INSTRUCTIONS FOR THE KANSAS SENTENCING GUIDELINES ACT PRESENTENCE INVESTIGATION REPORT (PSI)

In all cases involving felony crimes committed on or after July 1, 1993 the Presentence Investigation Report (PSI) must be on a form approved by the Kansas Sentencing Commission. K.S.A. 21-4714(g).

The complete Presentence Investigation Report should be stapled to the Journal Entry of Judgment form when these forms are sent to the Kansas Sentencing Commission. K.S.A. 22-3439(a). The PSI form found in this Manual must be used for all felony Presentence Investigation Reports prepared for crimes committed on or after July 1, 2007.

A separate form must be used for each separate Case Number, even if the separate cases are scheduled to be sentenced on the same day.

PRESENTENCE INVESTIGATION FACE SHEET

1. OFFENDER AND CASE IDENTIFICATION INFORMATION

Judicial District

Enter the number of the judicial district in which the Case was filed.

County

Enter the name of the County and the ORI Number (i.e., the Originating Agency Identification number) in which the district court sits.

Case No.

Enter the official district court Case Number in the present case.

Name

Enter the offender's full legal name. Please be aware of nicknames, or designations (i.e., Jr., Sr., III, etc.).

A/K/A's

Enter any known aliases that have been or are now being used by the offender. Also please note maiden names and previous married names.

Age

Enter the offender's age at the time of the commission of the offense.

K.B.I. Number

The K.B.I. Number is the State Identification Number (SID) assigned to an individual by the Kansas Bureau of Investigation Central Repository, upon the individual's first entry into the state criminal history record system. The basis for this number is the number contained on the individual's initial arrest fingerprint card. All subsequent records concerning such individual will be assigned this same number (i.e., it is the identification number listed on an Abstract of Record received from the

Central Repository).

Sex

Check the appropriate box for the offender's gender, male or female.

Race

Check the appropriate box. Designations are as follows: W (White) - a person having origins in any of the original peoples of Europe, North America, or the Middle East; B (Black) - a person having origins in any of the original peoples of Africa; A.I. (American Indian or Alaskan Native) - a person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition; A (Asian or Pacific Islander) - a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Ethnicity

Check the appropriate box. "Hispanic" refers to a person of Mexican, Puerto Rican, Cuban, Central or South America, or other Spanish culture or national origin.

Address

Enter the last known address of the offender. Do not use the address of the facility in which an offender is being held.

Citizenship

Check the appropriate box. If citizenship is other than the United States, please specify such if known.

Detainer or Other Charges Pending

Check the appropriate box. If yes, a brief description of the detainer or other charges and the jurisdiction in which they are pending, may be set forth in the "Official Version" section of the report.

Subject in Custody and Awaiting Sentencing

Check the appropriate box and indicate jail credit if applicable. Enter the beginning and ending dates for the time period the offender was in custody awaiting sentencing.

DNA Sample Taken

Indicate whether a DNA sample has been taken pursuant to K.S.A. 21-2511.

2. JUVENILE OFFENDER TRIED AS ADULT

If Offender Was Under 18 Years of Age When Crime(s) Was Committed and Was Tried as an Adult

Check the appropriate box indicating whether the offender was found to be an adult under K.S.A. 2007 38-2364, or if the offender was automatically considered an adult because of a prior juvenile adjudication which would constitute a felony if committed by an adult.

3. CO-DEFENDANT INFORMATION

Names of Co-Defendants, If Any

Identify any co-defendants by entering the name and the district court Case Number, if any. Do not list juveniles by name; however, enter the number of juvenile co-defendants, if any.

4. ATTORNEY AND TRIAL INFORMATION

Name of Defense Attorney

Enter the full name of the defense attorney representing the offender in the present case.

Type of Counsel Prior to Sentencing

Check the applicable box.

Name of Prosecuting Attorney

Enter the full name of the prosecuting attorney in the present case.

Name of Sentencing Judge

Enter the name of the district court judge who is scheduled to preside over the sentencing proceedings in the present case.

Date of Guilty Plea or Judgment

Enter the Month/Day/Year that the offender was convicted in the present case.

Date of Sentencing

Enter the Month/Day/Year the sentencing of the offender in the present case is scheduled.

5. PRESENTENCE INVESTIGATION INFORMATION

Name of Presentence Investigator

Print the full name of the presentence investigator in the present case, to be followed by his/her handwritten signature.

Date Assigned

Enter the Month/Day/Year the Presentence Investigation Report in the present case was ordered by the district court.

Date Submitted

Enter the Month/Day/Year the Presentence Investigation Report in the present case is filed in the district court.

6. PRIMARY OFFENSE INFORMATION

Name of Primary Offense

Enter the descriptive name of the offense (i.e., Attempted First Degree Murder, Possession of Cocaine, etc.). The Primary Offense is the most serious offense of conviction.

K.S.A. No.

Enter the offense of conviction by the proper K.S.A. number, and also include all of the applicable subsections [i.e., a severity level 4 Aggravated Battery would be K.S.A. 21-3414(a)(1)(A)].

Crime Classification

Check the appropriate boxes indicating: Felony or Misdemeanor and enter the appropriate severity level or class; Off-grid or Nongrid; Person or Nonperson; Drug grid or Nondrug grid; and Attempt, Conspiracy, or a Solicitation if applicable.

Criminal History Score

Enter the letter that corresponds to the offender's criminal history classification as determined from the Criminal History Worksheet. All convictions relevant to calculating the criminal history classification under the sentencing guidelines should be recorded on the Criminal History Worksheet as part of the Presentence Investigation Report in the present case. Prior convictions should be recorded in descending order by the date of conviction, starting with the most recent conviction. In cases with multiple convictions, the criminal history category "I" must be used for all nonbase crimes. (See the **Sentencing Range** paragraph below, for further explanation.)

Maximum Good Time

Please mark whether the offense is eligible for 15% or 20% maximum good time.

- 15%: nondrug severity level 1,2,3,4,5 or 6;

  Drug severity level 1 or 2.
- 20%: nondrug severity level 7,8,9,or 10;

  Drug severity level 3 or 4.

Information Not Relevant to Criminal History

The following information is **not** relevant to establishing an offender's criminal history classification under the KSGA therefore; the following types of prior criminal activity **should not** be recorded on the Criminal History Worksheet.

- **Juveniles:** Do not include informal dispositions, traffic infractions, child in need of care adjudications, contacts with law enforcement, or arrests not resulting in an adjudication.
- **Adults:** Do not include traffic infractions, diversions (except DUI diversions for subsequent DUI convictions or Involuntary Manslaughter while driving under the influence of alcohol or drugs), contacts with law enforcement, or arrests not resulting in conviction.

Sentencing Range

The Presumptive Sentencing Range for the offense is represented by the three numbers in the KSGA drug/nondrug sentencing grid box corresponding to the severity level and the criminal history classification of the offense. Enter the grid box numbers representing the "Aggravated," "Standard" and "Mitigated" sentencing range within the grid box. **Please note these numbers are entered in the same order as they are read, from left to right, in the grid box.** The "Aggravated" number is

the highest number in the grid box. The Standard" number is the middle number in the grid box. The "Mitigated" number is the lowest number in the grid box.

Check the appropriate box indicating whether the grid box for the offense is designated as presumptive prison, presumptive probation, or if it is a presumptive imprisonment border box (PIB). If a special rule applies to the offense, check the "special rule applicable" box, complete the **Special Rule Supplement** on page 5, and attach it to the PSI.

NOTE in multiple conviction cases: In all sentencing cases involving multiple convictions, the base sentence for the primary crime must be established pursuant to K.S.A. 21-4720. The primary crime is the offense with the highest severity level under the sentencing guidelines. The offender's full criminal history classification is to be applied to the severity level of the primary crime to determine the presumptive sentence range for this so-called "base crime." However, the criminal history category "I" must be used to determine the presumptive range of sentencing for each "nonbase" crime, regardless of whether sentencing is concurrent or consecutive. K.S.A. 21-4720(a)(2).

For nondrug and drug offenses with simultaneous presumptive imprisonment and presumptive probation sentences, the base crime is the presumptive imprisonment crime. For nondrug and drug offenses that have the same presumption, the base crime is the crime with the longest term within the grid box range.

K.S.A. 21-4729 (2003 Senate Bill 123)(Nonprison sanction; certified drug abuse treatment program) established mandatory drug treatment:

- for adult offenders;
- convicted of a felony violation of K.S.A. 65-4160 or 65-4162;
- whose offenses are classified in grid blocks 4-E, 4-F, 4-G, 4-H, or 4-I of the sentencing guidelines grid for drug crimes; OR
- whose offenses are classified in grid blocks 4-A, 4-B, 4-C or 4-D of the sentencing guidelines grid for drug crimes, but only if such person felonies committed by the offender were severity level 8, 9 or 10 or nongrid offenses of the sentencing guidelines grid for nondrug crimes under circumstances where the present sentencing court is willing to find and set forth reasons with particularity for finding that the offender's placement in a nonprison drug abuse treatment program will not jeopardize safety of the public;
- who are not ineligible due to any previous convictions for K.S.A 65-4159 or 65-4161 or 65-4142 or 65-4163 or 65-6146
- who are not ineligible due to the Special Rule concerning presumptive sentence of imprisonment for the 3rd and subsequent convictions of felony drug possession if the Offender has previously completed a certified drug abuse treatment program or has been discharged or refused to participate in a certified drug abuse treatment program pursuant to K.S.A. 21-4705(f)
- who are not ineligible due to prior convictions of off-grid felonies and severity level 1 through 7 person felonies
- who are not ineligible because they 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 not lawfully present in the United States and being detained for deportation. K.S.A. 21-4729(h).

- **NOTE:** When the district court orders offenders to attend mandatory drug treatment for up to 18 months pursuant to Senate Bill 123 (K.S.A. 21-4729), the district court simultaneously must impose a longer period of probation pursuant to K.S.A. 21-4611(c)(5) together with specific findings that public safety will be jeopardized or that the welfare of the offender will not be served by imposing the 12 month statutory maximum probation term provided by K.S.A. 21-4611(c)(3) on the offender. K.S.A. 21-4720 only addresses the duration of the term of drug treatment and not the duration of the offender's term of probation.

Postrelease Supervision Duration

Check the appropriate box indicating the term of postrelease supervision applicable to the offense. **Please be careful when completing this information.**

Some retroactive changes were made to the lengths of postrelease supervision during the 2000 Kansas Legislative Session. Also be aware that for some crimes committed between July 1, 1993, and April 20, 1995, the applicable postrelease supervision term may be only 24 months at certain severity levels.

The term of postrelease supervision is 12 months for a fourth or subsequent conviction for DUI. K.S.A. 2007 Supp. 8-1567 (g). Please check the appropriate box. For a fourth or subsequent conviction for a DUI violation, after the term of imprisonment imposed by the court, the person shall be placed in the custody of the secretary of corrections for a mandatory one-year period of postrelease supervision, which such period of postrelease supervision shall not be reduced. During such postrelease supervision, the person shall be required to participate in an inpatient or outpatient program for alcohol and drug abuse, including, but not limited to, an approved aftercare plan or mental health counseling, as determined by the sectary and safety conditions imposed by the Kansas parole board as provided by K.S.A. 22-3717k, and amendments thereto. K.S.A. 2007 Supp. 8-1567 (g).

For convictions of certain child sex offenses wherein the offender was 18 years of age or older and the victim was less than 14 years of age, upon release from a mandatory minimum imprisonment term, the offender will be subject to lifetime postrelease supervision and lifetime electronic monitoring. K.S.A. 22-3717(d)(1)(G) and (u).

Probation Duration

Check the appropriate box indicating the term of probation applicable to the offense. K.S.A. 21-4611(c). If "Other" is checked, please specify.

7. ADDITIONAL OFFENSE INFORMATION

Additional Offense(s)

Enter appropriate information for any additional offenses following the rules for the primary offense above. Use supplemental face sheet if necessary to record all additional offenses.

FACE SHEET SUPPLEMENTAL PAGE

Additional Offenses (Boxes 1-4): Make as many copies of this page as needed in order to include

all of the offender's additional offenses. Instructions for the primary offense as described above will also apply to additional offenses on the Supplemental Page(s).

CURRENT OFFENSE INFORMATION

1. OFFICIAL VERSION

This section should be utilized by the individual preparing the PSI to briefly relate the facts of the offense that have been clearly established during the prosecution of the case.

2. DEFENDANT'S VERSION/DATE OF BIRTH/SOCIAL SECURITY NUMBER
List the Defendant's Date of Birth and Social Security Number.

If the defendant chooses to provide a description of the facts and/or circumstances surrounding the offense, that information should be included here. If the defendant chooses not to provide any information, the defendant's date of birth and social security number should be the only information listed in this area.

3. VICTIM'S INJURY

Include the appropriate information pertaining to victim's injury due to the crime committed.

4. TOTAL RESTITUTION OWED

Include name, address, and amount owed to each victim, then enter the total restitution owed in the space provided.

5. STATEMENTS

Include any victim statements pertaining to the crime committed.

6. RECOMMENDED PLACEMENT

In this section, the individual preparing the PSI should indicate that individual's professional recommendation to the sentencing court on a nonprison placement. **In all cases,** the individual preparing the PSI should mark all applicable boxes for criteria that qualify the offender for placement in a Community Corrections program, even if the individual completing the PSI does not recommend a Community Corrections placement.

7. OFFICER'S ASSESSMENT OF CONDITIONS OF PROBATION

Check the appropriate box(es) and insert additional information as required. Insert any addition assessments not provided for in the PSI form in the "Other" space as provided.

8. SPECIAL RULES SUPPLEMENTAL PAGE (Attach this page only if one or more special rules apply.)

Indicate the applicable special sentencing rules, if any, that the sentencing court should be aware of for the individual offender. This information is vital to the sentencing court. Many of the special sentencing rules include specific directions for the sentencing court to consider on sentencing requirements and procedures. (Note: The numbers for the special rules are intentionally non-sequential for data coding purposes. Please do not renumber them. The numbers 7, 14, and 18 were assigned to

rules that are no longer in use and they will not be reassigned.)

CRIMINAL HISTORY WORKSHEET INSTRUCTIONS

1. K.B.I. #

Enter the K.B.I. Number, which is the State Identification Number (SID) assigned to an individual by the Kansas Bureau of Investigation Central Repository, upon the individual's first entry into the state criminal history record system. The basis for this number is the number contained on the individual's initial arrest fingerprint card. All subsequent records concerning the individual will be assigned this same number (i.e., it is the identification number listed on the Abstract of Record received from the Central Repository).

2. CASE #

Enter the official District Court Case Number.

3. DISTRICT #

Enter the number of the Judicial District in which the offender was convicted of the present offense(s).

4. COURT/ORI #

Enter the District Court ORI number. This nine digit number is assigned by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation (FBI) and serves to identify all agencies having access to the national communications system. In the form XX XXX XX X X, each criminal justice agency in Kansas has an assigned ORI number. The first two digits represent the state (KS), the next three digits the county (001 through 105, plus additional assignments), the next two digits represent a sequential assignment within the county, the next digit is for the level of government (1 = local, 3 = state, 5 = federal, etc.) and the last digit is for the type of agency (A = county/district attorneys, C = jails, J = courts, etc.). For example, KS001013A would represent the Allen County Attorney and KS046051J represents the Overland Park Municipal Court. Questions concerning assigned ORI numbers should be addressed to the KBI.

5. PSI INVESTIGATOR NAME

Enter the last name, the first name and the middle initial of the investigating court services or community corrections officer.

6. PRIOR RECORD

Check whether the offender has a prior conviction record.

7. OFFENDER NAME

Enter the offender's last name, the first name and the middle name, or initial. The name should be copied as it is listed on the Presentence Investigation Report face sheet.

8. DATE OF OFFENSE

In Month, Day and four-digit Year format, enter the date the primary offense was committed.

9. DATE OF CONVICTION

In Month, Day and four-digit Year format, enter the date of a guilty plea or a district court finding.

10. DATE OF WORKSHEET

In Month, Day and four-digit Year format, enter the date the Worksheet was prepared.

11. DATE OF SENTENCING

In Month, Day and four-digit Year format, enter the date the district court has set the case for final disposition.

12. CUSTODY SUPERVISION

Check Yes, if the offender was under custody supervision when the current offense(s) was committed. Then check the type of supervision and enter the jurisdiction (i.e., federal, state, municipal, etc.), the district court Case Number and the sentencing date for that case.

13. CURRENT CRIME(S) OF CONVICTION

Enter the crime(s) of conviction in the current case for which the Criminal History Worksheet is being prepared. Enter the Kansas statute violated, including subsections and a description of the offense. Also indicate whether the crime of conviction is a felony or a misdemeanor, a person or a nonperson offense and the felony severity level or the misdemeanor classification.

14. CRIMINAL HISTORY CONVICTIONS AND/OR ADJUDICATIONS PRIOR TO SENTENCING

Enter the total of the individual scoreable entries from the second page and any supplemental pages. Count the convictions for each prior conviction type and enter the total number of convictions in the corresponding boxes. Add the number of adult convictions to the number of juvenile adjudications for each criminal history type, in order to obtain totals for each criminal history type. Any "Person Misdemeanors" that are converted to "Person Felonies" should not be counted in the Person Misdemeanors total. However, Nonperson "select" Misdemeanors should be added to the Nonperson Misdemeanors total.

15. AMENDED CRIMINAL HISTORY CONVICTIONS AND/OR ADJUDICATIONS

Enter in the gray area any amendments approved by the district court prior to the sentencing. It is not necessary to complete a new Worksheet when criminal history is amended.

16. CRIMINAL HISTORY CATEGORY

After all prior criminal convictions and adjudications have been totaled, indicate the final criminal history category by circling a letter from A to I.

17. NUMBER OF PERSON MISDEMEANORS CONVERTED

Enter the number of person misdemeanors converted to felonies.

18. PRIOR CONVICTION USED TO ENHANCE, ELEVATE OR IS AN ELEMENT OF THE CURRENT CRIME OF CONVICTION

Check the applicable box indicating whether a prior conviction is being used to enhance/elevate or is an element of the current crime of conviction.

19. NUMBER OF DECAYED JUVENILE ADJUDICATIONS

Enter the number of felony and misdemeanor decayed juvenile adjudications. Juvenile felony and misdemeanor adjudications that have decayed should not be considered in the totals or in determining the final criminal history category. However, the total should be listed at the bottom right of the first page and also individually in the prior conviction listing on page 2 (and also on the supplemental pages, if any), so that future PSI writers will have knowledge of the offender's entire record.

SUPPLEMENTAL CRIMINAL HISTORY WORKSHEET

PRIOR CONVICTIONS AND/OR ADJUDICATIONS

Each page of the Criminal History Worksheet should contain the offender's name, the judicial district, the county and the district court Case Number. For each prior conviction include the following information.

STATUTE/ORDINANCE NUMBER & DESCRIPTION

Enter the actual statute or ordinance violated. If the conviction is in another state or jurisdiction, enter the statute number from that jurisdiction. Please enter in the Description section, the Kansas statute used for comparison to the ordinance or out-of-state conviction. Descriptions for prior convictions should be brief but descriptive.

JURISDICTION CODE

Enter the Jurisdiction Code using the listing of Jurisdiction Codes at the bottom of the page (i.e., a Federal, State, Military or Municipal Court).

STATE/COUNTY

Enter the state in which the conviction occurred by using the assigned TWO-LETTER ABBREVIATION. Also use the assigned TWO-LETTER ABBREVIATION for the county in which the conviction occurred.

CITY

If a conviction is listed which occurred in a municipal or a county court, enter the name of the city in which the court is located.

CONVICTION DATE

In Month, Day and four-digit Year format, enter the date of conviction.

CASE NUMBER

Enter the official court Case Number.

CONVICTION CODE

Indicate the type of conviction using the Conviction and Amended Codes located at the bottom of the

page. Consult the Crime Lists in this Manual to determine whether the prior conviction should be classified as a felony or a misdemeanor, a person or a nonperson crime, or a "select" misdemeanor for criminal history purposes.

AMENDED CODE

Indicate any amendments to the crime classification using the Conviction and Amended Codes at the bottom of the page.

SOURCE OF INFORMATION

This indicates where the PSI writer found the information on a specific conviction. Source of Information Codes are listed at the bottom of the page. The source for specific information can be referred to later when requesting documentation.

SUPPLEMENTAL PAGE(S) OF THE PSI

Please enter the page number. Make as many copies of this page as are needed in order to include all of the offender's prior convictions. All instructions and codes used on page 2 will also apply to the Supplemental Page(s).

Information Not Relevant to Criminal History

The following information is **not** relevant to establishing an offender's criminal history classification under the KSGA therefore; the following types of prior criminal activity **should not** be recorded on the Criminal History Worksheet.

- **Juveniles:** Do not include informal dispositions, traffic infractions, child in need of care adjudications, contacts with law enforcement, or arrests not resulting in an adjudication.

- **Adults:** Do not include traffic infractions, diversions (except DUI diversions for subsequent DUI convictions or Involuntary Manslaughter while driving under the influence of alcohol or drugs), contacts with law enforcement, or arrests not resulting in conviction.

In some cases the status of a prior conviction will be unclear and the attorneys may stipulate to some convictions and not to others for the purposes of classifying an offender in a criminal history category. In other cases, particular convictions appearing on the Worksheet may be successfully challenged at the sentencing hearing and will thus not be relied upon to establish the offender's criminal history classification. Any amendments should be noted in the gray areas of the Criminal History Worksheet.

(SPECIAL CONVERSION RULES)

The following special rules apply to "person" crimes when categorizing criminal history.

The 3 to 1 Rule.

Prior adult convictions and/or juvenile adjudications for class A person misdemeanors and class B person misdemeanors, convert to person felonies at a rate of 3 to 1. The number entered in this box can be calculated by dividing the number of adult person misdemeanors convictions and/or juvenile person adjudications by three (i.e., the total number ÷ 3). If the resulting number is a fraction, disregard the fractional portion because these figures must be in whole numbers. K.S.A. 21-4711(a).

For example, eight person misdemeanor convictions and/or juvenile person adjudications would be converted to two person felony convictions (i.e., 8 ÷ 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. 21-4711(a).

Those misdemeanors converted to a felony under this Rule or "The Assault Rule" below should be identified in the conviction code column of the Worksheet as JMC or AMC.

The Assault Rule.

If the offender has three prior convictions for "assault" pursuant to K.S.A. 21-3408 within the three-year period immediately preceding the current crime(s) of conviction, then the three "assault" misdemeanors are converted into **one** person felony. Any remaining prior convictions for assault should be added to the Person Misdemeanor total. K.S.A. 21-4711(a). The Assault Rule was amended during the 1999 Kansas Legislative Session.

(OTHER RULES TO CONSIDER)

Anticipatory Crimes

A prior felony conviction of attempt, conspiracy or a solicitation to commit a crime should be treated as a person or nonperson crime in accordance with the designation assigned to the underlying crime. K.S.A. 21-4711(g).

Prior DUI Convictions

The Worksheet does not provide a special box for converting prior adult convictions or juvenile adjudications of violations of K.S.A. 2007 Supp. 8-1567 (Driving Under the Influence) to person felonies at a rate of 1 to 1. This conversion rule applies **only** when one of the current crimes of conviction involves Involuntary Manslaughter in the commission of K.S.A. 2007 Supp. 8-1567, namely, K.S.A. 21-3404(b). In such cases, if the current crime of conviction was committed on or after July 1, 2004, each DUI adult conviction and/or juvenile adjudication will count as one person felony. See K.S.A. 21-4711(c)(1).

K.S.A. 2000 Supp. 8-1567 was amended in the 2001 Legislative Session and three additional provisions now apply to prior DUI convictions. First, the amendment to K.S.A. 2000 Supp. 21-4711(c)(2) adds convictions for acts described in K.S.A. 2000 Supp. 8-1567 to the criminal history scoring of that specific subsection if such conviction was in another state, or for the violation of any city ordinance, or any county resolution. Second, an amendment to K.S.A. 2000 Supp. 8-1567 at the new subsection (l)(3) [which was formerly subsection (k)(3)], removes the "five year decay" rule for only counting the DUI convictions which occurred during the previous five years preceding the current conviction. A DUI prosecution for an offense committed on or after July 1, 2001, will count all previous D.U.I. convictions that have occurred during the

offender's lifetime. There are no retroactivity provisions provided for, so all previous convictions are now included for all offenders. Third, only one diversion agreement in lieu of criminal prosecution for a DUI offense will be allowed for each offender's lifetime.

A third or subsequent DUI is a nongrid felony with no KSGA severity level or penalty. The specific penalty provisions of the statute apply. K.S.A. 21-4704(i). In addition, an offender cannot be sent to the KDOC to serve any sentence except as provided for by subsections (f) and (g) of K.S.A. 2007 Supp. 8-1567. Pursuant to those sections the court may order mandatory substance abuse treatment in a state facility in the custody of the secretary of corrections in accordance with the rules and regulations of the secretary.

On a fourth or subsequent conviction for a DUI violation, after the term of imprisonment imposed by the court, the person shall be placed in the custody of the secretary of corrections for a mandatory one-year period (12 months) of postrelease supervision, which such period of postrelease supervision shall not be reduced. During such postrelease supervision, the person shall be required to participate in an inpatient or outpatient program for alcohol and drug abuse, including, but not limited to, an approved aftercare plan or mental health counseling, as determined by the secretary and satisfy conditions imposed by the Kansas parole board as provided by K.S.A. 22-3717, and amendments thereto. K.S.A. 2007 Supp. 8-1567(g).

Prior Conviction for Criminal Deprivation of Property; Motor Vehicle

The crime of criminal deprivation of property; motor vehicle, found at K.S.A. 21-3705(b), shall be a Class A, nonperson misdemeanor for a first or second conviction. A third or subsequent conviction is a severity level 9 nonperson felony, effective on and after July 1, 2008. The sentence for the felony is presumptive imprisonment.

The crime shall be a Class A, nonperson misdemeanor if the offense was committed on or after July 1, 1999, but prior to July 1, 2008. However, if the offense was committed prior to July 1, 1999, it was a nonperson felony and should be scored for criminal history purposes as a severity level 10, nonperson felony. See K.S.A. 21-4704, 21-4707(c)(3) and 21-4710(d)(8).