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HOUSE BILL No. 2780

By Committee on Corrections and Juvenile Justice

2-10

AN ACT concerning crimes, punishment and criminal procedure; relating to persistent sex offenders; amending K.S.A. 2003 Supp. 21-4704 and repealing the existing section.

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

Section 1. K.S.A. 2003 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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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 *or*
5 *adjudicated as a juvenile offender* in this state of a sexually violent crime,
6 as defined in K.S.A. 22-3717 and amendments thereto; and (2) at the
7 time of the conviction *or* under subsection (1) has at least one conviction
8 for a sexually violent crime, as defined in K.S.A. 22-3717 and amendments
9 thereto in this state or comparable felony under the laws of another state,
10 the federal government or a foreign government. *Any prior conviction or*
11 *adjudication used to establish the defendant as a persistent sex offender*
12 *pursuant to this subsection shall also be counted in determining the crim-*
13 *inal history category.* The provisions of this subsection shall not apply to
14 any person whose current convicted crime is a severity level 1 or 2 felony.

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

33 (l) The sentence for a violation of subsection (a) of K.S.A. 21-3715
34 and amendments thereto when such person being sentenced has a prior
35 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-
36 3716 and amendments thereto shall be presumed imprisonment.

37 Sec. 2. K.S.A. 2003 Supp. 21-4704 is hereby repealed.

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

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