

SENATE BILL No. 279

By Committee on Federal and State Affairs

2-17

9 AN ACT concerning crimes, punishment and criminal procedure; relat-
10 ing to involuntary manslaughter while driving under the influence of
11 alcohol or drugs; sentencing; amending K.S.A. 21-3442 and K.S.A.
12 2008 Supp. 21-4704 and repealing the existing sections.
13

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

15 Section 1. K.S.A. 21-3442 is hereby amended to read as follows: 21-
16 3442. (a) Involuntary manslaughter while driving under the influence of
17 alcohol or drugs is the unintentional killing of a human being committed
18 in the commission of, or attempt to commit, or flight from an act de-
19 scribed in K.S.A. 8-1567 and amendments thereto.

20 (b) Involuntary manslaughter while driving under the influence of
21 alcohol or drugs is a severity level 4, person felony. *On a violation of this*
22 *section, a person shall be required to serve at least 120 months' impris-*
23 *onment as a condition of probation. The person convicted shall not be*
24 *eligible for release on probation, suspension or reduction of sentence or*
25 *parole until the person has served the mandatory sentence as provided*
26 *herein.*

27 Sec. 2. K.S.A. 2008 Supp. 21-4704 is hereby amended to read as
28 follows: 21-4704. (a) For purposes of sentencing, the following sentencing
29 guidelines grid for nondrug crimes shall be applied in felony cases for
30 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	34 32 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	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	6 5 5

LEGEND
Presumptive Probation
6 Months
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. 21-3415, and amend-
6 ments thereto, aggravated battery against a law enforcement officer com-
7 mitted prior to July 1, 2006, or K.S.A. 21-3411, and amendments thereto,
8 aggravated assault against a law enforcement officer, which places the
9 defendant'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 deci-
13 sion 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 except that the term of imprisonment for felony violations of K.S.A. 8-
41 1567, and amendments thereto, may be served in a state correctional
42 facility designated by the secretary of corrections if the secretary deter-
43 mines that substance abuse treatment resources and facility capacity is

1 available. The secretary's determination regarding the availability of treat-
2 ment resources and facility capacity shall not be subject to review.

3 (j) (1) The sentence for any persistent sex offender whose current
4 convicted crime carries a presumptive term of imprisonment shall be
5 double the maximum duration of the presumptive imprisonment term.
6 The sentence for any persistent sex offender whose current conviction
7 carries a presumptive nonprison term shall be presumed imprisonment
8 and shall be double the maximum duration of the presumptive impris-
9 onment term.

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

22 (3) Except as provided in paragraph (2)(B), the provisions of this sub-
23 section shall not apply to any person whose current convicted crime is a
24 severity level 1 or 2 felony.

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

43 (l) Except as provided in subsection (o), the sentence for a violation

1 of subsection (a) of K.S.A. 21-3715 and amendments thereto when such
2 person being sentenced has a prior conviction for a violation of subsection
3 (a) or (b) of K.S.A. 21-3715 or 21-3716 and amendments thereto shall be
4 presumed imprisonment.

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

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

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

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

19 (n) The sentence for a third or subsequent violation of subsection (b)
20 of K.S.A. 21-3705, and amendments thereto, shall be presumptive im-
21 prisonment. Such sentence shall not be considered a departure and shall
22 not be subject to appeal.

23 (o) The sentence for a felony violation of K.S.A. 21-3701 or 21-3715,
24 and amendments thereto, when such person being sentenced has no prior
25 convictions for a violation of K.S.A. 21-3701 or 21-3715, and amendments
26 thereto; or the sentence for a felony violation of K.S.A. 21-3701, and
27 amendments thereto, when such person being sentenced has one or two
28 prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-
29 3716, and amendments thereto; or the sentence for a felony violation of
30 K.S.A. 21-3715, and amendments thereto, when such person being sen-
31 tenced has one prior felony conviction for a violation of K.S.A. 21-3701,
32 21-3715 or 21-3716, and amendments thereto, shall be the sentence as
33 provided by this section, except that the court may order an optional
34 nonprison sentence for a defendant to participate in a drug treatment
35 program, including, but not limited to, an approved after-care plan, if the
36 court makes the following findings on the record:

37 (1) Substance abuse was an underlying factor in the commission of
38 the crime;

39 (2) substance abuse treatment in the community is likely to be more
40 effective than a prison term in reducing the risk of offender recidivism;
41 and

42 (3) participation in an intensive substance abuse treatment program
43 will serve community safety interests.

1 A defendant sentenced to an optional nonprison sentence under this
2 subsection shall be supervised by community correctional services. The
3 provisions of subsection (f)(1) of K.S.A. 21-4729, and amendments
4 thereto, shall apply to a defendant sentenced under this subsection.

5 The sentence under this subsection shall not be considered a departure
6 and shall not be subject to appeal.

7 (p) The sentence for a felony violation of K.S.A. 21-3701, and amend-
8 ments thereto, when such person being sentenced has any combination
9 of three or more prior felony convictions for violations of K.S.A. 21-3701,
10 21-3715 or 21-3716 and amendments thereto, or the sentence for a vio-
11 lation of K.S.A. 21-3715, and amendments thereto, when such person
12 being sentenced has any combination of two or more prior convictions
13 for violations of K.S.A. 21-3701, 21-3715 and 21-3716, and amendments
14 thereto, shall be presumed imprisonment and the defendant shall be sen-
15 tenced to prison as provided by this section, except that the court may
16 recommend that an offender be placed in the custody of the secretary of
17 corrections, in a facility designated by the secretary to participate in an
18 intensive substance abuse treatment program, upon making the following
19 findings on the record:

20 (1) Substance abuse was an underlying factor in the commission of
21 the crime;

22 (2) substance abuse treatment with a possibility of an early release
23 from imprisonment is likely to be more effective than a prison term in
24 reducing the risk of offender recidivism; and

25 (3) participation in an intensive substance abuse treatment program
26 with the possibility of an early release from imprisonment will serve com-
27 munity safety interests by promoting offender reformation.

28 The intensive substance abuse treatment program shall be determined
29 by the secretary of corrections, but shall be for a period of at least four
30 months. Upon the successful completion of such intensive treatment pro-
31 gram, the offender shall be returned to the court and the court may
32 modify the sentence by directing that a less severe penalty be imposed
33 in lieu of that originally adjudged within statutory limits. If the offender's
34 term of imprisonment expires, the offender shall be placed under the
35 applicable period of postrelease supervision.

36 The sentence under this subsection shall not be considered a departure
37 and shall not be subject to appeal.

38 (q) *Except as provided further, the sentence for the violation of K.S.A.*
39 *21-3442, and amendments thereto, shall be as provided by the specific*
40 *mandatory sentencing requirements of such section and shall not be sub-*
41 *ject to the provisions of this section or K.S.A. 21-4707, and amendments*
42 *thereto. The mandatory sentencing requirements of such section shall not*
43 *apply if the court finds that the defendant, because of the defendant's*

1 *criminal history classification, is subject to presumptive imprisonment*
2 *pursuant to the sentencing guidelines grid for nondrug crimes and the*
3 *sentencing range exceeds 120 months. In such case, the defendant is re-*
4 *quired to serve a mandatory minimum term equal to the sentence estab-*
5 *lished pursuant to the sentencing range.*

6 Sec. 3. K.S.A. 21-3442 and K.S.A. 2008 Supp. 21-4704 are hereby
7 repealed.

8 Sec. 4. This act shall take effect and be in force from and after its
9 publication in the statute book.