

As Amended by Senate Committee

Session of 2007

SENATE BILL No. 97

By Committee on Judiciary

1-16

10 AN ACT concerning crimes, punishment and criminal procedure; relat-
11 ing to burglary; sentencing; amending K.S.A. 2006 Supp. 21-4704 and
12 repealing the existing section.
13

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

15 Section 1. K.S.A. 2006 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:

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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	618 586	285 272	267 253	246 234	226 214	203 195	186 176	165 155
II	493 467	460 438	216 205	200 190	184 174	168 160	154 146	138 131	123 117
III	247 233	228 216	107 102	100 94	92 88	83 79	77 74	71 66	61 59
IV	172 162	162 154	75 71	69 66	64 60	59 56	52 50	48 45	43 41
V	136 130	128 120	60 57	55 52	51 49	47 44	43 41	38 36	35 34
VI	46 43	41 39	38 36	36 34	32 30	29 27	26 24	21 20	19 18
VII	34 32	31 29	29 27	26 24	23 21	19 18	17 16	14 13	13 12
VIII	23 21	20 19	19 18	17 16	15 14	13 12	11 10	11 10	9 8
IX	17 16	15 14	13 12	13 12	11 10	10 9	9 8	8 7	7 6
X	13 12	12 11	11 10	10 9	9 8	8 7	7 6	7 6	7 6

LEGEND
Presumptive Probation
Boon 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, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4)
25 of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments
26 thereto, shall be as provided by the specific mandatory sentencing
27 requirements of that section and shall not be subject to the provisions of
28 this section or K.S.A. 21-4707 and amendments thereto. If because of the
29 offender's criminal history classification the offender is subject to pre-
30 sumptive imprisonment or if the judge departs from a presumptive pro-
31 bation sentence and the offender is subject to imprisonment, the provi-
32 sions of this section and K.S.A. 21-4707, and amendments thereto, shall
33 apply and the offender shall not be subject to the mandatory sentence as
34 provided in K.S.A. 21-3710, and amendments thereto. Notwithstanding
35 the provisions of any other section, the term of imprisonment imposed
36 for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3)
37 of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710,
38 K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall not
39 be served in a state facility in the custody of the secretary of corrections.

40 (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 sub-
17 section shall not apply to any person whose current convicted crime is a
18 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.,
35 and amendments thereto, or any substantially similar offense from an-
36 other jurisdiction.

37 (l) (1) The sentence for a violation of subsection (a) of K.S.A. 21-
38 3715 and amendments thereto when such person being sentenced has a
39 prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715
40 or 21-3716 and amendments thereto shall be presumed imprisonment.

41 (2) ~~The sentence for a third or subsequent violation of K.S.A. 21-3715~~
42 ~~or 21-3716, and amendments thereto, when such person being sentenced~~
43 ~~has two or more prior convictions for violations of either K.S.A. 21-3715~~

1 *or 21-3716, and amendments thereto, or a prior conviction of K.S.A. 21-*
2 *3715 and 21-3716, and amendments thereto, shall be presumed impris-*
3 *onment and the defendant shall be sentenced to prison as provided by*
4 *this section. Such sentence shall not be considered a departure and shall*
5 *not be subject to appeal.*

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

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

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

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

20 Sec. 2. K.S.A. 2006 Supp. 21-4704 is hereby repealed.

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