

SENATE BILL No. 307

By Senator Barnett

3-23

9 AN ACT concerning crimes, criminal procedure and punishment; relat-
10 ing to sentencing for burglary; expansion or construction of minimum
11 security facilities; amending K.S.A. 2004 Supp. 21-4704 and repealing
12 the existing section.

13

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

15 Section 1. K.S.A. 2004 Supp. 21-4704 is hereby amended to read as
16 follows: 21-4704. (a) For purposes of sentencing, the following sentencing
17 guidelines grid for nondrug crimes shall be applied in felony cases for
18 crimes committed on or after July 1, 1993:

SENTENCING RANGE - NONDRUG OFFENSES

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

LEGEND
Presumptive Probation
Boxer Box
Presumptive Imprisonment

- 1 (b) The provisions of this section shall be applicable to the sentencing
2 guidelines grid for nondrug crimes. Sentences expressed in such grid
3 represent months of imprisonment.
- 4 (c) The sentencing guidelines grid is a two-dimensional crime severity
5 and criminal history classification tool. The grid's vertical axis is the crime
6 severity scale which classifies current crimes of conviction. The grid's
7 horizontal axis is the criminal history scale which classifies criminal
8 histories.
- 9 (d) The sentencing guidelines grid for nondrug crimes as provided in
10 this section defines presumptive punishments for felony convictions, sub-
11 ject to judicial discretion to deviate for substantial and compelling reasons
12 and impose a different sentence in recognition of aggravating and miti-
13 gating factors as provided in this act. The appropriate punishment for a
14 felony conviction should depend on the severity of the crime of conviction
15 when compared to all other crimes and the offender's criminal history.
- 16 (e) (1) The sentencing court has discretion to sentence at any place
17 within the sentencing range. The sentencing judge shall select the center
18 of the range in the usual case and reserve the upper and lower limits for
19 aggravating and mitigating factors insufficient to warrant a departure.
- 20 (2) In presumptive imprisonment cases, the sentencing court shall
21 pronounce the complete sentence which shall include the prison sen-
22 tence, the maximum potential reduction to such sentence as a result of
23 good time and the period of postrelease supervision at the sentencing
24 hearing. Failure to pronounce the period of postrelease supervision shall
25 not negate the existence of such period of postrelease supervision.
- 26 (3) In presumptive nonprison cases, the sentencing court shall pro-
27 nounce the prison sentence as well as the duration of the nonprison sanc-
28 tion at the sentencing hearing.
- 29 (f) Each grid block states the presumptive sentencing range for an
30 offender whose crime of conviction and criminal history place such of-
31 fender in that grid block. If an offense is classified in a grid block below
32 the dispositional line, the presumptive disposition shall be nonimprison-
33 ment. If an offense is classified in a grid block above the dispositional
34 line, the presumptive disposition shall be imprisonment. If an offense is
35 classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional
36 nonprison sentence upon making the following findings on the record:
- 37 (1) An appropriate treatment program exists which is likely to be
38 more effective than the presumptive prison term in reducing the risk of
39 offender recidivism; and
- 40 (2) the recommended treatment program is available and the of-
41 fender can be admitted to such program within a reasonable period of
42 time; or
- 43 (3) the nonprison sanction will serve community safety interests by

1 promoting offender reformation.

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

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

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

23 (i) The sentence for the violation of the felony provision of K.S.A. 8-
24 1567 and, subsection (b)(3) of K.S.A. 21-3412a, and subsections (b)(3)
25 and (b)(4) of K.S.A. 21-3710, and amendments thereto, shall be as pro-
26 vided by the specific mandatory sentencing requirements of that section
27 and shall not be subject to the provisions of this section or K.S.A. 21-4707
28 and amendments thereto. If because of the offender's criminal history
29 classification the offender is subject to presumptive imprisonment or if
30 the judge departs from a presumptive probation sentence and the of-
31 fender is subject to imprisonment, the provisions of this section and
32 K.S.A. 21-4707, and amendments thereto, shall apply and the offender
33 shall not be subject to the mandatory sentence as provided in K.S.A. 21-
34 3710, and amendments thereto. Notwithstanding the provisions of any
35 other section, the term of imprisonment imposed for the violation of the
36 felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a
37 and subsections (b)(3) and (b)(4) of K.S.A. 21-3710, and amendments
38 thereto shall not be served in a state facility in the custody of the secretary
39 of corrections.

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

1 carries a presumptive nonprison term shall be presumed imprisonment
2 and shall be double the maximum duration of the presumptive impris-
3 onment term.

4 (2) Except as otherwise provided in this subsection, as used in this
5 subsection, “persistent sex offender” means a person who: (A) (i) Has
6 been convicted in this state of a sexually violent crime, as defined in K.S.A.
7 22-3717 and amendments thereto; and (ii) at the time of the conviction
8 under paragraph (A) (i) has at least one conviction for a sexually violent
9 crime, as defined in K.S.A. 22-3717 and amendments thereto in this state
10 or comparable felony under the laws of another state, the federal gov-
11 ernment or a foreign government; or (B) (i) has been convicted of rape,
12 K.S.A. 21-3502, and amendments thereto; and (ii) at the time of the
13 conviction under paragraph (B) (i) has at least one conviction for rape in
14 this state or comparable felony under the laws of another state, the federal
15 government or a foreign government.

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

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

37 (l) The sentence for a violation of subsection (a) of K.S.A. 21-3715
38 and amendments thereto when such person being sentenced has a prior
39 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-
40 3716, and amendments thereto, *or any comparable juvenile adjudication*
41 *or out of state conviction* shall be presumed imprisonment *at a correc-*
42 *tional facility that houses inmates having a minimum custody or security*
43 *classification. The sentence for a violation of subsection (b) or (c) of K.S.A.*

1 21-3715, and amendments thereto, when such person has three prior con-
2 victions for a violation of K.S.A. 21-3715 or 21-3716, and amendments
3 thereto, or any comparable juvenile adjudication or out of state convic-
4 tions shall be presumed imprisonment at a correctional facility that houses
5 inmates having a minimum custody or security classification. There shall
6 be a presumption of a minimum custody or security classification, except
7 that if the secretary of corrections determines that such classification is
8 not in the best interests of the inmate, the public or the department of
9 corrections, the secretary shall otherwise classify such person and serve
10 in a correctional facility as determined by the secretary. Such determi-
11 nation of custody or security classification by the secretary is not subject
12 to judicial review.

13 Sec. 2. K.S.A. 2004 Supp. 21-4704 is hereby repealed.

14 Sec. 3. This act shall take effect and be in force from and after its
15 publication in the statute book.