

**SENATE BILL No. 111**

By Committee on Judiciary

1-30

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AN ACT concerning crimes, criminal procedure and punishment; relating to sentencing for burglary; expansion or construction of minimum security facilities; amending K.S.A. 2002 Supp. 21-4704 and repealing the existing section.

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

Section 1. K.S.A. 2002 Supp. 21-4704 is hereby amended to read as follows: 21-4704. (a) For purposes of sentencing, the following sentencing guidelines grid for nondrug crimes shall be applied in 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	215 205 194	200 190 181	194 174 165	166 160 152	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	312 302 292	302 292 282	154 144 134	144 134 124	134 124 114	124 114 104	114 104 94	104 94 84	94 84 74
V	336 330 322	328 320 314	160 154 148	154 148 142	148 142 136	142 136 130	136 130 124	130 124 118	124 118 112
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	27 25 23	25 23 21	23 21 19
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
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) The sentence for any persistent sex offender whose current convicted  
41 crime carries a presumptive term of imprisonment shall be double  
42 the maximum duration of the presumptive imprisonment term. The sen-  
43 tence for any persistent sex offender whose current conviction carries a

1 presumptive nonprison term shall be presumed imprisonment and shall  
2 be double the maximum duration of the presumptive imprisonment term.  
3 Except as otherwise provided in this subsection, as used in this subsection,  
4 “persistent sex offender” means a person who: (1) Has been convicted in  
5 this state of a sexually violent crime, as defined in K.S.A. 22-3717 and  
6 amendments thereto; and (2) at the time of the conviction under subsec-  
7 tion (1) has at least one conviction for a sexually violent crime, as defined  
8 in K.S.A. 22-3717 and amendments thereto in this state or comparable  
9 felony under the laws of another state, the federal government or a for-  
10 eign government. The provisions of this subsection shall not apply to any  
11 person whose current convicted crime is a severity level 1 or 2 felony.

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

30 (l) The sentence for a violation of subsection (a) of K.S.A. 21-3715  
31 and amendments thereto when such person being sentenced has a prior  
32 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-  
33 3716 and amendments thereto *or any comparable juvenile adjudication*  
34 *or out of state conviction* shall be presumed imprisonment *at a correc-*  
35 *tional facility that houses inmates having a minimum custody or security*  
36 *classification. The sentence for a violation of subsection (b) or (c) of K.S.A.*  
37 *21-3715, and amendments thereto, when such person has three prior con-*  
38 *victions for a violation of K.S.A. 21-3715 or 21-3716, and amendments*  
39 *thereto, or any comparable juvenile adjudication or out of state conviction*  
40 *shall be presumed imprisonment at a correctional facility that houses in-*  
41 *mates having a custody or security classification of minimum. There shall*  
42 *be a presumption of a minimum custody or security classification, except*  
43 *that if the secretary of corrections determines that such classification is*

1 *not in the best interests of the inmate, or the public or the department of*  
2 *corrections, the secretary shall otherwise classify such person and serve*  
3 *in a correctional facility as determined by the secretary. Such determi-*  
4 *nation of custody or security classification by the secretary is not subject*  
5 *to judicial review.*

6 New Sec. 2. Subject to the provisions of appropriation acts and the  
7 availability of appropriations therefor, the department of corrections is  
8 hereby authorized to initiate and complete capital improvements for the  
9 expansion or construction of additional housing for inmates having a min-  
10 imum custody or security classification. In making such expenditures the  
11 secretary shall give priority to such expansion or construction at correc-  
12 tional facilities that already house inmates having a minimum custody or  
13 security classification.

14 Sec. 3. K.S.A. 2002 Supp. 21-4704 is hereby repealed.

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

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