Session of 2003

SENATE BILL No. 189

By Committee on Judiciary

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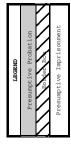
AN ACT concerning crimes, criminal procedure and punishment; relating to possession of controlled substances; sentencing; expansion or construction of minimum security facilities; amending K.S.A. 2002 Supp. 21-4705 and repealing the existing section.

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

Section 1. K.S.A. 2002 Supp. 21-4705 is hereby amended to read as follows: 21-4705. (a) For the purpose of sentencing, the following sentencing guidelines grid for drug crimes shall be applied in felony cases under the uniform controlled substances act for crimes committed on or after July 1, 1993:

SENTENCING RANGE - DRUG OFFENSES

Category ÿ	Ą	В	Ü	Q	ы	ഥ	Ð	Н	Н
Severity Level 9	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
н	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
III	51 49 46	47 44 41	42 40 37	36 34 32					S 9
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- (b) The provisions of subsection (a) will apply for the purpose of sentencing violations of the uniform controlled substances act except as otherwise provided by law. Sentences expressed in the sentencing guidelines grid for drug crimes in subsection (a) represent months of imprisonment.
- (c) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure. The sentencing court shall not distinguish between the controlled substances cocaine base (9041L000) and cocaine hydrochloride (9041L005) when sentencing within the sentencing range of the grid block.
- (2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the prison sentence, the maximum potential reduction to such sentence as a result of good time and the period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.
- (3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.
- (d) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or 4-F, the court may impose an optional nonprison sentence upon making the following findings on the record:
- (1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and
- (2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or
- (3) the nonprison sanction will serve community safety interests by promoting offender reformation.
- Any decision made by the court regarding the imposition of an optional nonprison sentence if the offense is classified in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or 4-F shall not be considered a departure and shall not be subject to appeal.
 - (e) The sentence for a second or subsequent conviction of K.S.A. 65-

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4159 and amendments thereto, manufacture of any controlled substance or controlled substance analog shall be a presumptive term of imprisonment of two times the maximum duration of the presumptive term of imprisonment. The court may impose an optional reduction in such sentence of not to exceed 50% of the mandatory increase provided by this subsection upon making a finding on the record that one or more of the mitigating factors as specified in K.S.A. 21-4716 and amendments thereto justify such a reduction in sentence. Any decision made by the court regarding the reduction in such sentence shall not be considered a departure and shall not be subject to appeal.

(f) The sentence for a violation of K.S.A. 65-4160 or 65-4162, and amendments thereto, when the offender is sentenced to prison, shall be served at a correctional facility that houses inmates having a minimum custody or security classification. There shall be a presumption of a minimum custody or security classification, except that if the secretary of corrections determines that such classification is not in the best interests of the inmate, the public or the department of corrections, the secretary shall otherwise classify such inmate and such inmate shall serve their term of imprisonment in a correctional facility as determined by the secretary. Such determination of custody or security classification by the secretary is not subject to judicial review.

New Sec. 2. Subject to the provisions of appropriation acts and the availability of appropriations therefor, the department of corrections is hereby authorized to initiate and complete capital improvements for the expansion or construction of additional housing for inmates having a minimum custody or security classification. In making such expenditures the secretary shall give priority to such expansion or construction at correctional facilities that already house inmates having a minimum custody or security classification.

- Sec. 3. K.S.A. 2002 Supp. 21-4705 is hereby repealed.
- Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.