

SENATE BILL No. 380

By Committee on Judiciary

1-23

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sentencing; clarifying a special sentencing rule applicable to
3 violations of criminal discharge of a firearm when a person was present
4 in the dwelling, building, structure or motor vehicle at which the
5 offender discharged a firearm; amending K.S.A. 21-6804 and repealing
6 the existing section.

7

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

9 Section 1. K.S.A. 21-6804 is hereby amended to read as follows: 21-
10 6804. (a) The provisions of this section shall be applicable to the
11 sentencing guidelines grid for nondrug crimes. The following sentencing
12 guidelines grid shall be applicable to nondrug felony crimes:

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	6 5 4

LEGEND
Presumptive Probation
30 Day Probation
Presumptive Imprisonment

1 (b) Sentences expressed in the sentencing guidelines grid for nondrug
2 crimes represent months of imprisonment.

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

8 (d) The sentencing guidelines grid for nondrug crimes as provided in
9 this section defines presumptive punishments for felony convictions,
10 subject to the sentencing court's discretion to enter a departure sentence.
11 The appropriate punishment for a felony conviction should depend on the
12 severity of the crime of conviction when compared to all other crimes and
13 the offender's criminal history.

14 (e) (1) The sentencing court has discretion to sentence at any place
15 within the sentencing range. In the usual case it is recommended that the
16 sentencing judge select the center of the range and reserve the upper and
17 lower limits for aggravating and mitigating factors insufficient to warrant a
18 departure.

19 (2) In presumptive imprisonment cases, the sentencing court shall
20 pronounce the complete sentence which shall include the:

21 (A) Prison sentence;

22 (B) maximum potential reduction to such sentence as a result of good
23 time; and

24 (C) period of postrelease supervision at the sentencing hearing.
25 Failure to pronounce the period of postrelease supervision shall not negate
26 the existence of such period of postrelease supervision.

27 (3) In presumptive nonprison cases, the sentencing court shall
28 pronounce the:

29 (A) Prison sentence; and

30 (B) duration of the nonprison sanction at the sentencing hearing.

31 (f) Each grid block states the presumptive sentencing range for an
32 offender whose crime of conviction and criminal history place such
33 offender in that grid block. If an offense is classified in a grid block below
34 the dispositional line, the presumptive disposition shall be
35 nonimprisonment. If an offense is classified in a grid block above the
36 dispositional line, the presumptive disposition shall be imprisonment. If an
37 offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose
38 an optional nonprison sentence as provided in subsection (q).

39 (g) The sentence for a violation of K.S.A. 21-3415, prior to its repeal,
40 aggravated battery against a law enforcement officer committed prior to
41 July 1, 2006, or a violation of K.S.A. 21-5412(d), and amendments
42 thereto, aggravated assault against a law enforcement officer, which places
43 the defendant's sentence in grid block 6-H or 6-I shall be presumed
44 imprisonment. The court may impose an optional nonprison sentence as
45 provided in subsection (q).

46 (h) When a firearm is used to commit any person felony, the

1 offender's sentence shall be presumed imprisonment. The court may
2 impose an optional nonprison sentence as provided in subsection (q).

3 (i) (1) The sentence for the violation of the felony provision of K.S.A.
4 21-5414(c)(1)(C), 21-5823(b)(3) and (b)(4), 21-6412 and 21-6416, and
5 amendments thereto, shall be as provided by the specific mandatory
6 sentencing requirements of that section and shall not be subject to the
7 provisions of this section or K.S.A. 21-6807, and amendments thereto.

8 (2) If because of the offender's criminal history classification the
9 offender is subject to presumptive imprisonment or if the judge departs
10 from a presumptive probation sentence and the offender is subject to
11 imprisonment, the provisions of this section and K.S.A. 21-6807, and
12 amendments thereto, shall apply and the offender shall not be subject to
13 the mandatory sentence as provided in K.S.A. 21-5823, and amendments
14 thereto.

15 (3) Notwithstanding the provisions of any other section, the term of
16 imprisonment imposed for the violation of the felony provision of K.S.A.
17 21-5414(c)(1)(C), 21-5823(b)(3) and (b)(4), 21-6412 and 21-6416, and
18 amendments thereto, shall not be served in a state facility in the custody of
19 the secretary of corrections. Prior to imposing any sentence pursuant to
20 this subsection, the court may consider assigning the defendant to a house
21 arrest program pursuant to K.S.A. 21-6609, and amendments thereto.

22 (j) (1) The sentence for any persistent sex offender whose current
23 convicted crime carries a presumptive term of imprisonment shall be
24 double the maximum duration of the presumptive imprisonment term. The
25 sentence for any persistent sex offender whose current conviction carries a
26 presumptive nonprison term shall be presumed imprisonment and shall be
27 double the maximum duration of the presumptive imprisonment term.

28 (2) Except as otherwise provided in this subsection, as used in this
29 subsection, "persistent sex offender" means a person who:

30 (A) (i) Has been convicted in this state of a sexually violent crime, as
31 defined in K.S.A. 22-3717, and amendments thereto; and

32 (ii) at the time of the conviction under clause (i) has at least one
33 conviction for a sexually violent crime, as defined in K.S.A. 22-3717, and
34 amendments thereto, in this state or comparable felony under the laws of
35 another state, the federal government or a foreign government; or

36 (B) (i) has been convicted of rape, as defined in K.S.A. 21-3502,
37 prior to its repeal, or K.S.A. 21-5503, and amendments thereto; and

38 (ii) at the time of the conviction under clause (i) has at least one
39 conviction for rape in this state or comparable felony under the laws of
40 another state, the federal government or a foreign government.

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

1 (k) (1) If it is shown at sentencing that the offender committed any
 2 felony violation for the benefit of, at the direction of, or in association with
 3 any criminal street gang, with the specific intent to promote, further or
 4 assist in any criminal conduct by gang members, the offender's sentence
 5 shall be presumed imprisonment. The court may impose an optional
 6 nonprison sentence as provided in subsection (q).

7 (2) As used in this subsection, "criminal street gang" means any
 8 organization, association or group of three or more persons, whether
 9 formal or informal, having as one of its primary activities:

10 (A) (i) The commission of one or more person felonies; or

11 ~~(B)~~(ii) the commission of felony violations of article 57 of chapter 21
 12 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010
 13 Supp. 21-36a01 through 21-36a17, prior to their transfer, or any felony
 14 violation of any provision of the uniform controlled substances act prior to
 15 July 1, 2009; ~~and~~

16 ~~(C)~~(B) its members have a common name or common identifying
 17 sign or symbol; and

18 ~~(D)~~(C) its members, individually or collectively, engage in or have
 19 engaged in the commission, attempted commission, conspiracy to commit
 20 or solicitation of two or more person felonies or felony violations of article
 21 57 of chapter 21 of the Kansas Statutes Annotated, and amendments
 22 thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their
 23 transfer, any felony violation of any provision of the uniform controlled
 24 substances act prior to July 1, 2009, or any substantially similar offense
 25 from another jurisdiction.

26 (l) Except as provided in subsection (o), the sentence for a violation
 27 of K.S.A. 21-5807(a)(1), and amendments thereto, or any attempt or
 28 conspiracy, as defined in K.S.A. 21-5301 and 21-5302, and amendments
 29 thereto, to commit such offense, when such person being sentenced has a
 30 prior conviction for a violation of K.S.A. 21-3715(a) or (b), prior to its
 31 repeal, 21-3716, prior to its repeal, K.S.A. 21-5807(a)(1) or (a)(2) or 21-
 32 5807(b), and amendments thereto, or any attempt or conspiracy to commit
 33 such offense, shall be presumptive imprisonment.

34 (m) The sentence for a violation of K.S.A. 22-4903 or K.S.A. 21-
 35 5913(a)(2), and amendments thereto, shall be presumptive imprisonment.
 36 If an offense under such sections is classified in grid blocks 5-E, 5-F, 5-G,
 37 5-H or 5-I, the court may impose an optional nonprison sentence as
 38 provided in subsection (q).

39 (n) The sentence for a violation of criminal deprivation of property, as
 40 defined in K.S.A. 21-5803, and amendments thereto, when such property
 41 is a motor vehicle, and when such person being sentenced has any
 42 combination of two or more prior convictions of K.S.A. 21-3705(b), prior
 43 to its repeal, or of criminal deprivation of property, as defined in K.S.A.

1 21-5803, and amendments thereto, when such property is a motor vehicle,
2 shall be presumptive imprisonment. Such sentence shall not be considered
3 a departure and shall not be subject to appeal.

4 (o) (1) The sentence for a felony violation of theft of property as
5 defined in K.S.A. 21-5801, and amendments thereto, or burglary as
6 defined in K.S.A. 21-5807(a), and amendments thereto, when such person
7 being sentenced has no prior convictions for a violation of K.S.A. 21-3701
8 or 21-3715, prior to their repeal, or theft of property as defined in K.S.A.
9 21-5801, and amendments thereto, or burglary as defined in K.S.A. 21-
10 5807(a), and amendments thereto; or the sentence for a felony violation of
11 theft of property as defined in K.S.A. 21-5801, and amendments thereto,
12 when such person being sentenced has one or two prior felony convictions
13 for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their
14 repeal, or theft of property as defined in K.S.A. 21-5801, and amendments
15 thereto, or burglary or aggravated burglary as defined in K.S.A. 21-5807,
16 and amendments thereto; or the sentence for a felony violation of burglary
17 as defined in K.S.A. 21-5807(a), and amendments thereto, when such
18 person being sentenced has one prior felony conviction for a violation of
19 K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of
20 property as defined in K.S.A. 21-5801, and amendments thereto, or
21 burglary or aggravated burglary as defined in K.S.A. 21-5807, and
22 amendments thereto, shall be the sentence as provided by this section,
23 except that the court may order an optional nonprison sentence for a
24 defendant to participate in a drug treatment program, including, but not
25 limited to, an approved aftercare plan, if the court makes the following
26 findings on the record:

27 (A) Substance abuse was an underlying factor in the commission of
28 the crime;

29 (B) substance abuse treatment in the community is likely to be more
30 effective than a prison term in reducing the risk of offender recidivism;
31 and

32 (C) participation in an intensive substance abuse treatment program
33 will serve community safety interests.

34 (2) A defendant sentenced to an optional nonprison sentence under
35 this subsection shall be supervised by community correctional services.
36 The provisions of K.S.A. 21-6824(f)(1), and amendments thereto, shall
37 apply to a defendant sentenced under this subsection. The sentence under
38 this subsection shall not be considered a departure and shall not be subject
39 to appeal.

40 (p) (1) The sentence for a felony violation of theft of property as
41 defined in K.S.A. 21-5801, and amendments thereto, when such person
42 being sentenced has any combination of three or more prior felony
43 convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to

1 their repeal, or theft of property as defined in K.S.A. 21-5801, and
2 amendments thereto, or burglary or aggravated burglary as defined in
3 K.S.A. 21-5807, and amendments thereto; or the sentence for a violation
4 of burglary as defined in K.S.A. 21-5807(a), and amendments thereto,
5 when such person being sentenced has any combination of two or more
6 prior convictions for violations of K.S.A. 21-3701, 21-3715 and 21-3716,
7 prior to their repeal, or theft of property as defined in K.S.A. 21-5801, and
8 amendments thereto, or burglary or aggravated burglary as defined in
9 K.S.A. 21-5807, and amendments thereto, shall be presumed
10 imprisonment and the defendant shall be sentenced to prison as provided
11 by this section, except that the court may recommend that an offender be
12 placed in the custody of the secretary of corrections, in a facility
13 designated by the secretary to participate in an intensive substance abuse
14 treatment program, upon making the following findings on the record:

15 (A) Substance abuse was an underlying factor in the commission of
16 the crime;

17 (B) substance abuse treatment with a possibility of an early release
18 from imprisonment is likely to be more effective than a prison term in
19 reducing the risk of offender recidivism; and

20 (C) participation in an intensive substance abuse treatment program
21 with the possibility of an early release from imprisonment will serve
22 community safety interests by promoting offender reformation.

23 (2) The intensive substance abuse treatment program shall be
24 determined by the secretary of corrections, but shall be for a period of at
25 least four months. Upon the successful completion of such intensive
26 treatment program, the offender shall be returned to the court and the court
27 may modify the sentence by directing that a less severe penalty be
28 imposed in lieu of that originally adjudged within statutory limits. If the
29 offender's term of imprisonment expires, the offender shall be placed
30 under the applicable period of postrelease supervision. The sentence under
31 this subsection shall not be considered a departure and shall not be subject
32 to appeal.

33 (q) (1) As used in this section, an "optional nonprison sentence" is a
34 sentence which the court may impose, in lieu of the presumptive sentence,
35 upon making the following findings on the record:

36 (A) An appropriate treatment program exists which is likely to be
37 more effective than the presumptive prison term in reducing the risk of
38 offender recidivism; and

39 (B) the recommended treatment program is available and the offender
40 can be admitted to such program within a reasonable period of time; or

41 (C) the nonprison sanction will serve community safety interests by
42 promoting offender reformation.

43 (2) Any decision made by the court regarding the imposition of an

1 optional nonprison sentence shall not be considered a departure and shall
2 not be subject to appeal.

3 (r) The sentence for a violation of K.S.A. 21-5413(c)(2), and
4 amendments thereto, shall be presumptive imprisonment and shall be
5 served consecutively to any other term or terms of imprisonment imposed.
6 Such sentence shall not be considered a departure and shall not be subject
7 to appeal.

8 (s) The sentence for a violation of K.S.A. 21-5512, and amendments
9 thereto, shall be presumptive imprisonment. Such sentence shall not be
10 considered a departure and shall not be subject to appeal.

11 (t) (1) If the trier of fact makes a finding beyond a reasonable doubt
12 that an offender wore or used ballistic resistant material in the commission
13 of, or attempt to commit, or flight from any felony, in addition to the
14 sentence imposed pursuant to the Kansas sentencing guidelines act, the
15 offender shall be sentenced to an additional 30 months' imprisonment.

16 (2) The sentence imposed pursuant to paragraph (1) shall be
17 presumptive imprisonment and shall be served consecutively to any other
18 term or terms of imprisonment imposed. Such sentence shall not be
19 considered a departure and shall not be subject to appeal.

20 (3) As used in this subsection, "ballistic resistant material" means
21 any:

22 (A) Commercially produced material designed with the purpose of
23 providing ballistic and trauma protection, including, but not limited to,
24 bulletproof vests and kevlar vests; and

25 (B) homemade or fabricated substance or item designed with the
26 purpose of providing ballistic and trauma protection.

27 (u) The sentence for a violation of K.S.A. 21-6107, and amendments
28 thereto, or any attempt or conspiracy, as defined in K.S.A. 21-5301 and
29 21-5302, and amendments thereto, to commit such offense, when such
30 person being sentenced has a prior conviction for a violation of K.S.A. 21-
31 4018, prior to its repeal, or K.S.A. 21-6107, and amendments thereto, or
32 any attempt or conspiracy to commit such offense, shall be presumptive
33 imprisonment. Such sentence shall not be considered a departure and shall
34 not be subject to appeal.

35 (v) The sentence for a third or subsequent violation of K.S.A. 8-1568,
36 and amendments thereto, shall be presumptive imprisonment and shall be
37 served consecutively to any other term or terms of imprisonment imposed.
38 Such sentence shall not be considered a departure and shall not be subject
39 to appeal.

40 (w) The sentence for aggravated criminal damage to property as
41 defined in K.S.A. 21-5813(b), and amendments thereto, when such person
42 being sentenced has a prior conviction for any nonperson felony shall be
43 presumptive imprisonment. Such sentence shall not be considered a

1 departure and shall not be subject to appeal.

2 (x) The sentence for a violation of K.S.A. 21-5807(a)(1), and
3 amendments thereto, shall be presumptive imprisonment if the offense
4 under such paragraph is classified in grid blocks 7-C, 7-D or 7-E. Such
5 sentence shall not be considered a departure and shall not be subject to
6 appeal.

7 (y) (1) Except as provided in paragraph (3), if the trier of fact makes a
8 finding beyond a reasonable doubt that an offender committed a nondrug
9 felony offense, or any attempt or conspiracy, as defined in K.S.A. 21-5301
10 and 21-5302, and amendments thereto, to commit a nondrug felony
11 offense, against a law enforcement officer, as defined in K.S.A. 21-5111(p)
12 (1) and (3), and amendments thereto, while such officer was engaged in
13 the performance of such officer's duty, or in whole or in any part because
14 of such officer's status as a law enforcement officer, the sentence for such
15 offense shall be:

16 (A) If such offense is classified in severity level 2 through 10, one
17 severity level above the appropriate level for such offense; and

18 (B) (i) if such offense is classified in severity level 1, except as
19 otherwise provided in clause (ii), imprisonment for life, and such offender
20 shall not be eligible for probation or suspension, modification or reduction
21 of sentence. In addition, such offender shall not be eligible for parole prior
22 to serving 25 years' imprisonment, and such 25 years' imprisonment shall
23 not be reduced by the application of good time credits. No other sentence
24 shall be permitted.

25 (ii) The provisions of clause (i) requiring the court to impose a
26 mandatory minimum term of imprisonment of 25 years shall not apply if
27 the court finds the offender, because of the offender's criminal history
28 classification, is subject to presumptive imprisonment and the sentencing
29 range exceeds 300 months. In such case, the offender is required to serve a
30 mandatory minimum term equal to the sentence established pursuant to the
31 sentencing range.

32 (2) The sentence imposed pursuant to paragraph (1) shall not be
33 considered a departure and shall not be subject to appeal.

34 (3) The provisions of this subsection shall not apply to an offense
35 described in paragraph (1) if the factual aspect concerning a law
36 enforcement officer is a statutory element of such offense.

37 (z) (1) Notwithstanding K.S.A. 21-5109(b)(2), and amendments
38 thereto, or any other provision of law to the contrary, the sentence for a
39 violation of criminal possession of a weapon by a convicted felon as
40 defined in K.S.A. 21-6304, and amendments thereto, shall be presumptive
41 imprisonment and shall be served consecutively to any other term or terms
42 of imprisonment imposed if the trier of fact makes a finding beyond a
43 reasonable doubt that:

- 1 (A) The weapon the offender possessed during such violation was a
2 firearm; and
- 3 (B) such firearm was used by the offender during the commission of
4 any violent felony.
- 5 (2) The sentence imposed pursuant to paragraph (1) shall not be
6 considered a departure and shall not be subject to appeal. No other
7 sentence shall be permitted.
- 8 (3) The provisions of this subsection shall not apply to an offender
9 who is prohibited from possessing a weapon pursuant to K.S.A. 21-6304,
10 and amendments thereto, as a result of a juvenile adjudication.
- 11 (4) As used in this subsection, "violent felony" means any of the
12 following:
- 13 (A) Capital murder, as defined in K.S.A. 21-5401, and amendments
14 thereto;
- 15 (B) murder in the first degree, as defined in K.S.A. 21-5402, and
16 amendments thereto;
- 17 (C) murder in the second degree, as defined in K.S.A. 21-5403, and
18 amendments thereto;
- 19 (D) voluntary manslaughter, as defined in K.S.A. 21-5404, and
20 amendments thereto;
- 21 (E) kidnapping, as defined in K.S.A. 21-5408(a)(1), and amendments
22 thereto, or aggravated kidnapping, as defined in K.S.A. 21-5408(b), and
23 amendments thereto;
- 24 (F) aggravated assault, as defined in K.S.A. 21-5412(b)(1), and
25 amendments thereto, and aggravated assault of a law enforcement officer,
26 as defined in K.S.A. 21-5412(d)(1), and amendments thereto;
- 27 (G) aggravated battery, as defined in K.S.A. 21-5413(b)(1)(A) or (b)
28 (1)(B), and amendments thereto, and aggravated battery against a law
29 enforcement officer, as defined in K.S.A. 21-5413(d)(1) or (d)(2), and
30 amendments thereto;
- 31 (H) mistreatment of a dependent adult or mistreatment of an elder
32 person, as defined in K.S.A. 21-5417(a)(1), and amendments thereto;
- 33 (I) rape, as defined in K.S.A. 21-5503, and amendments thereto;
- 34 (J) aggravated criminal sodomy, as defined in K.S.A. 21-5504(b), and
35 amendments thereto;
- 36 (K) abuse of a child, as defined in K.S.A. 21-5602(a)(1) or (a)(3), and
37 amendments thereto;
- 38 (L) any felony offense described in K.S.A. 21-5703 or 21-5705, and
39 amendments thereto;
- 40 (M) treason, as defined in K.S.A. 21-5901, and amendments thereto;
- 41 (N) criminal discharge of a firearm, as defined in K.S.A. 21-6308(a)
42 (1), and amendments thereto;
- 43 (O) fleeing or attempting to elude a police officer, as defined in

1 K.S.A. 8-1568(b), and amendments thereto;

2 (P) any felony that includes the domestic violence designation
3 pursuant to K.S.A. 22-4616, and amendments thereto; or

4 (Q) any attempt, conspiracy or criminal solicitation, as defined in
5 K.S.A. 21-5301, 21-5302 and 21-5303, and amendments thereto, of any
6 felony offense defined in this subsection.

7 (aa) (1) The sentence for a violation of K.S.A. 21-6308(a)(1)(A) or
8 (a)(1)(B), and amendments thereto, if the trier of fact makes a finding
9 beyond a reasonable doubt that the offender discharged a firearm and that
10 the offender knew or reasonably should have known that:

11 (A) A person was present in the dwelling, building, structure or motor
12 vehicle at which the offender discharged a firearm, shall be presumptive
13 imprisonment and, in addition to the sentence imposed pursuant to the
14 Kansas sentencing guidelines act, the offender shall be sentenced to an
15 additional 60 months of imprisonment; ~~and~~ or

16 (B) a person less than 14 years of age was present in the dwelling,
17 building, structure or motor vehicle at which the offender discharged a
18 firearm, shall be presumptive imprisonment and, in addition to the
19 sentence imposed pursuant to the Kansas sentencing guidelines act, the
20 offender shall be sentenced to an additional 120 months of imprisonment.

21 (2) The sentence imposed pursuant to paragraph (1) shall be served
22 consecutively to any other term or terms of imprisonment imposed. Such
23 sentence shall not be considered a departure and shall not be subject to
24 appeal.

25 Sec. 2. K.S.A. 21-6804 is hereby repealed.

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