

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2005

## HOUSE BILL No. 2414

By Representative Peck

2-9

12 AN ACT concerning crimes and punishments; amending K.S.A. ~~2004~~  
13 **2005** Supp. 21-3413 ~~and~~[,] 21-3415 [**and 21-4704**] and repealing the  
14 existing sections.  
15

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

17 Section 1. K.S.A. ~~2004~~ **2005** Supp. 21-3413 is hereby amended to  
18 read as follows: 21-3413. (a) Battery against a law enforcement officer is  
19 ~~a battery, as defined in K.S.A. 21-3412 and amendments thereto:~~

20 ~~(a) (1) Committed against (1) Battery, as defined in subsection~~  
21 **(a)(2) of K.S.A. 21-3412, and amendments thereto, committed**  
22 **against: (A) A uniformed or properly identified university or cam-**  
23 **pus police officer while such officer is engaged in the performance**  
24 **of such officer's duty; or (B) a uniformed or properly identified state,**  
25 **county or city law enforcement officer, other than a state correctional**  
26 **officer or employee, a city or county correctional officer or employee, a**  
27 **juvenile correctional facility officer or employee or a juvenile detention**  
28 **facility officer or employee, while such officer is engaged in the perform-**  
29 **ance of such officer's duty; or**

30 ~~(2) committed against a battery, as defined in subsection (a)(1)~~  
31 **of K.S.A. 21-3412, and amendments thereto, committed against:**  
32 **(A) A uniformed or properly identified university or campus police**  
33 **officer while such officer is engaged in the performance of such**  
34 **officer's duty; or (B) a uniformed or properly identified state,**  
35 **county or city law enforcement officer, other than a state correc-**  
36 **tional officer or employee, a city or county correctional officer or**  
37 **employee, a juvenile correctional facility officer or employee or a**  
38 **juvenile detention facility officer or employee, while such officer**  
39 **is engaged in the performance of such officer's duty; or**

40 **(3) battery, as defined in K.S.A. 21-3412, and amendments**  
41 **thereto, committed against: (A) A state correctional officer or em-**  
42 **ployee by a person in custody of the secretary of corrections, while such**  
43 **officer or employee is engaged in the performance of such officer's or**

1 employee’s duty;  
 2 ~~(3)~~ **(B)** committed against a juvenile correctional facility officer or  
 3 employee by a person confined in such juvenile correctional facility, while  
 4 such officer or employee is engaged in the performance of such officer’s  
 5 or employee’s duty;  
 6 ~~(4)~~ **(C)** committed against a juvenile detention facility officer or em-  
 7 ployee by a person confined in such juvenile detention facility, while such  
 8 officer or employee is engaged in the performance of such officer’s or  
 9 employee’s duty;  
 10 ~~(5)~~ **(D)** committed against a city or county correctional officer or em-  
 11 ployee by a person confined in a city holding facility or county jail facility,  
 12 while such officer or employee is engaged in the performance of such  
 13 officer’s or employee’s duty; ~~or~~  
 14 ~~—(6)— committed against a uniformed or properly identified university~~  
 15 ~~or campus police officer while such officer is engaged in the performance~~  
 16 ~~of such officer’s duty.~~  
 17 (b) Battery against a law enforcement officer as defined in subsection  
 18 ~~(a)(1) is a class A person misdemeanor. Battery against a law enforcement~~  
 19 ~~officer as defined in subsection (a)(2), (a)(3), (a)(4) or (a)(5) as defined~~  
 20 **in subsection (a)(1) is a class A person misdemeanor. Battery**  
 21 **against a law enforcement officer as defined in subsection (a)(2)**  
 22 **or (a)(3) is a severity level 5, person felony.**  
 23 (c) As used in this section:  
 24 (1) “Correctional institution” means any institution or facility under  
 25 the supervision and control of the secretary of corrections.  
 26 (2) “State correctional officer or employee” means any officer or em-  
 27 ployee of the Kansas department of corrections or any independent con-  
 28 tractor, or any employee of such contractor, working at a correctional  
 29 institution.  
 30 (3) “Juvenile correctional facility officer or employee” means any of-  
 31 ficer or employee of the juvenile justice authority or any independent  
 32 contractor, or any employee of such contractor, working at a juvenile  
 33 correctional facility, as defined in K.S.A. 38-1602 and amendments  
 34 thereto.  
 35 (4) “Juvenile detention facility officer or employee” means any officer  
 36 or employee of a juvenile detention facility as defined in K.S.A. 38-1602  
 37 and amendments thereto.  
 38 (5) “City or county correctional officer or employee” means any cor-  
 39 rectional officer or employee of the city or county or any independent  
 40 contractor, or any employee of such contractor, working at a city holding  
 41 facility or county jail facility.  
 42 Sec. 2. K.S.A. ~~2004~~ **2005** Supp. 21-3415 is hereby amended to read  
 43 as follows: 21-3415. (a) Aggravated battery against a law enforcement

1 officer is:

2 (1) An aggravated battery, as defined in subsection (a)(1)(A) of K.S.A.  
 3 21-3414 and amendments thereto, committed against: (A) A uniformed  
 4 or properly identified state, county or city law enforcement officer while  
 5 the officer is engaged in the performance of the officer’s duty; or (B) a  
 6 uniformed or properly identified university or campus police officer while  
 7 such officer is engaged in the performance of such officer’s duty;

8 (2) an aggravated battery, as defined in subsection (a)(1)(B) or  
 9 (a)(1)(C) of K.S.A. 21-3414 and amendments thereto, committed against:  
 10 (A) A uniformed or properly identified state, county or city law enforce-  
 11 ment officer while the officer is engaged in the performance of the offi-  
 12 cer’s duty; or (B) a uniformed or properly identified university or campus  
 13 police officer while such officer is engaged in the performance of such  
 14 officer’s duty; or

15 (3) intentionally causing, with a motor vehicle, bodily harm to: (A) A  
 16 uniformed or properly identified state, county or city law enforcement  
 17 officer while the officer is engaged in the performance of the officer’s  
 18 duty; or (B) a uniformed or properly identified university or campus po-  
 19 lice officer while such officer is engaged in the performance of such of-  
 20 ficer’s duty.

21 (b) (1) Aggravated battery against a law enforcement officer as de-  
 22 scribed in subsection (a)(1) or (a)(3) is a severity level 3, person felony.

23 (2) Aggravated battery against a law enforcement officer as described  
 24 in subsection (a)(2) is a severity level ~~6~~ 4, person felony.

25 (3) A person convicted of aggravated battery against a law enforce-  
 26 ment officer shall be subject to the provisions of subsection (g) of K.S.A.  
 27 21-4704 and amendments thereto.

28 **[Sec. 3. K.S.A. 2005 Supp. 21-4704 is hereby amended to read**  
 29 **as follows: 21-4704. (a) For purposes of sentencing, the following**  
 30 **sentencing guidelines grid for nondrug crimes shall be applied in**  
 31 **felony cases for crimes committed on or after July 1, 1993:**

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SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	38 35 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	18 17 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	6 5 5

LEGEND
Presumptive Probation
Bank
Row
Presumptive Imprisonment

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

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

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

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

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

29 [(3) In presumptive nonprison cases, the sentencing court shall  
30 pronounce the prison sentence as well as the duration of the non-  
31 prison sanction at the sentencing hearing.

32 [(f) Each grid block states the presumptive sentencing range  
33 for an offender whose crime of conviction and criminal history  
34 place such offender in that grid block. If an offense is classified in  
35 a grid block below the dispositional line, the presumptive dispo-  
36 sition shall be nonimprisonment. If an offense is classified in a grid  
37 block above the dispositional line, the presumptive disposition  
38 shall be imprisonment. If an offense is classified in grid blocks 5-  
39 H, 5-I or 6-G, the court may impose an optional nonprison sen-  
40 tence upon making the following findings on the record:

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

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

4     **[(3) the nonprison sanction will serve community safety inter-**  
5 **ests by promoting offender reformation.**

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

10    **[(g) (1) *The sentence for the violation of subsection (a)(2) or (a)(3)***  
11 ***of K.S.A. 21-3413, and amendments thereto, shall be presumed impris-***  
12 ***onment.***

13    **[(2) **The sentence for the violation of K.S.A. 21-3411, and****  
14 ****amendments thereto, aggravated assault against a law enforce-****  
15 ****ment officer or K.S.A. 21-3415, and amendments thereto, aggravated****  
16 ****battery against a law enforcement officer and amendments thereto which****  
17 ****places the defendant's sentence in grid block 6-H or 6-I shall be****  
18 ****presumed imprisonment. *In regard to the sentence imposed pursuant*****  
19 *****to this paragraph, the court may impose an optional nonprison sen-*****  
20 *****tence upon making a finding on the record that the nonprison*****  
21 *****sanction will serve community safety interests by promoting of-*****  
22 *****fender reformation. Any decision made by the court regarding the*****  
23 *****imposition of the optional nonprison sentence, if the offense is*****  
24 *****classified in grid block 6-H or 6-I, shall not be considered depar-*****  
25 *****ture and shall not be subject to appeal.*****

26    **[(h) **When a firearm is used to commit any person felony, the****  
27 ****offender's sentence shall be presumed imprisonment. The court****  
28 ****may impose an optional nonprison sentence upon making a finding****  
29 ****on the record that the nonprison sanction will serve community****  
30 ****safety interests by promoting offender reformation. Any decision****  
31 ****made by the court regarding the imposition of the optional non-****  
32 ****prison sentence shall not be considered a departure and shall not****  
33 ****be subject to appeal.****

34    **[(i) **The sentence for the violation of the felony provision of****  
35 ****K.S.A. 8-1567 and, subsection (b)(3) of K.S.A. 21-3412a, and sub-****  
36 ****sections (b)(3) and (b)(4) of K.S.A. 21-3710, and amendments****  
37 ****thereto, shall be as provided by the specific mandatory sentencing****  
38 ****requirements of that section and shall not be subject to the pro-****  
39 ****visions of this section or K.S.A. 21-4707 and amendments thereto.****  
40 ****If because of the offender's criminal history classification the of-****  
41 ****fender is subject to presumptive imprisonment or if the judge de-****  
42 ****parts from a presumptive probation sentence and the offender is****  
43 ****subject to imprisonment, the provisions of this section and K.S.A.****

1 21-4707, and amendments thereto, shall apply and the offender  
2 shall not be subject to the mandatory sentence as provided in  
3 K.S.A. 21-3710, and amendments thereto. Notwithstanding the  
4 provisions of any other section, the term of imprisonment imposed  
5 for the violation of the felony provision of K.S.A. 8-1567, subsec-  
6 tion (b)(3) of K.S.A. 21-3412a and subsections (b)(3) and (b)(4) of  
7 K.S.A. 21-3710, and amendments thereto shall not be served in a  
8 state facility in the custody of the secretary of corrections.

9 [(j) (1) The sentence for any persistent sex offender whose cur-  
10 rent convicted crime carries a presumptive term of imprisonment  
11 shall be double the maximum duration of the presumptive impris-  
12 onment term. The sentence for any persistent sex offender whose  
13 current conviction carries a presumptive nonprison term shall be  
14 presumed imprisonment and shall be double the maximum dura-  
15 tion of the presumptive imprisonment term.

16 [(2) Except as otherwise provided in this subsection, as used in  
17 this subsection, “persistent sex offender” means a person who: (A)  
18 (i) Has been convicted in this state of a sexually violent crime, as  
19 defined in K.S.A. 22-3717 and amendments thereto; and (ii) at the  
20 time of the conviction under paragraph (A) (i) has at least one con-  
21 viction for a sexually violent crime, as defined in K.S.A. 22-3717  
22 and amendments thereto in this state or comparable felony under  
23 the laws of another state, the federal government or a foreign gov-  
24 ernment; or (B) (i) has been convicted of rape, K.S.A. 21-3502, and  
25 amendments thereto; and (ii) at the time of the conviction under  
26 paragraph (B) (i) has at least one conviction for rape in this state  
27 or comparable felony under the laws of another state, the federal  
28 government or a foreign government.

29 [(3) Except as provided in paragraph (2) (B), the provisions of  
30 this subsection shall not apply to any person whose current con-  
31 victed crime is a severity level 1 or 2 felony.

32 [(k) If it is shown at sentencing that the offender committed  
33 any felony violation for the benefit of, at the direction of, or in  
34 association with any criminal street gang, with the specific intent  
35 to promote, further or assist in any criminal conduct by gang mem-  
36 bers, the offender’s sentence shall be presumed imprisonment.  
37 Any decision made by the court regarding the imposition of the  
38 optional nonprison sentence shall not be considered a departure  
39 and shall not be subject to appeal. As used in this subsection, “crim-  
40 inal street gang” means any organization, association or group of  
41 three or more persons, whether formal or informal, having as one  
42 of its primary activities the commission of one or more person  
43 felonies or felony violations of the uniform controlled substances

1 **act, K.S.A. 65-4101 *et seq.*, and amendments thereto, which has a**  
2 **common name or common identifying sign or symbol, whose mem-**  
3 **bers, individually or collectively engage in or have engaged in the**  
4 **commission, attempted commission, conspiracy to commit or so-**  
5 **licitation of two or more person felonies or felony violations of the**  
6 **uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and**  
7 **amendments thereto, or any substantially similar offense from an-**  
8 **other jurisdiction.**

9 **[(1) The sentence for a violation of subsection (a) of K.S.A. 21-**  
10 **3715 and amendments thereto when such person being sentenced**  
11 **has a prior conviction for a violation of subsection (a) or (b) of**  
12 **K.S.A. 21-3715 or 21-3716 and amendments thereto shall be pre-**  
13 **sumed imprisonment.]**

14 **Sec. ~~3~~ [4.] K.S.A. ~~2004~~ 2005 Supp. 21-3413 ~~and~~[,] 21-3415 [and**  
15 **21-4704] are hereby repealed.**

16 **Sec. ~~4~~ [5.] This act shall take effect and be in force from and after**  
17 **its publication in the statute book.**