://sentencing.ks.gov/legislation/veterans-treatment.

FINES

Felony, misdemeanor and infraction fines are as follows in K.S.A. 2016 Supp. 21-6611:

Off-grid and drug severity level 1 or drug severity level 1 or 2 if committed on or after July 1, 2012	≤ $500,000
Nondrug severity level 1 through 5 and drug severity level 3 and 4 or drug severity level 3 or 4 if committed on or after July 1, 2012	≤ $300,000
Nondrug severity level 6 through 10 and drug severity level 4 or drug severity level 5 if committed on or after July 1, 2012	≤ $100,000
Class A misdemeanor	≤ $2,500
Class B misdemeanor	≤ $1,000
Class C misdemeanor	≤ $500
Traffic infraction	≤ $500
Cigarette or Tobacco infraction	$25

As an alternative to any of the above fines, the fine imposed may be fixed at any greater sum not exceeding double the pecuniary gain derived from the crime by the offender. K.S.A. 2016 Supp. 21-6611(c). In addition, certain offenses have particular fines that are specified by statute.

DUI

The range of mandatory DUI fines is as follows:

- 1st DUI: not less than $750 nor more than $1,000
- 2nd DUI: not less than $1,250 nor more than $1,750
- 3rd DUI: not less than $1,750 nor more than $2,500
- 4th or subsequent DUI: $2,500

Test Refusal

The range of Test Refusal Fines is as follows:

- 1st Offense: not less than $1,250 nor more than $1,750
- 2nd Offense: not less than $1,750 nor more than $2,500
- 3rd or Subsequent Offense: $2,500

For DUI and Test Refusal cases, $250 from each fine imposed for violations of K.S.A. 2016 Supp. 8-2,144, 8-1025 and 8-1567 shall be remitted to the state treasurer for deposit into the Community Corrections Supervision Fund. K.S.A. 2016 Supp. 8-2,144(p), 8-1025(n) and 8-1567(p)(2).

The mandatory fine must be imposed but the sentencing court should determine the method by which the defendant will pay it, either by payment or community service. *State v. Copes*, 290 Kan. 209, 224 P.3d 571 (2010). However, any community service ordered must be performed no later than one year from imposition. *State v. Grebe*, 46 Kan.App.3d 741, 264 P.3d 511 (2011).

Human Trafficking Crimes

Offenders who are convicted of Promoting the Sale of Sexual Relations or Commercial Sexual Exploitation of a Child shall pay a fine of not less than $2500 nor more than $5000, and upon a second or subsequent offense, shall be fined not less than $5000. Offenders who are convicted of Buying Sexual Relations shall pay a fine of $2500 for a first offense, and not less than $5000 upon a second or subsequent offense. All such fines will be remitted state treasurer for deposit into the Human Trafficking Victim Assistance Fund. K.S.A. 2016 Supp. 21-6420, 21-6421 and 21-6422.

DNA Database Fee

K.S.A. 75-724. (a) Any person convicted or adjudicated of an offense that, pursuant to K.S.A. 21-2511, and amendments thereto, requires submission of a DNA sample shall pay a separate court cost of $200 as a Kansas bureau of investigation DNA database fee upon conviction or adjudication.

Domestic Violence Program Fee

If a judicial district creates a local fund, the court may impose a fee against any defendant for crimes involving a family or household member as provided in K.S.A. 2016 Supp. 21-5414 and against any defendant found to have committed a domestic violence offense pursuant to K.S.A. 2016 Supp. 22-4616. The chief judge of each judicial district where such fee is imposed shall set the amount of such fee by rules adopted in such judicial district in an amount not to exceed $100 per case. K.S.A. 20-369.

Drug/Alcohol Evaluation Fee

Offenders who are convicted of a first or second violation of K.S.A. 8-2,144 (commercial DUI), a first violation of 8-1025 (test refusal) or a first or second violation of 8-1567 (DUI) are required to undergo a drug evaluation and pay a fee of $150. K.S.A. 8-1008.

Juveniles or adults convicted or adjudicated of having committed, while under 21 years of age, a misdemeanor under K.S.A. 8-1599, 41-719 or 41-727 or K.S.A. 2016 Supp. 21-5701 through 21-5717, shall be ordered to submit to an alcohol and drug evaluation and pay a fee of $150. If the court finds that the person is indigent, the fee may be waived. K.S.A. 2016 Supp. 21-6602(d).

If the person is 18 or older but less than 21 and is convicted of a violation of K.S.A. 41-727 involving cereal malt beverage, the evaluation and fee are permissive and not mandatory. K.S.A. 2016 Supp. 21-6602(e).

KBI Lab Fee

The court shall order any person convicted or diverted of a misdemeanor or felony contained in chapters 21, 41 or 65 of the Kansas Statutes Annotated, or a violation of K.S.A. 8-2,144 (Commercial DUI) or 8-1567 (DUI), or a violation of a municipal ordinance or county resolution prohibiting the acts prohibited by such statutes, unless the municipality or county has an agreement with the laboratory providing services that sets a restitution amount to be paid by the person that is directly related to the cost of laboratory services, to pay a separate court cost of $400 for every individual offense if forensic science or laboratory services, forensic computer examination services or forensic audio and video examination services are provided in connection with the investigation by the Kansas bureau of investigation; the Sedgwick county regional forensic science center; the Johnson county sheriff's laboratory; the heart of America regional computer forensics laboratory; the Wichita-Sedgwick county computer forensics crimes unit or the Garden City police department computer, audio and video forensics laboratory. K.S.A. 28-176(a) only allows for a court to impose the lab fee upon the defendant if the defendant was convicted or adjudicated of (or diverted from the crime). S*tate v. Goeller,* 276 Kan. 578, 77 P.3d 1272 (2003). Such fees shall be in addition to and not in substitution for any and all fines and penalties otherwise provided for by law for such offense. K.S.A. 28-176.

Correctional Supervision Fee

The court shall order, as a condition of probation, suspension of sentence or assignment to a

community corrections program, the offender to pay a correctional supervision fee of $60 if the person was convicted of a misdemeanor, or a fee of $120 if the person was convicted of a felony. In any case the amount of the correctional supervision fee specified by this paragraph may be reduced or waived by the judge if the person is unable to pay that amount. K.S.A. 21-6607(c)(3).

BIDS Attorney Fees

Pursuant K.S.A. 2016 Supp. 21-6604(i) and K.S.A. 22-4513, the court shall order the defendant to reimburse the state general fund for all or a 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 which 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.

A defendant may waive the right to have a district court make the findings required by K.S.A. 22-4513(b) and may do so in a written plea agreement. If there is a knowing, voluntary, and intelligent waiver, the district court may order payment of a BIDS attorney fee without making the findings required by State v. Robinson 281 Kan. 538, 546, 132 P.3d 934 (2006). Include the BIDS Attorney Fee ordered and check the box if the fee was waived. See *State v. Phillips*, 289 Kan. 28, 210 P.3d 93 (2009).

Booking/Fingerprint Fee

Any person convicted or diverted, or adjudicated or diverted under a preadjudication program, pursuant to K.S.A. 22-2906 *et seq.*, K.S.A. 2016 Supp. 38-2346 *et seq.*, or 12-4414 *et seq.*, of a misdemeanor or felony where fingerprints are required pursuant to K.S.A. 21-2501, shall pay a separate court cost, not exceed $45, if the board of county commissioners or by the governing body of a city, where a city operates a detention facility, votes to adopt such a fee as a booking or processing fee for each complaint.

Such fee shall be in addition to and not in substitution for any and all fines and penalties otherwise provided for by law for such offense. K.S.A. 12-16,119.

Children's Advocacy Center Fund Fee

On and after July 1, 2013, any defendant convicted of a crime under chapter 21 of the Kansas Statutes Annotated in which a minor is a victim, shall pay an assessment fee in the amount of $400 to the clerk of the district court. All moneys received pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the children's advocacy center fund. K.S.A. 20-370.

SB 123 Assessment and Program Fees

Each offender who receives an SB 123 assessment should be ordered to pay the $175 SB 123 assessment fee, regardless of whether they undergo SB 123 treatment. If SB 123 treatment is

ordered, the SB 123 Assessment Fee and the $125 SB 123 Reimbursement should be ordered together for a total of $300. Changes in treatment cost necessitated a change in the form to reflect the accurate average reimbursement cost of an assessment. Reimbursement fees increased $25 to maintain a requested total fee of $300. See K.S.A. 75-52,144.

PROBATION

Duration of Probation for Felonies

For all crimes committed on or after July 1, 1993, the duration of probation in felony cases sentenced for the following severity levels is as follows (K.S.A. 2016 Supp. 21-6608(c)):

Severity Level	1	2	3	4	5	6	7	8	9	10
Nondrug	36	36	36	36	36	24	24	≤ 18	≤ 12	≤ 12
Drug (prior to July 1, 2012	36	36	≤ 18	* ≤ 12						
Drug	36	36	36	≤ 18	* ≤ 12					

* Except for SB 123 sentences, where the standard probation term is up to 18 months. K.S.A. 2016 Supp. 21-6608(c)(4).

The KSGA recommends probation duration periods for crimes ranked on the nondrug grid at severity levels 1 through 7, on the drug grid for severity levels 1 and 2 prior to July 1, 2012 and on the drug grid for severity levels 1 through 3 committed on or after July 1, 2012.

With three exceptions, the total period in all cases shall not exceed 60 months or the maximum period of the prison sentence that could be imposed, whichever is longer. K.S.A. 2016 Supp. 21-6608(c).

- The first exception is that the sentencing court may modify or extend the period of supervision, pursuant to a modification hearing and a judicial finding of necessity, up to a maximum of 5 years or the maximum period of the prison sentence that could be imposed, whichever is longer. K.S.A. 2016 Supp. 21-6608(c)(8).
- Second, if the defendant is convicted of nonsupport of a child, the period may be extended as long as the responsibility for support continues. K.S.A. 2016 Supp. 21-6608(c)(7).
- Third, if the defendant is ordered to pay full or partial restitution, the period may be extended as long as the amount of restitution ordered has not been paid. K.S.A. 2016 Supp. 21-6608(c)(7). Other unpaid assessments, such as costs, BIDS fee reimbursements, and lab fees are not restitution, and thus the fact that such may remain unpaid does not justify a probation extension under the statute. *State v. Hoffman*, 45 Kan. App. 2d 272, 246 P.3d 992 (2011).

The KSGA sets upper limits on probation duration periods for sentences on severity levels 8 through 10 on the nondrug grid, severity levels 3 and 4 on the drug grid prior to July 1, 2012 and severity levels 4 and 5 on the drug grid committed on or after July 1, 2012. For crimes at these severity levels, the sentencing court may impose a longer period of probation if the court finds and sets forth with particularity the reasons for finding that the safety of members of the public will be jeopardized or that the welfare of the offender will not be served by the length of the probation terms provided in subsections (c)(3) and (c)(4) of K.S.A. 2016 Supp. 21- 6608. K.S.A. 2016 Supp. 21-6608(c)(5).

Duration of Probation for Misdemeanors
The period of suspension of sentence, probation or assignment to community corrections fixed by the court shall not exceed two years in misdemeanor cases, subject to renewal and extension for additional fixed periods of two years. K.S.A. 2016 Supp. 21-6608(a).

Multiple Probation Sentences
In cases of multiple nonprison sentences, the nonprison (probation) terms shall not be aggregated or served consecutively. If the underlying prison sentences for a nonprison sentence are ordered to run consecutively and the nonprison term is revoked, the offender will serve the prison terms consecutively. K.S.A. 2016 Supp. 21-6819(b)(8).

Termination and Presumptive Discharge
A nonprison sentence may be terminated by the court at any time. K.S.A. 2016 Supp. 21-6608(a).
In addition, a probationer who has been compliant with all terms of probation for a period of 12 months, has paid all restitution and has a risk assessment level of low risk is eligible for presumptive discharge from probation. The court shall grant such discharge unless the court finds clear and convincing evidence that denial of discharge will serve community safety interests. K.S.A. 2016 Supp. 21-6608(d).

Conditions of Probation
Court services and community corrections officers may recommend conditions of probation for offenders who receive a nonprison sentence. A felony offender may be sentenced to up to 60 days in county jail as a condition of probation. K.S.A. 2016 Supp. 21-6604(a)(3).

In addition to any other conditions, the court shall order the defendant to comply with each of the following conditions in K.S.A. 21-6607(c):

- obey all laws of the United States, the state of Kansas and any other jurisdiction to the laws of which the defendant may be subject;
- make reparation or restitution to the aggrieved party for the damage or loss caused by the defendant's crime, in an amount and manner determined by the court and to the person specified by the court, unless the court finds compelling circumstances which would render a plan of restitution unworkable. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefore;
- pay a correctional supervision fee of $60 if the person was convicted of a misdemeanor or a fee of $120 if the person was convicted of a felony. In any case the amount of the correctional supervision fee specified by this paragraph may be reduced or waived by the judge if the person is unable to pay that amount;
- reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant;
- be subject to searches of the defendant's person, effects, vehicle, residence and property by a court services officer, a community correctional services officer and any other law enforcement officer based on reasonable suspicion of the defendant violating conditions of probation or criminal activity; and
- be subject to random, but reasonable, tests for drug and alcohol consumption as ordered by a court services officer or community correctional services officer.

The court may impose any conditions that the court deems proper, including, but not limited to, requiring that the defendant in K.S.A. 21-6607(b) to:

- avoid such injurious or vicious habits, as directed by the court, court services officer or community correctional services officer;
- avoid such persons or places of disreputable or harmful character, as directed by the court, court services officer or community correctional services officer;
- report to the court services officer or community correctional services officer as directed;
- permit the court services officer or community correctional services officer to visit the defendant at home or elsewhere;
- work faithfully at suitable employment insofar as possible;
- remain within the state unless the court grants permission to leave;
- pay a fine or costs, applicable to the offense, in one or several sums and in the manner as directed by the court;
- support the defendant's dependents;
- reside in a residential facility located in the community and participate in educational, counseling, work and other correctional or rehabilitative programs;
- perform community or public service work for local governmental agencies, private corporations organized not for profit, or charitable or social service organizations performing services for the community;
- perform services under a system of day fines whereby the defendant is required to satisfy fines, costs or reparation or restitution obligations by performing services for a period of days, determined by the court on the basis of ability to pay, standard of living, support obligations and other factors;
- participate in a house arrest program pursuant to K.S.A. 2016 Supp. 21-6609, and amendments thereto;
- order the defendant to pay the administrative fee authorized by K.S.A. 22-4529, and amendments thereto, unless waived by the court; or
- in felony cases, except for violations of K.S.A. 8-1567, and amendments thereto, be confined in a county jail not to exceed 60 days, which need not be served consecutively.

COMMUNITY CORRECTIONS TARGET POPULATION

K.S.A. 2016 Supp. 75-5291(a)(2) defines the target population of offenders for placement in a community correctional services program. This target population consists of adult offenders convicted of felony offenses who meet one of the following criteria:

- Offenders whose sentence falls within the designated border boxes on either the drug or nondrug sentencing grids;
- Who, on or after July 1, 2014, are determined to be moderate risk, high risk or very high risk by use of a statewide, mandatory, standardized risk assessment tool or instrument which shall be specified by the Kansas Sentencing Commission. The LSI-R has been approved by the KSC as the official risk assessment tool;
- Offenders whose severity level and criminal history classification designate a presumptive prison sentence on either grid but receive a nonprison sentence as the result of a dispositional departure;
- Offenders convicted of a sex offense as defined in K.S.A. 22-4902, classified as a severity level 7 or higher, and who receive a nonprison sentence, regardless of the manner in which the sentence is imposed;
- Offenders who are placed in a community correctional services programs as a condition of supervision following the successful completion of a conservation camp program;
- Offenders who have been sentenced to community corrections supervision pursuant to K.S.A. 2016

Supp. 21-6824, SB 123 Drug Treatment.

- Offenders who have been placed in a community correctional services program for supervision by the court for DUI pursuant to K.S.A. 2016 Supp. 8-1567;
- Juvenile offenders may be placed in community corrections programs if the local community corrections advisory board approves. However, grants from the community corrections fund administered by the Secretary of Corrections cannot be used for this service. K.S.A. 2016 Supp. 75-5291(a)(4).
- A public safety provision also allows direct revocation to prison from supervision by court services for offenders for whom a violation of conditions of release or assignment or a nonprison sanction has been established, as provided in K.S.A. 2016 Supp. 22-3716, if the sentencing court sets forth with particularity why placement in community corrections would jeopardize public safety or would not be in the best interest of the offender. K.S.A. 2016 Supp. 75-5291(a)(5).

***CORRECTIONAL CONSERVATION CAMP**

The court shall consider placement of a defendant in the Labette Correctional Conservation Camp, conservation camps established by the secretary of corrections pursuant to K.S.A. 75-52,127, and amendment thereto, or a community intermediate sanction center under the following circumstances:

- 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 or, 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. 2016 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. 2016 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 or, 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 defendant shall not be sentenced to imprisonment if space is available in a conservation camp or a community intermediate sanction center and the defendant meets all of the conservation camp's or a 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 a community intermediate sanction center. K.S.A. 2016 Supp. 21-6604(g).

**In practice, all the nonprison alternatives provided in K.S.A. 2016 Supp. 21-6604(g) are no longer viable placement alternatives. The Kansas Court of Appeals, in State v. Johnson, 42 Kan. App. 2d 356, 211 P.3d 861 (2009), took judicial notice that the Labette facility has ceased to operate as of June 30, 2009. The notice from the Secretary of Corrections indicated that the facility is closed for both male and female offenders. As stated in the notice, the facility is no longer available as a sentencing disposition for offenders who are subject to possible placement at the facility pursuant to K.S.A. 21-6604(g). With the closing of Labette, there is no longer any conservation camp in Kansas operated by the Department of Corrections.*

GOOD TIME

The prison sentence represents the time an offender actually serves, subject to a maximum reduction of:

- 20% good time for crimes committed on or after July 1, 1993 and prior to April 20, 1995;
- 15% good time for crimes committed on or after April 20, 1995;
- 20% good time for crimes of nondrug severity level 7-10 committed on or after January 1, 2008, crimes of drug severity level 3 or 4 committed on or after July 1, 2008, but prior to July 1, 2012, or crimes of drug severity level 3 through 5 committed on or after July 1, 2012. K.S.A. 2016 Supp. 21-6806(a) and K.S.A. 2016 Supp. 21-6821(b).

Good time credit is specific to the crime of conviction. Offenders convicted of multiple counts will earn good time at the applicable rate for the sentence they are serving.

Good time credit shall not be applied to Jessica's Law sentences. See K.S.A. 2016 Supp. 21-6623.

AGGRAVATED HABITUAL SEX OFFENDERS

Aggravated habitual sex offenders are offenders convicted of a sexually violent crime who have previously been convicted of two or more sexually violent crimes. K.S.A. 2016 Supp. 21-6626. Such offenders will be sentenced to imprisonment for life without the possibility of parole.

EXTENDED JURISDICTION JUVENILE CASES

See Special Rule #11. Under K.S.A. 2016 Supp. 38-2364(a), if an extended jurisdiction juvenile prosecution results in a guilty plea or finding of guilt, the court shall: (1) impose one or more juvenile sentences under K.S.A. 2016 Supp. 38-2361 and (2) impose an adult criminal sentence, the execution of which shall be stayed on the condition that the juvenile offender does not violate the provisions of the juvenile sentence and does not commit a new offense. **An adult felony Journal Entry of Judgment form must be completed for these cases.** A box is located in the "Special Rule Applicable" section of the adult Journal Entry of Judgment form labeled "Extended Jurisdiction Juvenile Imposed," to indicate that the Journal Entry of Judgment is for a case where an extended jurisdiction juvenile sentence was imposed and should be checked in these cases. Full description of the extended jurisdiction prosecution may be found at K.S.A. 2016 Supp. 38-2347.

SPECIAL SENTENCING RULES

PUBLIC SAFETY OFFENSES / FIREARMS FINDING

1. Person Felony Committed With a Firearm

When a firearm is used to commit any person felony, the offender's sentence shall be presumed imprisonment. The sentencing court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting

offender reformation. Any decision made by the sentencing court to impose an optional nonprison sentence is not considered a departure and is not subject to appeal. K.S.A. 2016 Supp. 21-6804(h).

2. Aggravated Battery Against a Law Enforcement Officer

The sentence for the violation of K.S.A. 21-3415, prior to its repeal (aggravated battery against a law enforcement officer), if committed prior to July 1, 2006, which places the defendant's sentence in grid blocks 6-H or 6-I shall be presumed imprisonment. The sentencing court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the sentencing court to impose an optional nonprison sentence is not considered a departure and is not subject to appeal. K.S.A. 2016 Supp. 21-6804(g).

3. Aggravated Assault Against a Law Enforcement Officer

The sentence for the violation of K.S.A. 2016 Supp. 21-5412(d) (aggravated assault of a law enforcement officer), which places the defendant's sentence in grid blocks 6-H or 6-I shall be presumed imprisonment. The sentencing court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the sentencing court to impose an optional nonprison sentence is not considered a departure and is not subject to appeal. K.S.A. 2016 Supp. 21-6804(g).

34. Battery on a Law Enforcement Officer

A special sentencing rule exists for a violation of K.S.A. 2016 Supp. 21-5413(c)(2), battery on a law enforcement officer where **bodily harm occurs**. The sentence shall be presumptive imprisonment and shall be served consecutively to any other terms imposed. A law enforcement officer shall include a: uniformed or properly identified university campus police; state, county, or city law enforcement officer, other than a state correctional officer; judge; attorney; community corrections officer; or court services officer. K.S.A. 2016 Supp. 21-6804(r).

32. Drug Felony Committed - Firearm Carried or Possessed

If the trier of fact makes a finding that the offender carried a firearm to commit a drug felony, or possessed a firearm in furtherance of a drug felony, the sentence imposed shall be enhanced by an additional 6 months imprisonment and such additional sentence shall be presumptive imprisonment. K.S.A. 2016 Supp. 21-6805(g)(1)(A).

This special rule **DOES NOT** apply to crimes sentenced on the nondrug grid:

- K.S.A. 2016 Supp. 21-5705(d)(6)(B), Drug distribution to a minor;
- K.S.A. 21-5707, Unlawful manufacture, distribution, cultivation or possession of controlled substances using a communication facility;
- K.S.A. 21-5708, Unlawfully obtaining or selling a prescription-only drug;
- K.S.A. 21-5713, Unlawful distribution or possession of a simulated controlled substance;
- K.S.A. 21-5714, Unlawful representation that noncontrolled substance is controlled substance;
- K.S.A. 21-5710(e)(3)(A), Possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia;
- K.S.A. 21-5710(e)(4)(B), Distributed or caused drug paraphernalia to be distributed to a minor or on or within 1,000 feet of any school property;
- K.S.A. 2016 Supp. 21-5706, Unlawful possession of controlled substances; and

- K.S.A. 21-5713, Unlawful distribution or possession of a simulated controlled substance on the drug grid.

33. Drug Felony Committed - Firearm Discharged
If the trier of fact makes a finding that the offender discharged a firearm when committing a drug felony, the sentence imposed shall be enhanced by an additional 18 months imprisonment and such additional sentence shall be presumptive imprisonment. K.S.A. 2016 Supp. 21-6805(g)(1)(B).

This special rule **DOES NOT** apply to crimes sentenced on the nondrug grid:

- K.S.A. 2016 Supp. 21-5705(d)(6)(B), Drug distribution to a minor;
- K.S.A. 21-5707, Unlawful manufacture, distribution, cultivation or possession of controlled substances using a communication facility;
- K.S.A. 21-5708, Unlawfully obtaining or selling a prescription-only drug;
- K.S.A. 21-5713, Unlawful distribution or possession of a simulated controlled substance;
- K.S.A. 21-5714, Unlawful representation that noncontrolled substance is controlled substance;
- K.S.A. 21-5710(e)(3)(A), Possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia;
- K.S.A. 21-5710(e)(4)(B), Distributed or caused drug paraphernalia to be distributed to a minor or on or within 1,000 feet of any school property;
- K.S.A. 2016 Supp. 21-5706, Unlawful possession of controlled substances; and
- K.S.A. 21-5713, Unlawful distribution or possession of a simulated controlled substance on the drug grid.

4. Crime Committed for the Benefit of a Criminal Street Gang
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 sentence shall be presumed imprisonment. The sentencing court may impose an optional nonprison sentence and such nonprison sentence is not considered a departure and is not subject to appeal. K.S.A. 2016 Supp. 21-6804(k).

11. Extended Jurisdiction Juvenile Imposed
If an extended jurisdiction juvenile prosecution results in a guilty plea or finding of guilt, the court shall; (1) impose one or more juvenile sentences under K.S.A. 2016 Supp. 38-2361 and, (2) impose an adult criminal sentence, the execution of which shall be stayed on the condition that the juvenile offender does not violate the provisions of the juvenile sentence and does not commit a new offense. **An adult felony Journal Entry of Judgment must be completed for these cases**. K.S.A. 2016 Supp. 38-2364.

35. Aggravated Endangering a Child
The sentence for violation of K.S.A. 2016 Supp. 21-5601(b) (aggravated endangering of a child), is a nondrug severity 9, person felony, and shall be served consecutively to any other term or terms of imprisonment imposed by the court. Such sentence is not a departure and is not subject to appeal. K.S.A. 2016 Supp. 21-5601(c)(2).

36. Ballistic Resistant Material
If the trier of fact makes a finding that an offender wore or used ballistic resistant material during the

commission of, attempt to commit, or flight from any felony, the sentence shall be enhanced by an additional 30 months imprisonment. Such additional sentence shall be presumptive prison and shall be served consecutively to any other term or terms of imprisonment imposed. K.S.A. 2016 Supp. 21-6804(t).

38. Unlawful Sexual Relations

The sentence for a violation of K.S.A. 2016 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. K.S.A. 2016 Supp. 21-6804(s).

HABITUAL OR REPEAT OFFENSES

5. Persistent Sex Offender

The sentence for any persistent sex offender, as defined in K.S.A. 2016 Supp. 21-6804(j), whose current crime of conviction 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. However, the provisions of this subsection shall not apply to any person whose current crime of conviction is a severity level 1 or 2 nondrug felony, unless such current conviction is for the crime of rape, K.S.A. 2016 Supp. 21-5503, and the offender has at least one prior conviction for rape in this state or a comparable felony from another jurisdiction. K.S.A. 2016 Supp. 21-6804(j).

12. Second or Subsequent Conviction for Manufacture of a Controlled Substance

The sentence for a second or subsequent conviction for the manufacture of a controlled substance under K.S.A. 2016 Supp. 21-5703, IF the prior conviction was for manufacture of methamphetamine, shall be double the presumptive sentence length. However, the sentencing court may reduce the sentence in an amount not to exceed 50 percent of the special sentence length increase if mitigating circumstances exist. Any decision made by the sentencing court regarding the reduction is not considered a departure and is not subject to appeal. K.S.A. 2016 Supp. 21-6805(e).

1) If both the current and prior convictions do not involve methamphetamine, the crime is a drug severity level 1 felony and the special sentencing rule does not apply. Priors can inlude a substantially similar offense from another jurisdiction in which the substance was not methamphetamine. K.S.A. 21-5703(2)(B)
2) If the prior conviction involved methamphetamine but the current conviction does not, the crime is a drug severity level 2 felony and the special sentencing rule applies, imposing a sentence of double the maximum duration of the presumptive term of imprisonment.
3) If the prior conviction did not involve methamphetamine but the current conviction does, the crime is a drug severity level 1 felony and the special sentencing rule does not apply.
4) If both the current and prior convictions involve methamphetamine, the crime is a drug severity level 1 felony and the special sentencing rule applies, imposing a sentence of double the maximum duration of the presumptive term of imprisonment.

26. Third or Subsequent Conviction for Drug Possession

The sentence for a third or subsequent felony conviction of K.S.A. 2016 Supp. 21-5706 shall be presumed imprisonment. Priors can include a substantially similar offense from another jurisdiction. K.S.A. 21-5706(c)(2)(B), (c)(3)(B) & (c)(3)(C).

Such sentence shall not be considered a departure and shall not be subject to appeal. K.S.A. 2016 Supp. 21-6805(f)(1).

47. Residential Burglary with Criminal History C, D, or E Criminal History
This is imposed by K.S.A. 2016 Supp. 21-5807 for the crime of residential burglary. The law creates a special sentencing rule for burglary of a dwelling to make the sentence presumptive imprisonment if the offender has a criminal history score of 7C (one previous person felony and one previous nonperson felony), 7D (one previous person felony), or 7E (three or more nonperson felonies). K.S.A. 21-6804(x).

13. Residential Burglary with One Prior Residential, Non-Residence, or Aggravated Burglary Conviction
The sentence for the violation of burglary of a residence, K.S.A. 21-3715(a), prior to its repeal, K.S.A. 2016 Supp. 21-5807(a)(1), or an attempt or conspiracy to commit such, when the offender has a prior conviction for residential or nonresidential burglary, K.S.A. 21-3715(a) or (b), prior to its repeal; K.S.A. 2016 Supp. 21-5807(a)(1) or (a)(2) (automobile burglary is not included); aggravated burglary, K.S.A. 21-3716, prior to its repeal, K.S.A. 2016 Supp. 21-5807(b); or an attempt or conspiracy to commit such, shall be presumed imprisonment. K.S.A. 2016 Supp. 21-6804(l). There is no indication in the statute it would include priors that are substantially similar offenses from another state.

27. Burglary with Two or More Prior Convictions for Theft, Burglary or Aggravated Burglary
The sentence for a violation of burglary, K.S.A. 2016 Supp. 21-5807(a), when the offender has any combination of two or more prior convictions of theft, (K.S.A. 21-3701, prior to its repeal), burglary (K.S.A. 21-3715, prior to its repeal), aggravated burglary (K.S.A. 21-3716, prior to its repeal), theft of property as defined in K.S.A. 2016 Supp. 21-5801, burglary or aggravated burglary as defined in K.S.A. 2016 Supp. 21-5807, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section. Such sentence shall not be considered a departure and shall not be subject to appeal. K.S.A. 2016 Supp. 21-6804(p). There is no indication in the statute it would include priors that are substantially similar offenses from another state.

29. Felony Theft with Three or More Prior Convictions for a Felony Theft, Burglary, or Aggravated Burglary
The sentence for a violation of theft of property, K.S.A. 2016 Supp. 21-5801, when the offender has any combination of three or more prior felony convictions for theft (K.S.A. 21-3701, prior to its repeal), burglary (K.S.A. 21-3715, prior to its repeal), aggravated burglary (K.S.A. 21-3716, prior to its repeal), theft of property as defined in K.S.A. 2016 Supp. 21-5801, burglary or aggravated burglary as defined in K.S.A. 2016 Supp. 21-5807, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section. K.S.A. 2016 Supp. 21-6804(p).
There is no indication in the statute it would include priors that are substantially similar offenses from another state.

30. Substance Abuse Underlying Factor*
The court may make findings that substance abuse is the underlying factor in the commission of crimes under special rules #27 and #29 above and place the offender in an intensive treatment program for at least 4 months if the state substance abuse facility is likely to be more effective than prison in reducing the risk of offender recidivism, serve community safety interests and promote offender reformation; return to court upon successful completion. K.S.A. 2016 Supp. 21-6804(p).
**While this option is authorized by statute, it has never been funded and is not, therefore, an available option.*

31. Third or Subsequent Criminal Deprivation of a Motor Vehicle
The sentence for a third or subsequent violation of criminal deprivation of property that is a motor vehicle pursuant to K.S.A. 2016 Supp. 21-5803(b) shall be presumptive imprisonment. Such

sentence shall not be considered a departure and shall not be subject to appeal. K.S.A. 2016 Supp. 21-6804(n). There is no indication in the statute it would include priors that are substantially similar offenses from another state.

16. Second Forgery

The crime of forgery is a severity level 8, nonperson felony on the nondrug grid. The sentence for a felony violation of K.S.A. 2016 Supp. 21-5823(b)(3) shall be as provided by the specific mandatory sentencing requirements of that statute unless the new conviction places the offender in the criminal history category A or B. In such case, the sentence shall be as for a severity level 8, nonperson felony. K.S.A. 2016 Supp. 21-6804(i)(1) and (2).

The specific mandatory sentencing provisions of K.S.A. 2016 Supp. 21-5823 provide that upon a first conviction for forgery, the offender is to be fined the lesser of the amount of the forged instrument or $500. For a second conviction of forgery the offender is required to serve at least 30 days imprisonment as a condition of probation and is to be fined the lesser of the amount of the forged instrument or $1,000. The offender is not eligible for release on probation, suspension, or reduction of sentence or parole until after serving the mandatory 30 or 45 day sentences as provided herein. K.S.A. 2016 Supp. 21-5823(b). There is no indication in the statute it would include priors that are substantially similar offenses from another state.

State v. Luttig, 40 Kan. App. 2d 1095, 199 P.3d 793 (2009) identified this shock time jail sentence as a penalty enhancement, and therefore prior convictions of forgery used to enhance the penalty could not be used for criminal history purposes. The Kansas Supreme Court affirmed this holding in *State v. Gilley*, 290 Kan. 31, 223 P.3d 774 (2010). However, 2010 House Bill 2469, effective April 8, 2010, amended K.S.A. 2010 Supp. 21-4710(d)(11) [now K.S.A. 2016 Supp. 21-6810(d)(9)], to provide for inclusion of prior offenses in the criminal history that enhance a penalty so long as they do not enhance the severity level of the offense, elevate the classification from misdemeanor to felony, or are not elements of the present crime of conviction. *State v. Pearce*, 51 Kan. App. 2d 116, 342 P.3d 963 (2015).

17. Third or Subsequent Conviction for Forgery

Upon a third or subsequent conviction of forgery the offender is required to serve at least 45 days imprisonment as a condition of probation and is to be fined the lesser of the amount of the forged instrument or $2,500. The offender is not eligible for release on probation, suspension, or reduction of sentence or parole until after serving the mandatory 45 day sentence as provided herein. K.S.A. 2016 Supp. 21-5823(b).

State v. Luttig, 40 Kan. App. 2d 1095, 199 P.3d 793 (2009) identified this shock time jail sentence as a penalty enhancement, and therefore prior convictions of forgery used to enhance the penalty may not be used for criminal history purposes. The Kansas Supreme Court affirmed this holding in *State v. Gilley*, 290 Kan. 31, 223 P.3d 774 (2010). As noted above however, 2010 House Bill 2469, effective April 8, 2010, amended K.S.A. 2010 Supp. 21-4710(d)(11) [now K.S.A. 2016 Supp. 21-6810(d)(9)], to provide for inclusion of prior offenses in the criminal history that enhance a penalty so long as they do not enhance the severity level of the offense, elevate the classification from misdemeanor to felony, or are not elements of the present crime of conviction. *State v. Pearce*, 51 Kan. App. 2d 116, 342 P.3d 963 (2015).

9. Crime Committed While Incarcerated and Serving a Felony Sentence, or While on Probation, Parole, Conditional Release, or Postrelease Supervision for a Felony

Under any of these conditions, a new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 2016 Supp. 21-6606 AND if the new crime of conviction is a felony, the sentencing court may sentence the offender to imprisonment for the new conviction, even

when the new crime of conviction otherwise presumes a nonprison sentence. Imposition of a prison sentence for the new crime does not constitute a departure. K.S.A. 2016 Supp. 21-6604(f)(1), and also *State v. Allen*, 28 Kan. App. 2d 784, 20 P.3d 747 (2001). See also K.S.A. 2016 Supp. 21-6606(e)(2) (serving indeterminate sentence).

40. Felony Committed after Early Discharge where Offender would have been on Probation or Postrelease Supervision for a Felony

On and after July 1, 2013, an offender who receives presumptive discharge from probation pursuant to K.S.A. 2016 Supp. 21-6608(d) or is granted early discharge from postrelease supervision pursuant to K.S.A. 2016 Supp. 22-3717(d)(2), and commits a felony during the time in which the offender would have been under supervision had it not been for discharge, may be sentenced to prison for the new felony even if the sentence for such felony is presumptive nonprison. K.S.A. 2016 Supp. 21-6604(f)(2)

28. Crime Committed While Incarcerated in a Juvenile Correctional Facility for an Offense Which if Committed by an Adult Would be a Felony

A special rule pertains to juveniles who commit a new felony while incarcerated in a juvenile correctional facility for a crime which if committed by an adult would be a felony. In such instances, the court shall sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. 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. K.S.A. 2016 Supp. 21-6604(f)(3).

10. Crime Committed While the Offender is on Release for a Felony Bond

When a new felony is committed while the offender is on release pursuant to article 28 of chapter 22 (Conditions of Release) of the Kansas Statutes Annotated, or similar provisions of the laws of another jurisdiction, a new sentence may be imposed pursuant to the consecutive sentencing requirements of K.S.A. 2016 Supp. 21-6606 and the sentencing court may sentence an offender to imprisonment for the new conviction, even if the new crime of conviction otherwise presumes a nonprison sentence. Imposition of a prison sentence for the new crime committed while on release for a felony does not constitute a departure. K.S.A. 2016 Supp. 21-6604(f)(4). However, K.S.A. 2016 Supp. 21-6606(d) indicates that any person who is convicted and sentenced for a crime committed while on release for a felony pursuant to article 28 of chapter 22 of the Kansas Statutes Annotated shall serve the sentence consecutively to the term or terms under which the person was released. Because of this conflict, a court imposing a consecutive sentence should clarify that consecutive sentencing was done in the exercise of discretion, not because it was mandated.

37. Second or Subsequent Identity Theft or Identity Fraud

The sentence for a violation of identity theft or identity fraud as defined in K.S.A. 2016 Supp. 21-6107, or any attempt or conspiracy to commit such offense, shall be presumptive prison when the offender has a prior conviction for a violation of identity theft under K.S.A. 21-4018, prior to its repeal, or identity theft or identity fraud under this statute, or any attempt or conspiracy to commit such offense. K.S.A. 2016 Supp. 21-6804(u). There is no indication in the statute it would include priors that are substantially similar offenses from another state. Such sentence is not considered a departure and is not subject to appeal.

41. Leaving the Scene of an Accident

If the current crime of conviction is leaving the scene of an accident when the accident involves great bodily harm or the death of any person, K.S.A. 8-1602(b)(3) through (5), the following prior

convictions for offenses committed on or after July 1, 2011, shall count as a person felony for criminal history purposes:

- 8-235, driving a vehicle without a license;
- 8-262, driving while license is canceled, suspended, or revoked;
- 8-287, driving while one's privileges are revoked for being a habitual violator;
- 8-291, violating restrictions on driver's license or permit;
- 8-1566, reckless driving;
- 8-1567, driving under the influence of alcohol or drugs;
- 8-1568, fleeing or attempting to elude a police officer;
- 8-1602, leaving the scene of an accident resulting in injury, great bodily harm, or death;
- 8-1605, failing to contact the owner of vehicle following an accident causing damage to unattended property;
- 40-3104, failing to obtain motor vehicle liability insurance coverage;
- Subsection (a)(3) of K.S.A. 2016 Supp. 21-5405, involuntary manslaughter committed while DUI;
- K.S.A. 2016 Supp. 21-5406, vehicular homicide; or
- A violation of a city ordinance or law of another state which would also constitute a violation of such sections. K.S.A. 2016 Supp. 21-6811(i).

42. Involuntary Manslaughter by DUI

If the current crime of conviction is involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 2016 Supp. 21-5405(a)(3), each prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for any violation of K.S.A. 2016 Supp. 8-1567 (DUI) or K.S.A. 2016 Supp. 8-2,164 (Commercial DUI) or K.S.A. 2016 Supp. 8-1025 (Test Refusal), or a violation of a law of another state or an ordinance of any city, or resolution of any county which prohibits these acts shall count as one person felony for criminal history purposes. K.S.A. 2016 Supp. 21-5405(a)(3) and K.S.A. 2016 Supp. 21-6811(c)(2).

43. Third or Subsequent Flee and Attempt to Elude

The sentence for a third or subsequent violation of fleeing or attempting to elude a police officer, K.S.A. 8-1568, shall be presumptive imprisonment and shall be imposed consecutive to any other term of imprisonment imposed. K.S.A. 2016 Supp. 21-6804(v). There is no indication in the statute it would include priors that are substantially similar offenses from another state. Such sentence is not considered a departure and is not subject to appeal.

44. Aggravated Battery by DUI

If current conviction is for K.S.A. 21-5413(b)(3), the first prior conviction, adjudication or diversion of K.S.A. 8-1567 (DUI), K.S.A. 8-2,144 (Commercial DUI), K.S.A. 8-1025 (Test Refusal), or comparable law of a different jurisdiction, shall count as a nonperson felony for criminal history purposes. Each second and subsequent prior adult conviction, diversion or juvenile adjudication of these offenses shall count as a person felony for criminal history purposes.

45. Aggravated Criminal Damage to Property

K.S.A. 21-5813(b) (Scrap Metal) 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.

46. Kansas Offender Registration Act

K.S.A. 2016 Supp. 21-6804(m) provides that the sentence for a violation of K.S.A. 22-4903 or K.S.A. 2016 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 K.S.A. 2016 Supp. 21-6804(q).

NONGRID OFFENSES

6. Felony DUI

Felony driving under the influence as defined in K.S.A. 2016 Supp. 8-1567 is a nongrid crime with no guidelines severity level or other connection to the KSGA. Instead, the specific sentencing provisions of the DUI statute determine the sentence. Additionally, the offender cannot be sent to a state correctional facility to serve the sentence imposed. K.S.A. 2016 Supp. 21-6804(i). However, for a third or subsequent DUI, an offender is required to serve a mandatory post-imprisonment supervision period of one year under the supervision of community correctional services or court services, as determined by the court. Any violation of the conditions of such supervision may subject the person to revocation and imprisonment in jail for the remainder of the period of imprisonment, supervision period, or any combination or portion thereof. K.S.A. 2016 Supp. 8-1567(b)(3).

39. Felony DUI Test Refusal

Felony DUI Test Refusal as defined in K.S.A. 2016 Supp. 8-1025 is an unclassified felony crime that is scored as a severity level 10 nonperson offense. Despite its classification on the grid, the specific sentencing provisions contained within the DUI Test Refusal statute determine the sentence. As with felony DUI, the offender cannot be sent to a state correctional facility to serve the sentence imposed. However, for a second or subsequent conviction for DUI Test Refusal, an offender is required to serve a mandatory post-imprisonment supervision period of one year under the supervision of community correctional services or court services, as determined by the court. Any violation of the conditions of such supervision may subject the person to revocation and imprisonment in jail for the remainder of the period of imprisonment, supervision period, or any combination or portion thereof. K.S.A. 2016 Supp. 8-1025(b)(3).

At the time of printing the Kansas Supreme Court is reviewing whether K.S.A. 8-1025 is unconstitutional. The review will determine if these prior convictions are counted in a defendant's DUI criminal history. See *State v. Ryce*, 303 Kan. 899, 368 P.3d 342 (2016), *reh'g granted,* (Sept. 29, 2016).

8. Felony Domestic Battery

Felony domestic battery, as defined in K.S.A. 2016 Supp. 21-5414(b)(3), is a nongrid person felony with no guidelines severity level or other connection to the KSGA. The specific sentencing provision of the domestic battery statute determines the sentence. Additionally, the offender cannot be sent to a state correctional facility to serve the sentence imposed. K.S.A. 2016 Supp. 21-6804(i).

21. Animal Cruelty

Felony animal cruelty, as defined in K.S.A. 2016 Supp. 21-6412(a)(1), (a)(6) or (b)(2)(B), is a nongrid, nonperson felony with no guidelines severity level or other connection to the KSGA. The sentence for felony animal cruelty shall be as provided by the specific mandatory sentencing requirements of K.S.A. 2016 Supp. 21-6412(b)(1) or (b)(2)(B). Additionally, the offender cannot be sent to a state correctional facility to serve the sentence. K.S.A. 2016 Supp. 21-6412 and K.S.A. 2016 Supp. 21-6804(i).

Felony animal cruelty involving a working or assistance dog, as defined in K.S.A. 2016 Supp. 21-6416(a), is a nongrid, nonperson felony with no guidelines severity level or other connection to the KSGA. The sentence for felony animal cruelty of a working or assistance dog shall be as provided

by the specific mandatory sentencing requirements of K.S.A. 2016 Supp. 21-6416(b). Additionally, the offender cannot be sent to a state correctional facility to serve the sentence. K.S.A. 2016 Supp. 6804(i).

FINANCE OFFENSES

25. Fraudulent Insurance Act

A fraudulent insurance act shall constitute a severity level 6, nonperson felony if the amount involved is $25,000 or more; a severity level 7, nonperson felony if the amount involved is at least $5,000 but less than $25,000; a severity level 8, nonperson felony if the amount involved is at least $1,000 but less than $5,000; and a class C nonperson misdemeanor if the amount is less than $1,000. Any combination of fraudulent acts occurring within a period of six consecutive months which involves $25,000 or more shall have a presumptive prison sentence of imprisonment regardless of its location on the sentencing grid block. K.S.A. 2016 Supp. 40-2,118(e).

15. Kansas Uniform Securities Act

Any violation of the Kansas Uniform Securities Act, K.S.A. 17-12a101 *et seq*., resulting in a loss of $25,000 or more, shall have a presumptive sentence of imprisonment regardless of the offender's presumptive sentence as located on the nondrug grid. K.S.A 2016 Supp. 17-12a508(a)(5).

19. Mortgage Business Act

Any person who willfully or knowingly violates any of the provisions of this act, any rule, and regulation adopted or order issued under this act commits a severity level 7 nonperson felony. A second or subsequent conviction of this act, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment. K.S.A. 2016 Supp. 9-2203(d).

20. Loan Brokers Act

Any person who willfully violates any provision of this act or knowingly violates any cease and desist order issued under this act commits a severity level 7, nonperson felony. Any violation of this act committed on or after July 1, 1993 and resulting in a loss of $25,000 or more, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment. K.S.A. K.S.A. 2016 Supp. 50-1013(a).

MULTIPLE CONVICTIONS

When separate sentences of imprisonment for different crimes are imposed on a defendant on the same date, including sentences for crimes for which suspended sentences, probation or assignment to a community correctional services program have been revoked, such sentences shall run concurrently or consecutively at the discretion of the sentencing court. The sentencing judge may consider the need to impose an overall sentence that is proportionate to the harm and culpability and shall state on the record if the sentence is to be served concurrently or consecutively. K.S.A. 2016 Supp. 21-6606 and 21-6819(b). If the sentencing court is silent as to whether multiple sentences are to run consecutively or concurrently, the sentences shall run concurrently except as provided by K.S.A. 2016 Supp. 21-6606(c), (d) and (e).

CONCURRENT AND CONSECUTIVE SENTENCES

Consecutive sentencing is mandatory in certain circumstances if it will not result in a manifest injustice. K.S.A. 2016 Supp. 21-6819(a). Consecutive sentencing is generally required when imposing a sentence for:

- a felony committed while the offender was on probation, assigned to a community corrections services program, on parole, conditional release, postrelease supervision, or serving time for a felony; K.S.A. 2016 Supp. 21-6606(c),
- a felony committed while the offender was on felony bond; K.S.A. 2016 Supp. 21-6606(d), (Special Rule #10);
- a knowing or reckless violation of battery against a law enforcement officer; K.S.A. 2016 Supp. 21-6804(r), (Special Rule #34);
- aggravated endangering a child, K.S.A. 2016 Supp. 21-5601, (Special Rule #35)
- a finding that the offender wore ballistic resistant materials, in which the offender shall serve an additional 30 months' imprisonment consecutive to any other sentence, K.S.A. 2016 Supp. 21-6804(t), (Special Rule #36); and
- a felony committed while the offender was incarcerated and serving a sentence for a felony in any place of incarceration. K.S.A. 2016 Supp. 21-6606(e)(1), (Special Rule #9).

DETERMINING THE BASE SENTENCE AND PRIMARY CRIME

In all sentencing cases involving multiple convictions, the sentencing court must establish the base sentence for the primary crime. The primary crime is determined pursuant to K.S.A. 2016 Supp. 21-6819(b)(2) as follows:

- The primary crime is generally the crime with the highest severity ranking. However, an off-grid crime shall not be used as the primary crime in determining the base sentence when imposing multiple sentences. The primary on-grid offense shall be sentenced with full criminal history and forms the base sentence for the guidelines sentence. The off-grid sentence remains primary overall, but is added to the guidelines sentence or concurrent to the guidelines sentence, as determined by the court.
- In situations where more than one crime is classified in the same category, the sentencing judge must designate which crime will serve as the primary crime.
    - A presumptive imprisonment crime is primary over a presumptive nonimprisonment crime.
    - When the offender is convicted of crimes sentenced on nondrug and drug grids, the primary crime is the one that carries the longest prison term. Therefore, in sentencing with the drug grid and nondrug, both crimes having the same presumption of probation or imprisonment, the primary crime shall be the crime with the longest sentence term.

For the "base" sentence, the offender's full criminal history is to be applied to determine the presumptive range for that crime. However, non-base sentences will not have criminal history scores applied and shall be calculated in the criminal history I (far right) column of the grid according to the severity level of the crime. K.S.A. 2016 Supp. 21-6819(b)(3) and (b)(5).

WHEN PRIMARY CRIME IS PRISON

If the sentence for the primary crime is prison, the entire imprisonment term of the consecutive sentences will be served in prison, even if the additional crimes are presumptive nonprison. K.S.A. 2016 Supp. 21-6819(b)(6).

"DOUBLE" RULE

When consecutive sentences are imposed, the total prison sentence imposed cannot exceed twice the base sentence. This is referred to as the "double rule." K.S.A. 2016 Supp. 21-6819(b)(4). This means that

the sentencing court is not required to shorten the length of any of the individual non-base sentences given to an offender, as long as the court orders that the total sentence given to the offender is adjusted so that it does not exceed twice the base sentence. The term "base sentence" applies to the base sentence actually imposed, not to the maximum base sentence that could have been imposed according to the sentencing grid. *State v. Snow*, 282 Kan. 323, 341-42, 144 Kan. 729 (2006). The sentencing judge shall have the discretion to impose a consecutive term of imprisonment for a crime other than the primary crime of any term of months not to exceed the nonbase sentence. K.S.A. 2016 Supp. 21-6819(b)(1). This allows the court the discretion to impose less than the full sentence for each additional offense ordered to run consecutively to the primary offense.

ON-GRID AND OFF-GRID CONVICTIONS

If sentences for off-grid and on-grid (sentencing guidelines) convictions are ordered to run consecutively, the offender shall not begin to serve the on-grid sentence until paroled from the off-grid sentence, and the postrelease period will be based on the off-grid crime. K.S.A. 2016 Supp. 21-6819(b)(2).

NONPRISON SENTENCES RUN CONCURRENT

In cases of multiple nonprison sentences, the nonprison (probation) terms shall not be aggregated or served consecutively. If the underlying prison sentences for a nonprison sentence are ordered to run consecutively and the nonprison term is revoked, the offender will serve the prison terms consecutively. K.S.A. 2016 Supp. 21-6819(b)(8).

CRIMES COMMITTED PRIOR TO JULY 1, 1993

If an offender is sentenced to prison for a crime committed on or after July 1, 1993, while the offender was imprisoned for an offense committed prior to July 1, 1993, and the offender is not eligible for the retroactive application of the KSGA, the new sentence begins when the offender is paroled or reaches the conditional release date on the old sentence, whichever is earlier.

If the offender was past the offender's conditional release date at the time the new offense was committed, the new sentence begins when the offender is ordered released by the Prisoner Review Board or reaches the maximum sentence date on the old sentence, whichever is earlier.

The new sentence is then served as otherwise provided by law. The period of postrelease supervision will be based on the new sentence. K.S.A. 2016 Supp. 21-6606(e)(2).

POSTRELEASE SUPERVISION

In cases involving multiple convictions, the crime carrying the longest postrelease supervision term, including off-grid crimes, will determine the period of postrelease supervision. K.S.A. 2016 Supp. 22-3717(d)(1)(F). Postrelease supervision periods will not be aggregated.

CONSOLIDATION

Orders of consolidation should be completed in both cases. PSIs should be prepared for both cases wherein the primary offense is indicated by case and count number, as well as subsequent counts. A separate Journal Entry of Judgment form (JE) must be used for each separate case number that is

consolidated with the primary case. All cases should have their own JE, including misdemeanor cases, with felony PSIs and criminal history included with felony offenses. All counts other than the primary offense in the primary case will use criminal history I.

DEPARTURES AND DEPARTURE FACTORS

Either party may file a motion seeking a departure, or the sentencing court may depart on its own motion. Any party filing a motion to depart must state in its motion the type of departure sought and the reasons relied upon. Both the prosecution and defense shall have a reasonable time to prepare for a departure hearing, and the sentencing court shall transmit to both parties, copies of the presentence investigation report prior to the hearing. The State must provide notice of a departure hearing to any victim or the victim's family, and the sentencing court shall review the victim impact statement. Parties may brief the sentencing court in writing and make oral arguments to the court at the hearing. K.S.A. 2016 Supp. 21-6817(a)(1) and (a)(3).

At the conclusion of the departure hearing or within 21 days thereafter, the sentencing court shall issue findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order. K.S.A. 2016 Supp. 21-6817(a)(2). Whenever the sentencing court departs from the presumptive guidelines sentence, the court must make findings of fact as to the reasons for departure regardless of whether a hearing is requested. K.S.A. 2016 Supp. 21-6817(a)(4). If a factual aspect of the current crime of conviction is an element of the crime or is used to subclassify the crime on the crime severity scale, that factual aspect may be used as an aggravating or mitigating factor to justify a departure from the presumptive sentence only if the criminal conduct constituting that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime. K.S.A. 2016 Supp. 21-6815(c)(3).

In determining aggravating or mitigating circumstances, the sentencing court shall consider:

- any evidence received during the proceeding, including the victim impact statement;
- the presentence investigation report;
- written briefs and oral arguments of either the State or counsel for the defendant; and
- any other evidence relevant to such aggravating or mitigating circumstances that the court finds trustworthy and reliable. K.S.A. 2016 Supp. 21-6815(d)(1) through (d)(4).

MITIGATING FACTORS

The following nonexclusive list of statutorily enumerated factors may be considered in determining whether substantial and compelling reasons for a downward dispositional departure exist:

- The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction;
- The offender played a minor or passive role in the crime or participated under circumstances of duress or compulsion. This factor is not sufficient as a complete defense;
- The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants, drugs or alcohol does not fall within the purview of this factor;
- The defendant, or the defendant's children, suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse; or
- The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.

- The offender committed such crime as a result of an injury, including major depressive disorder, polytrauma, post-traumatic stress disorder or traumatic brain injury, connected to service in a combat zone in the armed forces of the United States of America. K.S.A. 2016 Supp. 21-6815(c)(1)(A) through (F).

K.S.A. 2016 Supp. 21-6815(e) provides additional mitigating factors to be considered. It provides that, upon motion of the prosecutor stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who is alleged to have committed an offense, the court may consider such mitigation in determining whether substantial and compelling reasons for a departure exist. In considering this mitigating factor, the court may consider the following:

- the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the prosecutor's evaluation of the assistance rendered;
- the truthfulness, completeness and reliability of any information or testimony provided by the defendant;
- the nature and extend of the defendant's assistance;
- any injury suffered, or any danger or risk of injury to the defendant or the defendant's family resulting from such assistance; and
- the timeliness of the defendant's assistance. K.S.A. 2016 Supp. 21-6815(e).

For Jessica's Law departures, the sentencing judge may rely on the same mitigating factors to find substantial and compelling reasons for a departure from the mandatory minimum of Jessica's Law, and to support an additional departure from the default prison sentence pursuant to the sentencing guidelines act. *State v. Spencer*, 291 Kan. 796, 248 P.3d 256 (2011).

AGGRAVATING FACTORS

The following nonexclusive list of aggravating factors may be considered in determining whether substantial and compelling reasons for departure exist:

- The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity that was known or should have been known to the offender;
- The defendant's conduct during the commission of the current offense manifested excessive brutality to the victim in a manner not normally present in that offense;
- The offense was motivated by the defendant's belief or perception, entirely or in part, of the race, color, religion, ethnicity, national origin or sexual orientation of the victim, whether or not the defendant's belief or perception was correct;
- The offense involved a fiduciary relationship which existed between the defendant and the victim;
- The defendant, 18 or more years of age, employed, hired, used, persuaded, induced, enticed, or coerced any individual under 16 years of age to commit or assist in avoiding detection or apprehension for commission of any person felony or any attempt, conspiracy or solicitation to commit any person felony regardless of whether the defendant knew the age of the individual was under 16 years of age;
- The defendant's current crime of conviction is a crime of extreme sexual violence and the defendant is a predatory sex offender as defined by this section;
- The defendant was incarcerated at the time the crime was committed; or
- The crime involved two or more participants in the criminal conduct, and the defendant played a major role in the crime as the organizer, leader, recruiter, manager, or supervisor. K.S.A. 2016 Supp. 21-6815(c)(2)(A) through (H).

DRUG GRID CRIMES - ADDITIONAL AGGRAVATING FACTORS

In addition to the factors listed above, the following aggravating factors which apply to drug felonies committed on or after July 1, 1993, may be considered in determining whether substantial and compelling reasons for departure exist:

- The crime was committed as part of a major organized drug manufacture, production, cultivation or delivery activity. Two or more of the following nonexclusive factors constitute evidence of major organized drug manufacture, production, cultivation or delivery activity:
  - The offender derived a substantial amount of money or asset ownership from the illegal drug sale activity;
  - The presence of a substantial quantity or variety of weapons or explosives at the scene of arrest or associated with the illegal drug activity;
  - The presence of drug transaction records or customer lists that indicate a drug sale activity of major size;
  - The presence of manufacturing or distribution materials such as, but not limited to, drug recipes, precursor chemicals, laboratory equipment, lighting, irrigation systems, ventilation, power-generation, scales or packaging material;
  - Building acquisitions or building modifications including but not limited to painting, wiring, plumbing or lighting which advanced or facilitated the commission of the offense;
  - Possession of large amounts of illegal drugs, or substantial quantities of controlled substances;
  - A showing that the offender has engaged in repeated criminal acts associated with the manufacture, production, cultivation, or delivery of controlled substances.
- The offender possessed illegal drugs:
  - With the intent to sell, which were sold or were offered for sale to a person under 18 years of age; or
  - With the intent to sell, deliver or distribute, or which were sold, or offered for sale in the immediate presence of a person under 18 years of age;
- The offender, 18 or more years of age, employs, hires, uses, persuades, induces, entices, coerces any individual under 16 years of age to violate or assist in avoiding detection or apprehension for violation of any provision of the uniform controlled substances act, or any attempt, conspiracy or solicitation to commit a violation of any provision of the uniform controlled substances act, regardless of whether the offender knew the individual was under 16 years of age;
- The offender was incarcerated at the time the crime was committed. K.S.A. 2016 Supp. 21-6816(a)(1) through (a)(4).
- In determining whether aggravating factors exist as provided in this section, the court shall review the victim impact statement. K.S.A. 2016 Supp. 21-6816(b).

DURATIONAL DEPARTURES

When imposing a departure sentence, the sentencing court should begin with the grid block corresponding to the severity level of the crime of conviction and the offender's criminal history. A sentence that is an upward durational departure cannot exceed twice the maximum presumptive sentence. There is no limit on a downward durational departure. K.S.A. 2016 Supp. 21-6818(b).

DISPOSITIONAL DEPARTURES

The sentencing court may also depart from the presumptive disposition in the case by sentencing an offender for whom the presumptive sentence is probation to prison (upward dispositional departure), or by sentencing an offender for whom the presumptive sentence is prison to a nonprison sanction (downward dispositional departure). See K.S.A. 2016 Supp. 21-6818(c) and (d). When the sentencing judge imposes a prison sentence as a dispositional departure, the term of imprisonment shall not exceed the maximum duration of the presumptive imprisonment term. If an upward dispositional departure is combined with an upward durational departure, the sentencing court must define separate substantial and compelling reasons for both departures. See K.S.A. 2016 Supp. 21-6818(c)(2). However, this requirement does not apply in the case of a downward dispositional and durational departure combination.

JESSICA'S LAW OFFENSES

When the court finds substantial and compelling reasons to impose a downward departure, the court may impose the guidelines sentence in lieu of the mandatory minimum sentence. K.S.A. 2016 Supp. 21-6627(c).

A downward departure from an off-grid Jessica's Law sentence must first depart to a guidelines sentence within the grid box reflecting the offender's criminal history and the severity level of the crime when the victim's age and the offender's age are not considered. If the sentencing judge wishes to depart from the presumptive guidelines sentence, the court must also consider whether substantial and compelling factors exist to justify a second departure from the presumptive sentence. *State v. Jolly*, 291 Kan. 842, 249 P.3d 421 (2011) and *State v. Spencer*, 291 Kan. 796, 248 P.3d 256 (2011).

CRIMES OF EXTREME SEXUAL VIOLENCE

No downward dispositional departure shall be imposed for any crime of extreme sexual violence, as defined in K.S.A. 2016 Supp. 21-6815 and the sentencing judge shall not impose a downward durational departure for a crime of extreme sexual violence to less than 50% of the center of the range of the sentence for such crime. K.S.A. 2016 Supp. 21-6818(a).

POSTRELEASE SUPERVISION DEPARTURE FOR SEXUALLY MOTIVATED OFFENSES

If an offender is convicted of a sexually motivated crime, as defined in 2016 Supp. K.S.A. 22-3717(d)(2), the sentencing court, based upon substantial and compelling reasons stated on the record, may depart from the prescribed postrelease supervision period and place the offender on postrelease supervision for a maximum period of 60 months. This is considered a departure and is subject to appeal. K.S.A. 2016 Supp. 22-3717(d)(1)(D)(i) and (ii).

JURY TRIAL PROCEDURES FOR UPWARD DURATIONAL DEPARTURE

- If the State seeks an upward durational departure sentence, the aggravating factor(s) must first be stipulated to by defendant or proven to a unanimous jury beyond a reasonable doubt. In *State v. Gould*, 271 Kan. 394, 23 P.3d 801 (2001), the Supreme Court held that facts (aggravators) that would increase the penalty beyond the statutory maximum, other than a prior conviction, must be submitted

to a jury and proved beyond a reasonable doubt. The Legislature then amended K.S.A. 21-4716 [now K.S.A. 2016 Supp. 21-6815(b)] to provide a statutory framework for such a jury proceeding:

- In *State v. Horn*, 291 Kan. 1, 8–9, 238 P.3d 238 (2010), the Kansas Supreme Court stated the prior statutory language "appears to contemplate the use of an existing trial jury in the separate departure sentence proceeding." It then determined "that a defendant's waiver of his or her right to a jury trial on the issue of guilt mandates that the court, not a jury, will hear the evidence and make the factual findings on the existence of the asserted sentence-enhancing factor." In the 2011 legislative session, the Kansas Legislature addressed the *Horn* decision by amending K.S.A. 2010 Supp. 21–4718(b)(4). The statute now simply provides the determination regarding an upward departure must be made by "*a jury* as soon as practicable." It also notes "If the jury at the upward durational departure sentence proceeding has been waived, the upward durational departure sentence proceeding shall be conducted by the court."

- The defendant must be informed of the right to have aggravating departure factors determined by a jury in order for such waiver to be valid. *State v. Duncan*, 291 Kan. 467, 243 P. 3d 338 (2010).
- A County or District Attorney seeking an upward durational departure must provide notice 30 days prior to the date of trial or, within 7 days from the date of the arraignment if the trial is to take place in less than 30 days from the date of the arraignment. K.S.A. 2016 Supp. 21-6817(b)(1). The court shall determine if the presentation of the evidence regarding the aggravating factors shall be presented during the trial of the matter or in the jury proceeding following the trial. K.S.A. 2016 Supp. 21-6817(b)(2).
- The jury shall determine, based on the reasonable doubt standard, whether aggravating factors exist that may serve to enhance the maximum sentence. If one or more aggravating factors are found to exist, by a unanimous jury vote, such factors shall be reported to the court on a special jury verdict form. K.S.A. 2016 Supp. 21-6817(b)(4) and (b)(7).

DEPARTURE AND CONSECUTIVE SENTENCING COMBINATION

The following shall apply for a departure from the presumptive sentence based on aggravating factors within the context of consecutive sentences:

- The court may depart from the presumptive limits for consecutive sentences only if the judge finds substantial and compelling reasons to impose a departure sentence for any of the individual crimes being sentenced consecutively. K.S.A. 2016 Supp. 21-6819(c)(1).
- When a departure sentence is imposed for any of the individual crimes sentenced consecutively, the imprisonment term of that departure sentence shall not exceed twice the maximum presumptive imprisonment term that may be imposed for that crime. K.S.A. 2016 Supp. 21-6819(c)(2).
- The total imprisonment term of the consecutive sentences, including the imprisonment term for the departure crime, shall not exceed twice the maximum presumptive imprisonment term of the departure sentence following aggravation. This, referred to as the "double-double rule", means that the total prison term of the consecutive sentences must not be more than twice the upward departure sentence. K.S.A. 2016 Supp. 21-6819(c)(3).

Examples

An offender is convicted of kidnapping (severity level 3), aggravated burglary (severity level 5), and theft with a loss of at least $1,000 but less than $25,000 (severity level 9). The offender has one prior person felony conviction placing him in criminal history Category D. If the jury determines, based on the reasonable doubt standard, that substantial and compelling reasons exist to impose an upward durational departure sentence for the kidnapping, that departure may be imposed in conjunction with

the imposition of consecutive sentences for the remaining convictions of aggravated burglary and theft. Both the limits on the total consecutive term and the limits applicable to upward durational departure sentences apply.

The sentencing court begins by establishing a base sentence for the primary sentence. In this fact pattern, the most serious crime of conviction is the kidnapping, with a presumed imprisonment sentence of 94 months, which becomes the base sentence. The two remaining convictions at criminal history Category I have presumptive sentences of 32 and 6 months respectively. (If the sentencing court wished only to sentence these offenses consecutively, the total sentence could not aggregate to a sum greater than two times the base without a durational departure sentence. In this hypothetical case, the greatest aggregate consecutive sentence would be 2 x 94, or 188 months. Here, the total sum of 94 + 32 + 6 would be 132 months, a consecutive sentence clearly within the limit of twice the base sentence.)

Assume that the jury establishes a finding for an upward durational departure sentence for the kidnapping conviction based on the presence of an aggravating factor and the court imposes three consecutive sentences for the three offenses in this case.

Base sentence: Kidnapping at Maximum Presumptive Sentence = 100 months
(Kidnapping at severity level 3, criminal history D on the nondrug grid)
Other sentences: Aggravated Burglary and Theft = 32 and 6 months.
(Aggravated Burglary at severity level 5, criminal history I and Theft at severity level 9, criminal history I on the nondrug grid)

The base sentence may be enhanced to a maximum departure length of up to 200 months, or two times the maximum presumptive sentence. This is the standard rule for any departure sentence. In addition, the total imprisonment term of the consecutive sentences, including the departure term, shall not exceed twice the departure of the enhanced sentence. Therefore, the aggregate consecutive sentence in this example cannot exceed 2 x 200, or 400 months. The sum of 200 + 32 + 6, or 238 months is well within the limit of 400 months.

The sentencing court may choose to depart and impose a longer sentence for the aggravated burglary and theft if independent substantial and compelling reasons exist to justify those departures. The aggregate consecutive sentence becomes 200 + 64 + 12, or 276 months, which is still within the limit of 400 months. This sentence would represent a durational departure sentence within a consecutive sentence context, and the limits on the total duration of such a sentence are sometimes referred to as the "double-double rule." The application of the "double-double rule" allows a sentencing court considerable discretion in fashioning a sentence for exceptional cases that warrant both an upward durational departure and consecutive sentencing. See *State v. Snow,* 282 Kan. 323, 342, 144 P.3d 729 (2006) and the subsequent *State v. Snow*, 40 Kan. App.2d 747, 195 P.3d 282 (2008).

REPORTING DISPOSITIONS TO THE KANSAS SENTENCING COMMISSION

The sentencing guidelines Journal Entry of Judgment form approved by the Kansas Sentencing Commission must be completed for each felony conviction for a crime committed on or after July 1, 1993. K.S.A. 2016 Supp. 22-3426(d). The court shall forward a signed copy of the Journal Entry of Judgment, attached together with the presentence investigation report as provided by K.S.A. 2016 Supp.

21-6813 to the Kansas Sentencing Commission within 30 days after sentencing. K.S.A. 2016 Supp. 22-3439(a).

For crimes committed on or after July 1, 1993, when a convicted person is revoked for a probation violation, a Journal Entry of Probation Violation form as approved by the Kansas Sentencing Commission shall be completed by the court. K.S.A. 2016 Supp. 22-3426a. For probation revocations that result in the defendant's imprisonment in the custody of the Department of Corrections, the court shall forward a signed copy of the Journal Entry of Probation Violation to the Kansas Sentencing Commission within 30 days of final disposition. K.S.A. 2016 Supp. 22-3439(b). Even if the probation revocation hearing does not result in the offender being imprisoned, a Journal Entry of Probation Violation, on the approved form, must still be submitted to the Kansas Sentencing Commission. See K.S.A. 2016 Supp. 74-9101(b)(5).

The Kansas Sentencing Commission staff will also review felony journal entries and notify the sentencing court in writing when a possible illegal sentence has been identified. The information gathered from the sentencing guidelines forms provides a database to assess the impact of the sentencing guidelines on state correctional resources, the impact of proposed revisions to the sentencing guidelines, and improves the availability and reliability of criminal history record information.

REPORTING DISPOSITIONS TO THE KANSAS BUREAU OF INVESTIGATION

The court shall insure that information concerning dispositions for all other felony probation revocations based upon crimes committed on or after July 1, 1993, and for all class A and B misdemeanor crimes and assault as defined in K.S.A. 2016 Supp. 21-5412, committed on or after July 1, 1993, is forwarded to the Kansas Bureau of Investigation central repository on a form or in a format approved by the Kansas Attorney General within 30 days of that final disposition. K.S.A. 2016 Supp. 22-3439(c). All district courts shall be required to electronically report all case filings and dispositions for violations of K.S.A. 2016 Supp. 8-1567 and 8-1025, 21-5426, 21-6419, 21-6420, 21-6421 and 21-6422. K.S.A. 2016 Supp. 22-4704.

Likewise in the municipal courts, the municipal judge shall ensure that information concerning dispositions of city ordinance violations that result in convictions comparable to offenses under Kansas criminal statutes is forwarded to the Kansas Bureau of Investigation central repository on a form or in a format approved by the Kansas Attorney General within 30 days of final disposition. K.S.A. 12-4106(e). In all cases alleging a violation of K.S.A. 2016 Supp. 8-2,144, 8-1567, 32-1131, 8-1025, 21-6419 or 21-6241, reports of the filing and disposition of such case must be submitted electronically to the KBI central repository. K.S.A. 2016 Supp. 12-4106(f).

DNA SAMPLE COLLECTION

Offenders who are convicted of certain crimes, or adjudicated of certain juvenile offenses, shall be required to submit a DNA or biological sample to the Kansas Bureau of investigation. The details of this procedure are provided K.S.A. 2016 Supp. 21-2511.

CHAPTER VI: DRUG TREATMENT – SB 123 PROGRAM

TARGET POPULATION

K.S.A. 2016 Supp. 21-6604(n) provides a mandatory nonprison sanction of certified drug abuse treatment under community corrections supervision for certain drug possession offenders.

This target population shall be required to undergo a criminal risk-need and drug abuse assessment:

Adult offenders convicted of drug possession, (K.S.A. 2016 Supp. 21-5706) who:

(1) have NO felony conviction(s) of drug manufacturing (K.S.A. 2016 Supp. 21-5703), drug cultivation (K.S.A. 2016 Supp. 21-5705(c)), drug distribution (K.S.A. 2016 Supp. 21-5705(a)) or unlawful use of proceeds of a drug crime (K.S.A. 2016 Supp. 21-5716);

-AND-

(2) (A) whose offense is in the 5-C, 5-D, 5-E, 5-F, 5-G, 5-H or 5-I grids blocks of the drug grid

-OR-

(B) whose offense is in the 5-A or 5-B grids blocks of the drug grid if:

(i) the offender's prior person felony conviction(s) were severity level 8, 9, or 10 or nongrid offenses; AND

(ii) the sentencing court finds and sets forth with particularity the reasons for finding that public safety will not be jeopardized by placement of the offender in a certified drug abuse treatment program. See K.S.A. 2016 Supp. 21-6824(a).

Offenders who have been convicted of a third or subsequent violation of K.S.A. 2016 Supp. 21-5706 (or K.S.A. 65-4160 or 65-4162, prior to their repeal, or K.S.A. 2010 Supp. 21-36a06, prior to its transfer) shall not be eligible for SB 123, but shall be sentenced to prison pursuant to K.S.A. 2016 Supp. 21-6805(f).

Offenders convicted of *attempted* possession are not eligible for SB 123. *State v. Perry-Coutcher*, 45 Kan. App. 2d 911, 254 P.3d 566 (2011). Likewise, offenders convicted of conspiracy and solicitation to commit drug possession will not be eligible for SB 123 treatment.

Offenders who are residents of another state and are returning to such state pursuant to the interstate corrections compact or the interstate compact for adult offender supervision, or who are not lawfully present in the United States and being detained for deportation, are not eligible for treatment under SB 123 and shall be sentenced as otherwise provided by law. K.S.A. 2016 Supp. 21-6824(h).

CRIMINAL RISK-NEED AND DRUG ABUSE ASSESSMENTS

As part of the presentence investigation, offenders who meet the requirements of K.S.A. 2016 Supp. 21-6824(a), unless otherwise specifically ordered by the court, shall be subject to a drug abuse assessment and a criminal risk-need assessment. Both assessments must be completed prior to sentencing. However, those offenders who score Low or Low/Moderate on the LSI-R criminal risk-need assessment need not be subject to a drug abuse assessment unless otherwise ordered by the court.

The Kansas Sentencing Commission has adopted the use of the LSI-R (Level of Service Inventory – Revised) as the mandatory criminal risk-need assessment and the SASSI (Substance Abuse Subtle Screening Inventory) as the mandatory drug abuse assessment.

The presentence criminal risk-need assessment shall be conducted by a court services officer or a community corrections officer. Offenders shall be assigned a risk status based on the results of the assessment. K.S.A. 2016 Supp. 21-6824(b).

The presentence drug abuse assessment shall be conducted by a drug abuse treatment program certified by the secretary of corrections to provide assessment and treatment services and shall include a clinical interview and a recommendation concerning drug abuse treatment for the offender. See K.S.A. 2016 Supp. 75-52,144(b).

The risk-need assessment and drug abuse assessment are only available to the parties, the sentencing judge, the department of corrections and if requested, the Kansas Sentencing Commission. K.S.A. 2016 Supp. 21-6813(c).

QUALIFICATION FOR TREATMENT

As of July 1, 2012, participation in SB 123 treatment has been limited to include only those offenders who have both moderate to high criminal risk-need and high drug abuse assessment scores. Those offenders who score Low or Low/Moderate on the LSI-R criminal risk-need assessment need not be subject to a drug abuse assessment unless otherwise ordered by the court.

If the offender is assigned a high risk status as determined by the drug abuse assessment performed pursuant to subsection (b)(1) and a moderate or high risk status as determined by the criminal risk-need assessment performed pursuant to subsection (b)(2), the sentencing court shall commit the offender to treatment in a drug abuse treatment program, under community corrections supervision, until the court determines the offender is suitable for discharge by the court. The term of treatment shall not exceed 18 months. K.S.A. 2016 Supp. 21-6824(c) and (d)(1). Even if the offender's criminal history places them in a border box on the drug grid (5C and 5D), SB 123 treatment is mandatory if the offender meets the criteria outlined in K.S.A. 2016 Supp. 21-6824. *State v. Swazey*, 51 Kan. App. 2d, 357 P.3d 893 (2015).

If the offender's risk-need assessment and drug abuse assessment scores do not qualify the offender for treatment, the offender will be supervised by either court services or community corrections, depending on the results of the criminal risk-need assessment. K.S.A. 2016 Supp. 21-6824(d)(2).

The court may order an offender who otherwise does not meet the assessment score requirements of subsection (c) to undergo one additional drug abuse assessment while such offender is on probation. Such offender may be ordered to undergo drug abuse treatment pursuant to subsection (a) if such offender is determined to meet the requirements of subsection (c). The cost of such assessment shall be paid by such offender. K.S.A. 2016 Supp. 21-6824(i).

See Appendix E (SB 123 flow chart).

PAYMENT OF FEES

All offender assessments, regardless of whether the offender is sentenced for SB 123 treatment, will initially be paid by the Kansas Sentencing Commission. K.S.A. 2016 Supp. 75-52-144(d).

The sentencing court shall determine the extent, if any, that such person is able to pay for such assessment and treatment. Such payments shall be used by the supervising agency to offset costs to the state. If such financial obligations are not met or cannot be met, the sentencing court shall be notified for the purpose of collection or review and further action on the offender's sentence. K.S.A. 2016 Supp. 75-52,144(d). For those assessed but not eligible for treatment, it is requested that a $175 assessment fee be ordered at sentencing. For those sentenced to SB 123 treatment, a minimum $175 assessment fee and a $125 reimbursement fee for treatment costs continues to be requested to be ordered by the court at sentencing along with other fees and court costs. If the court determines that the offender has the ability to pay a larger portion of the SB 123 treatment cost, the court may order such offender to do so.

In a plea agreement situation, the court may direct the defendant to undergo the assessments at any time in order to determine SB 123 eligibility. The defendant will still be responsible for payment of all assessment fees imposed by the court at sentencing.

Please refer to SB 123 Alternatives Sentencing Policy for Drug Offenders Operations Manual for further information concerning treatment parameters located at http://www.sentencing.ks.gov/sb-123.

LENGTH OF TREATMENT

The term of treatment shall not exceed 18 months, beginning upon the date the offender initially begins treatment. The term of treatment may not exceed the term of probation. K.S.A. 2016 Supp. 21-6824(c).The court may extend the term of probation, pursuant to K.S.A. 2016 Supp. 21-6608(c)(3).

CONDITION VIOLATIONS

VIOLATION SANCTIONS

Offenders who violate a condition of the drug treatment program shall be subject to a nonprison sanction of up to 60 days in county jail, fines, community service, intensified treatment, house arrest or electronic monitoring. K.S.A. 2016 Supp. 22-3716(g).

In addition, an offender in SB 123 may be subject to sanctions for probation violations pursuant to K.S.A. 2016 Supp. 22-3716(c)(1). For more information on Probation Violations, see Chapter VIII.

REVOCATION OF PROBATION

If the defendant fails to participate in or has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the treatment program, as established by judicial finding, the defendant shall be subject to revocation of probation and shall serve the underlying prison sentence as established in K.S.A. 2016 Supp. 21-6805. K.S.A. 2016 Supp. 21-6604(n) and 21-6824(f).

Offenders in SB 123 may also be revoked pursuant to the provisions of K.S.A. 22-3716(c). Condition violations may result in discharge from the mandatory drug abuse treatment. See *State v. Gumfory*, 281 Kan. 1168, 135 P.3d 1191 (2006).

The amount of time spent participating in the SB 123 program shall not be credited as service on the underlying prison sentence. K.S.A. 2016 Supp. 21-6604(n).

POSTRELEASE SUPERVISION

Offenders who complete SB 123 treatment and do not have their probation revoked will not be subject to postrelease supervision.

Offenders in the SB 123 program whose crime of conviction was committed prior to July 1, 2013 and who have their probation revoked, shall not be subject to a period of postrelease supervision upon completion of the underlying prison sentence. K.S.A. 2016 Supp. 21-6604(n)(2)(A).

Offenders in the SB 123 program whose crime of conviction was committed on or after July 1, 2013, shall serve a period of postrelease supervision if their probation is revoked or their underlying prison term expires while serving a 120/180-day prison sanction pursuant to subsection (c)(1)(C) or (c)(1)(D) of K.S.A. 2016 Supp. 22-3716. K.S.A. 2016 Supp. 21-6604(n)(2)(B).

*CONSERVATION CAMP

Offenders whose offense is classified in the 4-E or 4-F drug grid blocks prior to July 1, 2012, or on and after July 1, 2012, grid blocks 5-C, 5-D, 5-E or 5-F, but does not qualify for the SB 123 drug treatment program, must be considered for the Labette Correctional Conservation Camp before a sentencing court may impose a dispositional departure. K.S.A. 2016 Supp. 21-6604(g).

The Secretary of Corrections may also make direct placement to Labette Correction Conservation Camp for offenders whose offense is classified in the 5-C, 5-D, 5-E or 5-F drug grid blocks if those offenders do not otherwise meet the requirements of K.S.A. 2016 Supp. 21-6824. K.S.A. 2016 Supp. 21-6604(l).

**In practice, all the nonprison alternatives provided in K.S.A. 2016 Supp. 21-6604(g) are no longer viable placement alternatives. The Kansas Court of Appeals, in State v. Johnson, 42 Kan. App. 2d 356, 211 P.3d 861 (2009), took judicial notice that the Labette facility has ceased to operate as of June 30, 2009. The notice from the Secretary of Corrections indicated that the facility is closed for both male and female offenders. As stated in the notice, the facility is no longer available as a sentencing disposition for offenders who are subject to possible placement at the facility pursuant to K.S.A. 2016 Supp. 21-6604(g). With the closing of Labette, there is no longer any conservation camp in Kansas operated by the Department of Corrections.*

CHAPTER VII: OFFENDER REGISTRATION

For a listing of offenses that require registration, please refer to the statutory crime listing in Appendix D. Offenses requiring registration are marked with an "**R"**.

LENGTH OF REGISTRATION REQUIREMENT

The Kansas Offender Registration Act requires offenders who are convicted of certain crimes to register as an offender for a duration of either 15 years, 25 years or for the lifetime of the offender. The length of registration for each crime is provided in K.S.A. 2016 Supp. 22-4906, and on page two of the Offender Registration Supplement of the Journal Entry of Judgment.

Any person who has been declared a sexually violent predator pursuant to K.S.A. 2016 Supp. 59-29a01 *et seq*. shall be required to register for life. K.S.A. 2016 Supp. 22-4906(e).

An offender who is convicted of two or more offenses requiring registration shall be required to register for life. K.S.A. 2016 Supp. 22-4906(c).

Convictions or adjudications which result from or are connected with the same act, or result from crimes committed at the same time, shall be counted for the purpose of this section as one conviction or adjudication. A conviction or adjudication from any out of state court shall constitute a conviction or adjudication for purposes of the act. K.S.A. 2016 Supp. 22-4902(g).

OFFENDER REGISTRATION TYPE

Offenders will be required to register as either a sex offender, violent offender or drug offender, depending on their crime of conviction. See K.S.A. 2016 Supp. 22-4902 and page 1 of the Offender Registration Supplement of the Journal Entry of Judgment. An offender who commits multiple crimes may be required to register as multiple types of offender simultaneously.

DUTIES OF THE SENTENCING COURT

At the time of conviction or adjudication for an offense requiring registration, the court is required to inform the offender, on the record, of the procedure to register and the duties of the offender pursuant to the act. K.S.A. 2016 Supp. 22-4904(a)(1)(A).

In addition, if the offender is being released, the court shall:

- Complete a notice of duty to register, which shall include title and statute number of conviction or adjudication, date of conviction or adjudication, case number, county of conviction or adjudication, and the following offender information: Name, address, date of birth, social security number, race, ethnicity and gender;
- require the offender to read and sign the notice of duty to register, which shall include a statement that the requirements provided in this subsection have been explained to the offender;
- order the offender to report within 3 business days to the registering law enforcement agency in the county or tribal land of conviction or adjudication and to the registering law enforcement agency in any place where the offender resides, maintains employment or attends school, to complete the registration form with all information and any updated information required for registration as provided in K.S.A. 2016 Supp. 22-4907, and

- provide one copy of the notice of duty to register to the offender and, within three business days, send a copy of the form to the law enforcement agency having initial jurisdiction and to the Kansas bureau of investigation. K.S.A. 2016 Supp. 22-4904(a)(1)(B).

At the time of sentencing or disposition for an offense requiring registration as provided in K.S.A. 2016 Supp. 22-4902, and amendments thereto, the court shall ensure the age of the victim is documented in the journal entry of conviction or adjudication. K.S.A. 2016 Supp. 22-4902(a)(2).

VIOLATION OF THE ACT

Offenders who fail to comply with the provisions of the offender registration act shall be subject to the penalties provided in K.S.A. 2016 Supp. 22-4903. Upon a first offense, violation of the act is a severity level 6 person felony, and upon a second offense, a level 5 person felony. Offenses which continue for more than 30 consecutive days shall constitute a new and separate offense every 30 days thereafter. K.S.A. 2016 Supp. 22-4903(a).

An act which continues for more than 180 consecutive days is an aggravated offense, which is a severity level 3 person felony. Any aggravated violation of the Kansas offender registration act which continues for more than 180 consecutive days shall, upon the 181st consecutive day, constitute a new and separate offense, and shall continue to constitute a new and separate violation of the Kansas offender registration act every 30 days thereafter, or a new and separate aggravated violation of the Kansas offender registration act every 180 days thereafter, for as long as the violation continues. K.S.A. 2016 Supp. 22-4903(b).

Such violation shall be designated as a person or nonperson crime in accordance with the designation assigned to the underlying crime for which the offender is required to be registered under the Kansas offender registration act. If the offender is required to be registered under both a person and nonperson underlying crime, the violation shall be designated as a person crime. See K.S.A. 2016 Supp. 22-4903(c)(1)(C), (c)(2) and (c)3(B).

CRIMINAL HISTORY CALCULATION

An element of the crime of violating requires that an offense requiring registration be committed. Therefore, the offense giving rise to the registration requirement may not be counted in the offender's criminal history when the current crime of conviction is violation of the offender registration act. See K.S.A. 2016 Supp. 21-6810(d)(9).

However, all other prior convictions, including other convictions for offenses requiring registration, may be counted and scored unless otherwise prohibited. If an offender is required to register due to a prior case with multiple counts, and the offender was convicted of more than one count of crimes requiring registration, then one count will serve as an element of the crime of failure to register and the other count(s) may be scored as part of the criminal history. *State v. Deist*, 44 Kan. App. 2d 655, 239 P.3d 896 (2010).

CHAPTER VIII: PROBATION VIOLATIONS AND REVOCATION

Please note the change in the terminology of the word "revoke." Under the framework imposed by 2013 House Bill 2170 and further amendments thereafter, a court may no longer revoke and subsequently reinstate probation. Rather, the court may now impose sanctions, lengthen the period of probation and modify the conditions of probation without revocation. "Revocation" now means that the offender is being sent to prison to serve the underlying sentence and will no longer be eligible for reinstatement. For all instances in which the court wants to impose a quick dip or 120/180-day prison sanction, extend the length of probation or modify the conditions or probation, the court should not revoke probation.

PROBATION SANCTIONS

2013 House Bill 2170 created graduated sanctions that require a probation violator to be incarcerated for a period of time determined in part by the number of previous probation violations the offender has committed. 2014 Senate Substitute for House Bill 2448 went into effect on July 1, 2014 and amended these provisions further. Please see http://www.sentencing.ks.gov/hb-2170/s-sub-for-hb-2448 for more information on these changes.

See Appendix E (Graduated Felony Sanctions Flow Chart).

QUICK DIPS

An offender who commits a probation violation may be subject to a "quick dip" sanction of 2 or 3 days in the county jail. 2 or 3-day "quick dip" sanctions may be used by the court or a supervising officer for offenders on probation for misdemeanor, nongrid felony and felony convictions. This sanction may also be imposed for multiple subsequent violations, not to exceed 18 total days during the offender's term of supervision, including all quick dip sanctions imposed by both the court and all supervising officers. K.S.A. 2016 Supp. 21-3716(b)(3)(B)(ii) and (c)(1)(B).

Supervising Officer Quick Dip Authority

K.S.A. 2016 Supp. 22-3716(b)(4)(A) gives court services officers, and (b)(4)(B) gives community corrections officers, the authority to impose a 'quick dip' sanction if the offender waives the right to a revocation hearing on an alleged probation violation. If the offender does not waive the right to a revocation hearing, the supervising officer may not impose a quick dip, but at the revocation hearing the court may impose any of the sanctions provided by statute in K.S.A. 2016 Supp. 22-3716(b)(3)(B) for nongrid felonies and misdemeanors, and K.S.A. 2016 Supp. 22-3716(c)(1) for felonies.

The sentencing court may choose to withhold this authority from the court services or community corrections officer at sentencing. The Journal Entry of Sentencing in 2013 and all subsequent years include a check box where this authority may be specifically withheld.

The total of all sanctions imposed by supervising officers and the court must not exceed 18 total days during the offender's term of supervision.

The supervising officer must have the concurrence of their chief court services officer or community corrections director, respectively, and must not have had the authority to impose such sanction withheld by the sentencing court. See also K.S.A. 2016 Supp. 21-6604(s) and (t).

COURT SANCTIONS IN MISDEMEANOR AND NONGRID FELONY PROBATION CASES

The court may order an offender who commits a probation violation while on probation for a misdemeanor or nongrid felony to:

- Continuation or modification of probation and a county jail sanction of up to 60 days;
- a "quick dip" sanction of 2 or 3 days in a county jail, not to exceed 18 total days (including quick dips imposed by supervising officers) during the term of supervision; or
- revocation of probation and requiring the offender to serve the sentence imposed or any lesser sentence. See K.S.A. 2016 Supp. 22-3716(b)(3)(B).

See Appendix E (Graduated Felony Sanctions Flow Chart).

COURT SANCTIONS IN FELONY PROBATION CASES

Quick Dips

The court may sentence an offender who commits a probation violation to a "quick dip" sanction of 2 or 3 days in county jail. This sanction may also be imposed for multiple subsequent violations, not to exceed 18 total days during the offender's term of supervision, including all quick dip sanctions imposed by both the court and all supervising officers. K.S.A. 2016 Supp. 22-3716(c)(1)(B).

120 or 180-day Prison Sanctions

If a felony offender who has previously received a "quick dip" sanction from either the court or a supervising officer commits another violation of the terms of their probation, the court may impose a sanction of 120 or 180 days to be served in the custody of the secretary of corrections. The secretary shall have the discretion to reduce the length of such sanction by up to half. K.S.A. 2016 Supp. 21-3716(c)(1)(C) and (c)(1)(D).

120 or 180-day sanctions shall begin upon pronouncement of such sanction by the court. Prior incarceration time, such as the time an offender spends awaiting a probation violation hearing, shall not be counted towards service on the prison sanction. However, time spent in county jail awaiting transport to a DOC facility after imposition of the sanction may be counted. K.S.A. 2016 Supp. 21-3716(c)(1)(C) and (c)(1)(D).

Probation condition violators are required to be placed in a community corrections program at least once prior to placement in a state correctional facility pursuant to K.S.A. 2016 Supp. 22-3716(c)(2), unless the offender has committed a new crime, has absconded from supervision, or the court finds that the safety of the members of the public will be jeopardized or the welfare of the inmate will not be served by such assignment to community corrections. K.S.A. 2016 Supp. 22-3716(c)(4), (c)(8) and (c)(9).

Upon completion of a prison sanction, the offender shall be returned to community corrections

supervision. K.S.A. 2016 Supp. 22-3716(c)(6).

K.S.A. 2016 Supp. 22-3716(c)(8)(B)(i) and (ii) allows a court to continue or modify conditions of release for or impose a 120- or 180-day prison sanction on an offender who absconds from supervision, without having to first impose a 2- or 3-day jail sanction.

Revocation of Probation

If the offender has previously received a 120 or 180-day prison sanction, the court may revoke probation and require the offender to serve their underlying prison sentence, or a portion thereof, in the custody of the secretary of corrections. K.S.A. 2016 Supp. 22-3716(c)(1)(E).

The court may revoke the probation of an offender who commits a new crime or absconds from supervision, and require them to serve their underlying prison sentence regardless of previous graduated sanctions, or lack thereof. K.S.A. 2016 Supp. 22-3716(c)(8).

The court may revoke a probation violator's probation by finding and setting forth with particularity the reasons why public safety will be jeopardized or the offender's welfare will not be served, regardless of previous graduated sanctions, or lack thereof. K.S.A. 2016 Supp. 22-3716(c)(9).

60-Day County Jail Sanction

County jail sanctions of up to 60 days may be imposed for a violation, however they do not count towards the graduated sanction scheme and may not be imposed at the same time as any other sanction. K.S.A. 2016 Supp. 22-3716(c)(11).

No Imposition of Consecutive Sanctions While On Concurrent Probation Terms

If an offender is serving multiple probation terms concurrently, any violation sanctions imposed pursuant to subsection (c)(1)(B), (c)(1)(C) or (c)(1)(D), or any sanction imposed pursuant to subsection (c)(11), shall be imposed concurrently. K.S.A. 2016 Supp. 22-3716(c)(10).

Retroactivity of Sanction Authority

2014 Senate Sub. for House Bill 2448 added new language to clarify that graduated sanctions may be used for any felony probation violation occurring after July 1, 2013, regardless of the date the crime was committed or sentenced. K.S.A. 2016 Supp. 22-3716(c)(12).

New Felony Committed During Probation or Presumptive Discharge Period

When an offender is sentenced for a crime committed while the offender was on felony probation or other felony nonprison status, a consecutive sentence is mandated by K.S.A. 2016 Supp. 21-6606(c). If the new offense is a felony, the sentencing court may sentence the offender to prison, even if such offense otherwise presumes a nonprison sentence. K.S.A. 2016 Supp. 21-6604(f).

On and after July 1, 2013, an offender who receives presumptive discharge from probation pursuant to K.S.A. 2016 Supp. 21-6608(d) and commits a felony during the time in which the offender would have been under supervision had it not been for the early discharge, may be sentenced to prison for the new felony even if the sentence for such felony is presumptive nonprison (Special Rule #40). K.S.A. 2016 Supp. 21-6604(f)(2).

POSTRELEASE SUPERVISION

Offenders who successfully complete probation or a nonprison sanction are not required to serve a period of postrelease supervision.

For crimes committed on and after July 1, 2013, an offender who is revoked from a nonprison sanction and ordered to serve their underlying prison sentence or completes their underlying prison term while serving a 120 or 180-day graduated sanction, the offender shall be required to complete a period of postrelease supervision. K.S.A. 2016 Supp. 22-3716(f).

For crimes committed prior to July 1, 2013, notwithstanding any law to the contrary, an offender whose nonprison sanction is revoked shall not serve a period of postrelease supervision upon the completion of the prison portion of such sentence. However, offenders who have received a nonprison sanction as a result of a dispositional departure, a border box offense conviction, or a sexually motivated or sexually violent crime conviction, may be required to serve a period of postrelease upon revocation of the nonprison sanction. K.S.A. 2012 Supp. 22-3716(e). This section was repealed by 2013 House Bill 2170.

CHAPTER IX: APPEALS

APPELLATE REVIEW PRINCIPLES – K.S.A. 2016 SUPP. 21-6820

A departure sentence can be appealed by the defendant or the state to the appellate courts in accordance with rules adopted by the Supreme Court. K.S.A. 2016 Supp. 21-6820(a). Pending review of the sentence, the sentencing court, or the appellate court may order the defendant confined or placed on conditional release, including bond. K.S.A. 2016 Supp. 21-6820(b). On appeal from a judgment or conviction entered for a felony committed on or after July 1, 1993, the appellate court shall not review:

- Any sentence within the presumptive range in the appropriate grid block of the sentencing grid; or
- Any sentence resulting from a plea agreement between the state and the defendant as accepted by the sentencing court on the record. K.S.A. 2016 Supp. 21-6820(c).

Appellate review for a departure sentence is limited to whether the court's findings of fact and reasons justifying departure are supported by evidence on the record and constitutes substantial and compelling reasons for departure. K.S.A. 2016 Supp. 21-6820(d). A defendant's allegation that there was a constitutional error in an individual presumptive sentence does not grant the appellate court jurisdiction to review the sentence. *State v. Huerta*, 291 Kan. 831, 247 P.3d 1043 (2011). In any appeal, the appellate court may review a claim that:

- A departure sentence resulted from partiality, prejudice, oppression or corrupt motive;
- The sentencing court erred in including or excluding a prior conviction or juvenile adjudication for criminal history scoring purposes; or
- The sentencing court erred in ranking the crime severity level of the current crime or in determining the appropriate classification of a prior conviction or juvenile adjudication for criminal history purposes. K.S.A. 2016 Supp. 21-6820(e).

The appellate court may reverse or affirm the sentence. If the appellate court concludes that the trial court's factual findings are not supported by evidence in the record or do not establish substantial and compelling reasons for a departure, it shall remand the case to the trial court for resentencing. K.S.A. 2016 Supp. 21-6820(f). In the event a conviction designated as the primary crime in a multiple conviction case is reversed on appeal, the appellate court shall remand the multiple conviction case for resentencing. Upon resentencing, if the case remains a multiple conviction case, the court shall follow all of the provisions of K.S.A. 2016 Supp. 21-6819 concerning the sentencing of multiple conviction cases. K.S.A. 2016 Supp. 21-6819(b)(5).

The sentencing court shall retain authority irrespective of any notice of appeal for 90 days after entry of judgment of conviction to modify its judgment and sentence to correct any arithmetic or clerical errors. K.S.A. 2016 Supp. 21-6820(i).

CHAPTER X: POSTRELEASE SUPERVISION

Upon completion of the prison portion of the sentence, all inmates who committed their crime of conviction on or after July 1, 2013 will be released to serve a term of postrelease supervision.

For crimes committed on and after July 1, 2013, if an offender is revoked from a nonprison sanction and ordered to serve their underlying prison sentence or completes the underlying prison term while serving a 120/180 day graduated sanction, such offender shall be required to complete a period of postrelease supervision. K.S.A. 2016 Supp. 22-3716(e).

For crimes committed prior to July 1, 2013, notwithstanding any law to the contrary, an offender whose nonprison sanction is revoked shall not serve a period of postrelease supervision upon the completion of the prison portion of such sentence. However, offenders who have received a nonprison sanction as a result of a dispositional departure, a border box offense conviction, or a sexually motivated or sexually violent crime conviction, may be required to serve a period of postrelease upon revocation of the nonprison sanction. K.S.A. 2012 Supp. 22-3716(e) (section repealed by 2013 House Bill 2170).

LENGTH OF SUPERVISION

The Prisoner Review Board reviews release plans. However, the Board is unable to make any changes regarding prison release dates for offenders sentenced under the KSGA. K.S.A. 2016 Supp. 22-3717(i).

CRIME	LENGTH OF POSTRELEASE
NONDRUG Level 1,2,3 or 4 DRUG Level 1, 2 or *3	36 MONTHS, except that offenders sentenced for severity levels 1 through 4 of the nondrug grid and severity levels 1 and 2 of the drug grid, for crimes committed prior to April 20, 1995 may receive a postrelease supervision period of 24 months. K.S.A. 22-3717(d)(1)(A).
NONDRUG Level 5 or 6 DRUG Level ^3 or *4	24 MONTHS K.S.A 22-3717(d)(1)(B)
NONDRUG Level 7, 8, 9 or 10 DRUG Level ^4 or *5	12 MONTHS K.S.A 22-3717(d)(1)(C)
Sexually Motivated Crime	Up to 60 months K.S.A. 22-3717(d)(1)(D)(i)

*= for crimes committed on and after July 1, 2012 only
^= for crimes committed prior to July 1, 2012 only

GOOD TIME CREDIT

On after July 1, 2013 offenders, other than offenders whose term of imprisonment includes a sentence for a sexually violent crime, a sexually motivated crime, electronic solicitation or unlawful sexual relations, will not have their good time and program credit earned while incarcerated added to the end of their period of postrelease supervision. K.S.A. 2016 Supp. 22-3717(d). Sex offenders will still be required to serve any good time and program credit earned while in prison under postrelease supervision. K.S.A. 2016 Supp. 22-3717(d)(1)(D).

K.S.A. 2016 Supp. 22-3717(s) states that all modifications to the period of postrelease as provided in subsection (t) shall be applied retroactively. K.S.A. 2016 Supp. 22-3717(t) requires the department of corrections to modify the periods of postrelease supervision of offenders who were sentenced prior to July 1, 2013 in order to apply the new rule that good time and program credit will no longer be required to be added on to the offender's period of postrelease supervision.

REDUCTION OF POSTRELEASE SUPERVISION PERIOD

Offenders sentenced to a 36 or 24-month period of postrelease supervision may have their period of supervision reduced by up to 12 months, and offenders sentenced to a period of 12 months may have their period of supervision reduced by up to 6 months, based on the offender's compliance and overall performance while on postrelease supervision. K.S.A. 2016 Supp. 22-3717(d)(1)(E).

The Prisoner Review Board may grant an offender early discharge from their period of postrelease supervision if such offender petitions the Board for early release and has paid all restitution. K.S.A. 2016 Supp. 22-3717(d)(2).

MULTIPLE CONVICTION CASES

In cases involving multiple convictions, the crime carrying the longest postrelease supervision term, including off-grid crimes, will determine the period of supervision. Postrelease supervision periods will not be aggregated. K.S.A. 2016 Supp. 22-3717(d)(1)(F).

SEXUALLY MOTIVATED CRIME DEPARTURES

If an offender is convicted of a sexually motivated crime, as defined in K.S.A. 2016 Supp. 22-3717(d)(2), the sentencing court, based upon substantial and compelling reasons stated on the record, may depart from the prescribed postrelease supervision period and place the offender on postrelease supervision for a maximum period of 60 months. This is considered a departure and is subject to appeal. K.S.A. 2016 Supp. 22-3717(d)(1)(D)(i) and (ii).

The Prisoner Review Board may, in its discretion, grant early discharge from this extended postrelease supervision period upon completion of any treatment programs, payment of all restitution and completion of the longest presumptive postrelease supervision period associated with any of the crimes for which the prison sentence was being served. K.S.A. 2016 Supp. 22-3717(d)(1)(D)(vi).

JESSICA'S LAW AND SEXUALLY VIOLENT OFFENSE SUPERVISION

Offenders convicted of certain Jessica's Law offenses as provided in K.S.A. 2016 Supp. 21-6627, wherein the offender was 18 years of age or older and the victim was less than 14 years of age, committed on or after July 1, 2006, shall be placed on parole for life and shall not be discharged from supervision by the Prisoner Review Board. When the Prisoner Review Board orders the parole of an inmate, the Board shall also order that the inmate be electronically monitored for the duration of the inmate's natural life. K.S.A. 2016 Supp. 22-3717(u).

The court shall order that any defendant sentenced pursuant to K.S.A 2016 Supp. 21-6627 (Jessica's Law) shall, upon release from imprisonment, be electronically monitored for the duration of the defendant's life. K.S.A. 2016 Supp. 21-6604(r).

An offender who is given a downward departure from the mandatory minimum to the guidelines sentence, shall, upon completion of the prison sentence, be subject to postrelease supervision.

An offender convicted of any sexually violent crime, as defined in K.S.A. 2016 Supp. 22-3717(d)(5), committed on or after July 1, 2006, other than a Jessica's Law offense, shall be released to a mandatory period of postrelease supervision for the duration of the person's natural life. K.S.A. 2016 Supp. 22-3717(d)(1)(G).

OTHER OFF-GRID OFFENSES

In the discretion of the Prisoner Review Board, offenders convicted of an off-grid crime may be granted parole after the offender has served the mandatory minimum prison sentence. The Prisoner Review Board may not discharge an offender from parole within a period of less than one year after release from prison. K.S.A. 2016 Supp. 22-3722.

For more information on parole and off-grid offenses, see the Off-grid Crimes section of Chapter I.

VIOLATIONS OF POSTRELEASE SUPERVISION CONDITIONS

For crimes committed before April 20, 1995, a finding of a technical violation of the conditions of postrelease supervision will result in imprisonment for a period not to exceed 90 days from the date of the final revocation hearing; for crimes committed on or after April 20, 1995, a technical violation will result in imprisonment for six months and such time may be reduced by not more than 3 months based upon the inmate's conduct, work and program participation during the imprisonment period. K.S.A. 2016 Supp. 75-5217(b). If the violation results from a conviction of a new felony or misdemeanor, upon revocation of postrelease supervision, the offender will serve a period of confinement, to be determined by the Prisoner Review Board. K.S.A. 2016 Supp. 75-5217(c) and (d).

On and after July 1, 2013, an offender who is granted early discharge from postrelease supervision pursuant to K.S.A. 2016 Supp. 22-3717(d)(2), and commits a felony during the time in which the offender would have been under supervision had it not been for discharge, may be sentenced to prison for the new felony even if the sentence for such felony is presumptive nonprison. K.S.A. 2016 Supp. 21-6604(f)(2).

CHAPTER XI: RETROACTIVITY OF SENTENCING GUIDELINES

The retroactive provision of the KSGA applies to incarcerated offenders who would have been considered presumptive probation candidates had they been sentenced as if their crimes occurred on or after July 1, 1993, or who would have been placed in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes, had they been sentenced as if their crimes occurred on or after July 1, 1993. K.S.A. 21-4724(b)(1). For offenders sentenced before July 1, 1993, the Kansas Department of Corrections (KDOC) was required to assess each offender's possible eligibility for retroactive application of the KSGA by determining the severity level of the crime(s) of conviction as if the crime(s) had occurred on or after July 1, 1993, and the offender's criminal history. K.S.A. 21-4724(c)(1).

Once an offender was determined to be eligible for the retroactive application of the sentencing guidelines, the KDOC was to issue a report indicating such to the offender, prosecutor, and the sentencing court. K.S.A. 21-4724(c). The criminal history classification determined by KDOC was to be deemed correct unless an objection was filed by either the offender or the prosecution within the 30 days provided to request a hearing. K.S.A. 21-4724(c)(4). If a hearing was requested within the 30 days, the parties could challenge the KDOC's determination of the crime severity or the criminal history, or seek a departure sentence if the offender was eligible for conversion of the sentence to a guidelines sentence. K.S.A. 21-4724(d).

If no hearing was requested, the sentence was converted and the offender was released after serving the midpoint sentence of the range in the applicable sentencing guidelines grid block. K.S.A. 21-4724(d)(1). If a hearing was requested, the sentencing court determined whether the offender was eligible for conversion to a guidelines sentence and the appropriate duration of that sentence, within the limits imposed by the sentencing guidelines. K.S.A. 21-4724(d)(2). The presence of the offender in person at the hearing was not required but counsel had to be appointed. K.S.A. 21-4724(d)(4), (5). No sentence could be increased through retroactive application of the guidelines. K.S.A. 21-4724(e).

For those offenders who committed crimes prior to July 1, 1993, but who were sentenced after that date, the sentencing court was to impose a sentence pursuant to the law in effect before July 1, 1993. However, the sentencing court was also required to compute the appropriate sentence had the offender been sentenced pursuant to the KSGA. K.S.A. 21-4724(f).

CONVERSION OF SENTENCE FOR A CRIME COMMITTED BETWEEN JULY 1, 1993, AND MARCH 24, 1994

Prior to March 24, 1994, if an offender was sentenced to prison for a crime committed after July 1, 1993, and while the offender was on parole or conditional release for a crime committed prior to July 1, 1993, the old sentence was to be converted into a determinate sentence to run consecutive to the new sentence as follows:

- Twelve months for class C, D or E felonies or the conditional release date whichever is shorter; and
- Thirty-six months for class A or B felonies or the conditional release date whichever is shorter.

The converted sentence for crimes committed prior to July 1, 1993, was to be aggregated with the new consecutive guidelines sentence. See K.S.A. 1993 Supp. 22-3717(f)(1) and (2).

CHAPTER XII: POINTS OF INTEREST ABOUT THE GUIDELINES

SOME POINTS OF INTEREST ABOUT THE GUIDELINES FOR THE SENTENCING COURT

CRIME SEVERITY AND CRIMINAL HISTORY CONSTRAIN SENTENCING DECISIONS

The KSGA provides a grid-based sentencing scheme dependent on two controlling factors: the crime severity level and the criminal history of the offender. The drug and nondrug sentencing grids indicate the range of sentence lengths (duration) presumed by statute to be appropriate for an offender. Further, they indicate whether the defendant should be presumed by statute to be granted probation or remanded to prison (disposition). The sentencing court has discretion to grant a sentence other than that presumed by the grid box in the form of a departure sentence if the court finds substantial and compelling reasons to do so. If the offender's case falls in a border box, the length of sentence is still presumed under the KSGA, but the sentencing court, without finding substantial and compelling reasons, can grant an optional nonprison sentence of probation. 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:

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

GUIDELINES LEAVE ROOM FOR PROPERLY JUSTIFIED EXERCISE OF DISCRETION

The KSGA offers an objective approach to sentencing without placing undue limitations on the discretion of the sentencing court. The guidelines establish presumptive rather than mandatory sentences. Upon motion of either party or upon its own motion, the sentencing court may depart from the presumed disposition established by the guidelines. The sentencing court may similarly depart upward or downward from the presumptively appropriate duration of any prison term established by the sentencing guidelines. Such departures must be supported on the record by substantial and compelling reasons, which may include aggravating or mitigating circumstances specifically enumerated in non-exclusive lists of departure factors found within the sentencing guidelines provisions.

In *State v. Gould*, 271 Kan. 394, 23 P.3d 801 (2001), K.S.A. 2000 Supp. 21-4716 was found to be "unconstitutional on its face" for the imposition of upward durational departure sentences. Both K.S.A. 2001 Supp. 21-4716 and K.S.A. 21-4718 were subsequently amended to correct the problem arising from *Gould*. Effective June 6, 2002, the jury determines all aggravating factors that might enhance the maximum sentence, based upon the reasonable doubt standard. K.S.A. 2016 Supp. 6815(b) [formerly K.S.A. 21-4716]. Evidence of aggravating circumstances is either presented during the trial of the matter or in a bifurcated jury proceeding following the trial or plea. K.S.A. 2016 Supp. 21-6817(b)(2).

Certain offenses (i.e., those that fall into border boxes on the guidelines grids) allow the sentencing court the option to impose a nonprison sentence without making a departure. However, the sentencing court also has the discretion to decide whether sentences should run concurrently or consecutively. K.S.A. 2016 Supp. 21-6819.

PRESENTENCE INVESTIGATION REPORT IS MANDATORY

Another benefit of the KSGA for the sentencing court is the fact that a Presentence Investigation Report is mandatory, which ensures that the court will be in possession of the most complete criminal history information involving the offender. K.S.A. 2016 Supp. 21-6813(a).

PLEA AGREEMENTS

The sentencing court remains free to accept or reject any plea agreement reached by the parties that is otherwise authorized by the KSGA. However, the court may impose up to the maximum sentence provided in the applicable grid box, even if the parties have recommended a lesser sentence. While plea bargaining may not be used to exact a promise from the prosecutor not to allege prior convictions that will enhance the crime severity level of the offense, or will affect the determination of the offender's criminal history category, plea bargaining is otherwise permissible. K.S.A. 2016 Supp. 21-6807(b)(4) and 21-6812.

The offender may enter a plea to the charged offense, or to a lesser or related charge in return for the dismissal of other charges or counts, a recommendation for a particular sentence within the appropriate sentencing range on the grid, a recommendation for a departure sentence where departure factors exist and are stated on the record, an agreement that a particular charge or count will or will not be filed, or any other promise not prohibited by law. K.S.A. 2016 Supp. 21-6807(b)(4) and 21-6812 and K.S.A. 2016 Supp. 22-3210.

Whether the sentencing court accepts or rejects any proposed plea agreement, the court will often be making a decision whether to accept a plea of guilty or no contest from the offender before coming into possession of all criminal history information that is required for imposition of sentence. Nevertheless, the sentencing court is still able to advise the offender of the sentencing consequences of the plea by simply informing the offender of the entire range of sentences provided by the grid for the severity level of the crime to which the plea is being entered. K.S.A. 2016 Supp. 21-6807 and K.S.A. 2016 Supp. 22-3210(a)(2).

While subsequently discovered prior convictions cannot then be used to enhance the severity level of the crime to which a plea has been accepted, they can be counted in the offender's criminal history. K.S.A. 2016 Supp. 21-6807(c)(4).

SUGGESTED SENTENCING PROTOCOL UNDER THE KSGA

1. ANNOUNCE THE CASE.

2. HAVE COUNSEL STATE THE APPEARANCES FOR THE RECORD.

3. GIVE AN OVERVIEW OF HOW THE DEFENDANT WAS FOUND GUILTY.

- Guilty plea
- No contest plea
- Bench trial
- Jury trial

4. CONFIRM THAT EACH PARTY HAS BEEN SUPPLIED WITH A COPY OF THE PRESENTENCE INVESTIGATION REPORT (PSI).

5. ASK EACH PARTY IF THERE IS A CHALLENGE TO THE CRIMINAL HISTORY.

- Require the parties to answer on the record.
- Address the defendant personally and ask whether he acknowledges the accuracy of the criminal history set out in the Criminal History Worksheet. K.S.A. 2016 Supp. 21-6814.
- If there are challenges to the criminal history, take up each challenge and rule on each challenge. The offender must specify the exact nature of any alleged error if he or she objects to his or her criminal history worksheet.
    - Criminal history shall be established by a preponderance of the evidence. The burden of proof is on the State.
    - A certified or authenticated copy of a Journal Entry is sufficient proof of a prior offense unless the defendant denies he or she is the person named. See *State v. Staven*, 19 Kan. App. 2d 916, 881 P.2d 573 (1994).
    - If time to challenge the criminal history was not available prior to the sentencing hearing, additional time must be provided. See *State v. Hankins*, 19 Kan. App. 2d 1036, 880 P.2d 271 (1994).
    - Burden is on prosecution when defendant objects to criminal history classification. See *State v. Schow*, 287 Kan. 529, 197 P.3d 825 (2008). However, if criminal history has previously been established, and the offender later challenges the established criminal history, the burden shifts to the defendant pursuant to 2009 Legislation. K.S.A. 2010 Supp. 21-4715(c), prior to its repeal, now at K.S.A. 2016 Supp. 21-6814.
- If changes are made to the defendant's criminal history, the court should also make the changes on the Criminal History Worksheet.
- If the defendant's criminal history score is modified as the result of a challenge, confirm that the parties are prepared for sentencing and, if so, proceed.

6. STATE THE PRIMARY OFFENSE OF CONVICTION, THE CRIMINAL HISTORY SCORE, THE RANGE OF IMPRISONMENT SENTENCE LENGTHS (AGGRAVATED, STANDARD, MITIGATED) IN THE APPLICABLE GRID BOX, ANY GRID BOX PRESUMPTION (IMPRISONMENT, PROBATION, BORDER BOX), ANY SPECIAL RULE THAT AFFECTS THE GRID BOX PRESUMPTION, THE PERIOD OF POSTRELEASE SUPERVISION FOLLOWING RELEASE FROM IMPRISONMENT, THE APPLICABLE

PERCENTAGE OF GOOD TIME CREDIT THAT CAN BE EARNED, THE LENGTH OF THE PERIOD OF PROBATION, IF GRANTED, AND THE AGENCY TO SUPERVISE SUCH PROBATION.

7. IF THERE ARE ADDITIONAL FELONY OFFENSES, FOR EACH SUCH OFFENSE, IN ORDER OF DECREASING SEVERITY, APPLY CRIMINAL HISTORY "I" TO THE ADDITIONAL OFFENSES AND STATE THE INFORMATION IN PARAGRAPH 6 APPLICABLE TO THE ADDITIONAL OFFENSES.

8. IF REQUESTS FOR DEPARTURE HAVE BEEN FILED, EXPLAIN TO COUNSEL HOW YOU WILL HANDLE THE DEPARTURE HEARING.

- There is no prescribed proceeding for a departure hearing under K.S.A. 2016 Supp. 21-6817.
- A departure hearing may be conducted as a separate hearing, or the motion may be heard preceding other oral arguments and evidence on sentencing.
- If a separate departure hearing is held, the court may rule on the departure at the end of the hearing, "or within 21 days thereafter." K.S.A. 2016 Supp. 21-6817(a)(2).

9. IF NO REQUESTS FOR DEPARTURE ARE ON FILE, ASK THE PARTIES WHETHER EITHER IS SEEKING A DEPARTURE.

This is not required by statute but it is the safest practice. In the event the PSI is not available in a timely manner, or other reasons arise which do not allow adequate time to prepare and present arguments regarding the issues of "departure sentencing," a continuance must be granted. K.S.A. 2016 Supp. 21-6817(a)(1).

10. IF A DEPARTURE IS SOUGHT, CONDUCT A HEARING ON THE DEPARTURE MOTION(S). ALLOW COUNSEL TO ADDRESS THE COURT AND ALSO ALLOW THE WITNESSES FOR EITHER PARTY TO TESTIFY.

11. ASK EACH ATTORNEY FOR THE ATTORNEY'S SENTENCING SUGGESTIONS. THIS IS RELEVANT WHETHER OR NOT THE PARTIES HAVE AGREED TO RECOMMEND A PARTICULAR SENTENCE.

12. ASK IF ANY VICTIM(S) OR OTHERS WISH TO SPEAK CONCERNING THE SENTENCE(S) TO BE IMPOSED.

Following the rule in *State v. Parks*, 265 Kan. 644, 962 P.2d 486 (1998), non-victims and non-family members may also be permitted to submit written statements and/or speak.

13. ADDRESS THE DEFENDANT DIRECTLY (NOT HIS OR HER COUNSEL) AND CONDUCT ALLOCUTION UNDER K.S.A. 2016 SUPP. 22-3422 AND 22-3424.

Ask the defendant personally if he or she wishes to make a statement or to present evidence in support of mitigation of sentence. Allow such statements or evidence.

14. ASK THE DEFENDANT WHETHER HE HAS ANY LEGAL CAUSE TO SHOW WHY SENTENCE SHOULD NOT BE PRONOUNCED.

15. ANNOUNCE THE GRANTING OR DENIAL OF ANY REQUESTED DEPARTURE, CITING THE SUBSTANTIAL AND COMPELLING REASONS FOR THE DEPARTURE IF GRANTED.

- If a departure is denied there is generally no need to state the reasons for the denial. However, in denying a Jessica's Law departure back to a guidelines sentence, the record should be clear that the judge reviewed the defendant's asserted mitigating circumstances. See K.S.A. 2016 Supp. 21-6628(d).
- Statutory mitigating and aggravating factors may be found at K.S.A. 2016 Supp. 21-6815 (nondrug) and K.S.A. 2016 Supp. 21-6816 (drug).
- Sentencing courts must provide separate reasons based upon facts in the record for each durational and dispositional departure. See *State v. Favela*, 259 Kan. 215, 911 P.2d 792 (1996).
- Reasons for departure must be "substantial and compelling." See K.S.A. 2016 Supp. 21-6815(a), 21-6816(a) and 21-6818(c)(2).
- Findings of fact as to the reasons for departure shall be made regardless of whether a hearing was requested. K.S.A. 2016 Supp. 21-6817(a)(4).
- For sex offenders, a postrelease supervision period of up to 60 months may be ordered. K.S.A. 2016 Supp. 22-3717(d)(1)(D)(i). When imposing a durational postrelease supervision departure under K.S.A. 2016 Supp. 22-3717(d), state specifically on the record the substantial and compelling reasons to impose a departure. See *State v. Anthony*, 273 Kan. 726, 45 P.3d 852 (2002).

16. IF A SPECIAL RULE APPLIES, WHICH DOES NOT REQUIRE A DEPARTURE, STATE THE APPLICABLE RULE AND ITS EFFECT UPON THE SENTENCE IMPOSED.
See listing of special rules in Chapter V.

17. ANNOUNCE THE SENTENCE FOR THE PRIMARY OFFENSE.
Suggestion: Follow the information layout for the offense in the PSI. Example: Mr. Doe, for the primary offense of theft, a level 9 nonperson felony, with your criminal history of B, I sentence you to the standard term of 14 months in the custody of the secretary of corrections. Your departure request for probation is granted. The court finds substantial and compelling reasons for the departure as follows: the two person felonies in your criminal history arose from the same incident, a bar fight, which occurred twenty years ago; you have no convictions since you served those sentences; the victim of the theft, your mother, is convinced you stole from her to buy oxycodone to self-medicate the pain from back problems and you need drug treatment, not prison; a drug treatment program is available to you in the community; and, the State has joined in the request for a departure to probation. You are granted probation to be supervised by Community Corrections for 12 months. If your probation is revoked, you will be remanded to DOC to serve the time left on your sentence, after credit for time served, but you can earn up to 20% maximum good time credit. Upon your release from prison you would then be placed on postrelease supervision for 12 months.

18. ANNOUNCE ALL OTHER SENTENCES, STATING WHETHER EACH ADDITIONAL SENTENCE IS CONCURRENT OR CONSECUTIVE TO THE PRIMARY OFFENSE SENTENCE.
The Court *must state on the record* if the sentence is concurrent or consecutive, otherwise it becomes a concurrent sentence by default except as provided by K.S.A. 2016 Supp. 21-6606(c), (d) and (3). K.S.A. 2016 Supp. 21-6606(a).

As of July 1, 2012, when the Court imposes multiple sentences consecutively, the consecutive sentences shall consist of an imprisonment term which may not exceed the sum of the consecutive imprisonment terms, and a supervision term. The sentencing judge shall have the discretion to impose a consecutive

term of imprisonment for a crime other than the primary crime of any term of months not to exceed the nonbase sentence. K.S.A. 2016 Supp. 21-6819(b)(1). This allows for consecutive sentencing for a count other than the primary offense up to the maximum sentence rather than requiring the full nonbase sentence. This change is reflected and may be entered in the Journal Entry of Judgment, Additional Offenses.

The total length of all consecutive sentences imposed cannot exceed twice the base sentence. The "double rule" and "double-double rule" are found at K.S.A. 2016 Supp. 21-6819. The "double-double rule" applies to cap the total length of consecutive upward durational departure sentences. See *State v. Snow*, 282 Kan. 323, 342, 144 P.3d 729 (2006) and the subsequent *State v. Snow*, 40 Kan. App. 2d 747, 195 P.3d 282 (2008).

19. ESTABLISH RESTITUTION AMOUNTS, IF ANY. SCHEDULE A RESTITUTION HEARING, IF THIS IS IN DISPUTE. ASSESS, OR DECLINE TO ASSESS, WITH PARTICULARITY, COSTS, FEES AND EXPENSES.

20. ESTABLISH THE NUMBER OF DAYS OF JAIL CREDIT TO WHICH THE DEFENDANT IS ENTITLED AND THE DEFENDANT'S "SENTENCE BEGINS DATE."
See K.S.A. 2016 Supp. 21-6615.

21. ADVISE THE DEFENDANT THAT HE OR SHE MAY HAVE RIGHTS OF EXPUNGEMENT.
See K.S.A. 2016 Supp. 21-6614.

22. ADVISE THE DEFENDANT OF HIS OR HER RIGHT TO APPEAL BY FILING THE NOTICE WITHIN 14 DAYS, UNDER K.S.A. 2016 SUPP. 22-3608, AND THE RIGHT TO COUNSEL.
Even if defendant's jury trial counsel was retained, advise the defendant that he has the right to appeal his conviction and sentence, and, if he is indigent, counsel and the costs of the appeal will be afforded him. K.S.A. 2016 Supp. 22-3424(b). Likewise, when a defendant has been sentenced on a conviction resulting from a guilty or no contest plea, even if defendant's plea counsel was retained, advise the defendant that, if he is indigent and wants to appeal the sentence, counsel and the costs of the appeal will be afforded him. *State v. Ortiz*, 230 Kan. 733, 640 P.2d 1255 (1982).

23. ADVISE THE DEFENDANT OF THE PROHIBITIONS AGAINST A CONVICTED FELON POSSESSING A FIREARM, IF APPLICABLE.
See K.S.A. 2016 Supp. 21-6304(a)(1) through (a)(3).

24. ADVISE THE OFFENDER OF THE LOSS OF CERTAIN CIVIL RIGHTS SUCH AS THE RIGHT TO VOTE UNTIL THE OFFENDER'S SENTENCE IS FULLY DISCHARGED.
See K.S.A. 2016 Supp. 21-6613. Anyone convicted of a felony on or after July 1, 2002 may not vote until his or her sentence is completed. This specifically includes a sentence of probation.

25. IF DEFENDANT IS REQUIRED TO REGISTER UNDER THE KANSAS OFFENDER REGISTRATION ACT (K.S.A. 2016 SUPP. 22-4901 *ET SEQ.*), ENSURE THE AGE OF THE VICTIM IS INCLUDED ON THE JOURNAL ENTRY OF JUDGMENT.
At the time of sentencing or disposition for an offense requiring registration as provided in K.S.A. 2016 Supp. 22-4902, and amendments thereto, the court shall ensure the age of the victim is documented in the

journal entry of conviction or adjudication. K.S.A. 2016 Supp. 22-4904(a)(2).

26. IF IMPRISONMENT IS ORDERED, REMAND THE DEFENDANT TO THE CUSTODY OF THE SECRETARY OF CORRECTIONS OR THE SHERIFF, OR ESTABLISH A DATE TO REPORT IF A STAY OF EXECUTION IS GRANTED AND IF THE DEFENDANT IS NOT IN CUSTODY. ESTABLISH AN APPEAL BOND AMOUNT, IF REQUESTED. IF PROBATION IS GRANTED, DIRECT THE DEFENDANT AS TO WHEN AND TO WHAT SUPERVISING AGENCY HE/SHE IS TO REPORT.

27. IF PROBATION IS ORDERED AND THE COURT WISHES TO WITHHOLD THE AUTHORITY OF COURT SERVICES OR COMMUNITY CORRECTIONS TO IMPOSE A 2-3 DAY JAIL SANCTION FOR PROBATION CONDITION VIOLATIONS, ENSURE THAT THE JOURNAL ENTRY FORM IS MARKED ACCORDINGLY.

SOME POINTS OF INTEREST ABOUT THE GUIDELINES FOR THE PROSECUTION

EMPHASIS OF GUIDELINES IS ON CRIMINAL HISTORY AND CRIME SEVERITY

The KSGA places the emphasis of the sentencing phase of a criminal prosecution on the two factors that are generally of greatest concern to the prosecutor, the criminal history of the offender and the crime severity. The prosecution can focus its efforts on establishing by a preponderance of the evidence any challenged aspect(s) of the criminal history information provided in the presentence investigation report and presenting to the sentencing court any aggravating or mitigating circumstances which may provide substantial and compelling reasons for the court to consider imposing a departure sentence. Properly authenticated copies of journal entries of convictions or the mandatory presentence investigation reports prepared in conjunction with the prosecution of cases for crimes occurring on or after July 1, 1993, generally will be sufficient. Other properly authenticated documents that may be of use in proving criminal history include plea transcripts and charging documents such as an information, complaint, or indictment. The prosecution is entitled to reasonable time to obtain the necessary proof of prior convictions. K.S.A. 2016 Supp. 21-6814.

The burden is on the prosecution when defendant objects to the criminal history classification. See *State v. Schow*, 287 Kan. 529, 197 P.3d 825 (2008). However, if criminal history has previously been established, the burden moves to the defendant, pursuant to 2009 legislation. K.S.A. 2010 Supp. 21-4715(c), prior to its repeal, or K.S.A. 2016 Supp. 21-6814.

PROVING THE AGE OF JESSICA'S LAW OFFENDERS

Imposition of an off-grid mandatory sentence of imprisonment under K.S.A. 2016 Supp. 21-6627 requires a factual finding that the offender was 18 years of age or older at the time of the offense. Unless the offender has stipulated to the offender's age, that age is a fact question that must be submitted to a jury and proved beyond a reasonable doubt. *State v. Brown*, 291 Kan. 646, 244 P.3d 267 (2011). The Kansas Judicial Council has suggested that the jury's factual finding on the offender's age be included under a separate question on the verdict form. See the Notes on Use under the various PIK-Criminal elements instructions for offenses subject to Jessica's Law enhancements.

SOME POINTS OF INTEREST ABOUT THE GUIDELINES FOR THE DEFENSE

IMPORTANCE OF ACCURATE, VERIFIED CRIMINAL HISTORY

Because the KSGA focuses so heavily on the criminal history of the offender as a determining factor of the sentence that will be imposed, the defense will be provided with a copy of the mandatory presentence investigation report, including the criminal history worksheet, and have an opportunity to challenge any errors contained in the report. Immediately upon receipt of the report the defense may file written notice to the prosecution and the sentencing court alleging errors in the proposed criminal history worksheet. The burden will then fall to the State to verify and establish by a preponderance of the evidence the accuracy of any disputed portions of the alleged criminal history, and the sentencing court is authorized to correct any errors. Consequently, the defense has an important role in ensuring that the sentence is based on an accurate criminal history that has been properly verified. See K.S.A. 2016 Supp. 21-6814.

In addition, because a sentencing court may take judicial notice of a prior criminal history worksheet as an accurate reflection of criminal history for use in a subsequent case, the offender may waive the right

to challenge any errors contained in the worksheet by failing to do so when the worksheet is initially prepared and served on the parties. Failure to challenge any errors in the criminal history worksheet at a hearing on the proposed conversion of a sentence for a crime committed prior to July 1, 1993, to a KSGA sentence pursuant to the retroactivity provisions of the guidelines may also operate as a waiver of that opportunity in future cases. See K.S.A. 2016 Supp. 21-6813. See also *State v. Turner*, 22 Kan. App. 2d 564, 919 P.2d 370 (1996) and *State v. Lakey*, 22 Kan. App. 2d 585, 920 P.2d 470 (1996).

The burden is on the prosecution when defendant objects to the criminal history classification. See *State v. Schow*, 287 Kan. 529, 197 P.3d 825 (2008). However, if criminal history has previously been established, the burden moves to the defendant, pursuant to 2009 legislation. See K.S.A. 2016 Supp. 21-6814.

CAN ADVISE THE OFFENDER ABOUT TIME TO BE SERVED IN DEFINITE TERMS

Because the terms of imprisonment, nonprison sentences, and postrelease supervision imposed by the sentencing court pursuant to the KSGA will be of definite duration, defense counsel will be able to advise the offender of the exact amount of time which the sentence will require the offender to serve once the criminal history is known.

SOME POINTS OF INTEREST ABOUT THE GUIDELINES FOR CLERKS OF THE COURTS

COPIES OF REQUIRED DOCUMENTS SENT TO THE KSC

A copy of the Journal Entry of Judgment and the Presentence Investigation Report, including the Criminal History Worksheet, all on the mandated KSGA forms, must be attached together and forwarded to the Kansas Sentencing Commission within 30 days of sentencing. K.S.A. 2016 Supp. 21-6813(g) and K.S.A. 2016 Supp. 22-3439(a).

A copy of the Journal Entry of Probation Violation must be sent to the Kansas Sentencing Commission, along with a copy of the original Journal Entry of Judgment, the Presentence Investigation Report, and the Criminal History Worksheet within 30 days of the final disposition. K.S.A. 2016 Supp. 22-3439(b).

PROVIDING DOCUMENTATION OF PRIOR CONVICTIONS

Because of the importance of an accurate criminal history under the KSGA and the need to verify prior convictions that are counted in criminal history scoring, Clerks of the Courts may receive requests for certified copies of journal entries and other documents, including requests from other jurisdictions.

PRESENTENCE INVESTIGATION REPORT IS PUBLIC RECORD

The Presentence Investigation Report (PSI), with the exception of the sections containing the official version, the defendant's version, victim comments, and psychological (including drug and alcohol) evaluations of the defendant, will be public record and may be kept in the court file. K.S.A. 2016 Supp. 21-6813.