

SENATE BILL No. 137

By Senator Haley

2-4

AN ACT concerning crimes, criminal procedure and punishment; relating to hate crimes; prescribing penalties therefor; reporting requirements; amending K.S.A. 2002 Supp. 21-4704 and 21-4716 and repealing the existing sections.

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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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	533 620 992	618 586 554	285 272 258	287 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	450 438 416	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	33 31 29
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

143880
Presumptive Probation
143880
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 con-
41 victed 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 shall be presumed imprisonment.

34 (m) *The sentence for any person convicted of a crime that was mo-*
35 *tivated entirely or in part by the race, color, religion, ethnicity, national*
36 *origin or sexual orientation of the victim or the crime was motivated by*
37 *the person’s belief or perception, entirely or in part, of the race, color,*
38 *religion, ethnicity, national origin or sexual orientation of the victim,*
39 *whether or not the person’s belief or perception was correct, shall be*
40 *presumed imprisonment and shall be double the maximum duration of*
41 *the presumptive imprisonment term for the underlying crime, or if an off-*
42 *grid crime, shall be double the sentence prescribed by law for such crime.*
43 *Such motivation or belief or perception as described in this subsection*

1 *shall be an element of the underlying crime and determination thereof*
2 *shall be submitted to the trial jury and proved beyond a reasonable doubt.*

3 Sec. 2. K.S.A. 2002 Supp. 21-4716 is hereby amended to read as
4 follows: 21-4716. (a) Except as provided in subsection (b), the sentencing
5 judge shall impose the presumptive sentence provided by the sentencing
6 guidelines for crimes committed on or after July 1, 1993, unless the judge
7 finds substantial and compelling reasons to impose a departure. If the
8 sentencing judge departs from the presumptive sentence, the judge shall
9 state on the record at the time of sentencing the substantial and com-
10 pelling reasons for the departure.

11 (b) Subject to the provisions of subsection (b) of K.S.A. 21-4718, and
12 amendments thereto, any fact that would increase the penalty for a crime
13 beyond the statutory maximum, other than a prior conviction, shall be
14 submitted to a jury and proved beyond a reasonable doubt.

15 (c) (1) Subject to the provisions of subsection ~~(b)(3)~~ (c)(3), the fol-
16 lowing nonexclusive list of mitigating factors may be considered in deter-
17 mining whether substantial and compelling reasons for a departure exist:

18 (A) The victim was an aggressor or participant in the criminal conduct
19 associated with the crime of conviction.

20 (B) The offender played a minor or passive role in the crime or par-
21 ticipated under circumstances of duress or compulsion. This factor is not
22 sufficient as a complete defense.

23 (C) The offender, because of physical or mental impairment, lacked
24 substantial capacity for judgment when the offense was committed. The
25 voluntary use of intoxicants, drugs or alcohol does not fall within the
26 purview of this factor.

27 (D) The defendant, or the defendant's children, suffered a continuing
28 pattern of physical or sexual abuse by the victim of the offense and the
29 offense is a response to that abuse.

30 (E) The degree of harm or loss attributed to the current crime of
31 conviction was significantly less than typical for such an offense.

32 (2) Subject to the provisions of subsection (b)(3) ~~(c)(3)~~, the following
33 nonexclusive list of aggravating factors may be considered in determining
34 whether substantial and compelling reasons for departure exist:

35 (A) The victim was particularly vulnerable due to age, infirmity, or
36 reduced physical or mental capacity which was known or should have
37 been known to the offender.

38 (B) The defendant's conduct during the commission of the current
39 offense manifested excessive brutality to the victim in a manner not nor-
40 mally present in that offense.

41 ~~(C) The offense was motivated entirely or in part by the race, color,~~
42 ~~religion, ethnicity, national origin or sexual orientation of the victim or~~
43 ~~the offense was motivated by the defendant's belief or perception, entirely~~

1 ~~or in part, of the race, color, religion, ethnicity, national origin or sexual~~
2 ~~orientation of the victim whether or not the defendant's belief or per-~~
3 ~~ception was correct.~~

4 ~~(D)~~ The offense involved a fiduciary relationship which existed be-
5 tween the defendant and the victim.

6 ~~(E)~~ (D) The defendant, 18 or more years of age, employed, hired,
7 used, persuaded, induced, enticed or coerced any individual under 16
8 years of age to commit or assist in avoiding detection or apprehension for
9 commission of any person felony or any attempt, conspiracy or solicitation
10 as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments
11 thereto to commit any person felony regardless of whether the defendant
12 knew the age of the individual under 16 years of age.

13 ~~(F)~~ (E) The defendant's current crime of conviction is a crime of
14 extreme sexual violence and the defendant is a predatory sex offender.
15 As used in this subsection:

16 (i) "Crime of extreme sexual violence" is a felony limited to the
17 following:

18 (a) A crime involving a nonconsensual act of sexual intercourse or
19 sodomy with any person;

20 (b) a crime involving an act of sexual intercourse, sodomy or lewd
21 fondling and touching with any child who is 14 or more years of age but
22 less than 16 years of age and with whom a relationship has been estab-
23 lished or promoted for the primary purpose of victimization; or

24 (c) a crime involving an act of sexual intercourse, sodomy or lewd
25 fondling and touching with any child who is less than 14 years of age.

26 (ii) "Predatory sex offender" is an offender who has been convicted
27 of a crime of extreme sexual violence as the current crime of conviction
28 and who:

29 (a) Has one or more prior convictions of any crimes of extreme sexual
30 violence. Any prior conviction used to establish the defendant as a pred-
31 atory sex offender pursuant to this subsection shall also be counted in
32 determining the criminal history category; or

33 (b) suffers from a mental condition or personality disorder which
34 makes the offender likely to engage in additional acts constituting crimes
35 of extreme sexual violence.

36 (iii) "Mental condition or personality disorder" means an emotional,
37 mental or physical illness, disease, abnormality, disorder, pathology or
38 condition which motivates the person, affects the predisposition or desires
39 of the person, or interferes with the capacity of the person to control
40 impulses to commit crimes of extreme sexual violence.

41 ~~(G)~~ (F) The defendant was incarcerated during the commission of
42 the offense.

43 In determining whether aggravating factors exist as provided in this

1 section, the court shall review the victim impact statement.

2 (3) If a factual aspect of a crime is a statutory element of the crime
3 or is used to subclassify the crime on the crime severity scale, that aspect
4 of the current crime of conviction may be used as an aggravating or mit-
5 igating factor only if the criminal conduct constituting that aspect of the
6 current crime of conviction is significantly different from the usual crim-
7 inal conduct captured by the aspect of the crime.

8 ~~(c)~~ (d) In determining aggravating or mitigating circumstances, the
9 court shall consider:

- 10 (1) Any evidence received during the proceeding;
- 11 (2) the presentence report;
- 12 (3) written briefs and oral arguments of either the state or counsel
13 for the defendant; and
- 14 (4) any other evidence relevant to such aggravating or mitigating cir-
15 cumstances that the court finds trustworthy and reliable.

16 New Sec. 3. The attorney general shall collect and disseminate data
17 on incidents of criminal acts that evidence prejudice based on race, color,
18 religion, ethnicity, national origin, sexual orientation or disability. All law
19 enforcement agencies shall report monthly to the attorney general con-
20 cerning such offenses in such form and in such manner as prescribed by
21 rules and regulations adopted by the attorney general. Such information
22 shall be compiled by the attorney general and disseminated upon request
23 to any local law enforcement agency, unit of local government or state
24 agency. Dissemination of such information shall be subject to all confi-
25 dentiality requirements otherwise imposed by law. Data required pur-
26 suant to this subsection shall be used only for research or statistical pur-
27 poses and shall not include any information that may reveal the identity
28 of an individual victim of a crime. The attorney general shall publish an
29 annual summary of the data required pursuant to this subsection. The
30 attorney general shall provide training for all law enforcement officers in
31 identifying, responding to and reporting all crimes as provided in subsec-
32 tion (m) of K.S.A. 21-4704, and amendments thereto. The Kansas law
33 enforcement training commission shall develop and certify a course of
34 such training to be made available to all law enforcement officers.

35 Sec. 4. K.S.A. 2002 Supp. 21-4704 and 21-4716 are hereby repealed.

36 Sec. 5. This act shall take effect and be in force from and after its
37 publication in the statute book.

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