

## SENATE BILL No. 248

By Committee on Judiciary

2-1

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9 AN ACT concerning crimes, punishment and criminal procedure; relat-  
10 ing to possession of a firearm; sentencing; amending K.S.A. 21-3410  
11 and 21-3414 and K.S.A. 2006 Supp. 21-4704 and 21-4705 and repeal-  
12 ing the existing sections.

13

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

15 Section 1. K.S.A. 21-3410 is hereby amended to read as follows: 21-  
16 3410. Aggravated assault is an assault, as defined in K.S.A. 21-3408 and  
17 amendments thereto, committed:

- 18 (a) With a deadly weapon;  
19 (b) while disguised in any manner designed to conceal identity; or  
20 (c) with intent to commit any felony.

21 Aggravated assault is a severity level 7, person felony. ~~A person con-~~  
22 ~~victed of aggravated assault shall be subject to the provisions of subsection~~  
23 ~~(h) of K.S.A. 21-4704 and amendments thereto.~~

24 Sec. 2. K.S.A. 21-3414 is hereby amended to read as follows: 21-  
25 3414. (a) Aggravated battery is:

- 26 (1) (A) Intentionally causing great bodily harm to another person or  
27 disfigurement of another person; or  
28 (B) intentionally causing bodily harm to another person with a deadly  
29 weapon, or in any manner whereby great bodily harm, disfigurement or  
30 death can be inflicted; or  
31 (C) intentionally causing physical contact with another person when  
32 done in a rude, insulting or angry manner with a deadly weapon, or in  
33 any manner whereby great bodily harm, disfigurement or death can be  
34 inflicted; or

35 (2) (A) recklessly causing great bodily harm to another person or dis-  
36 figurement of another person; or

37 (B) recklessly causing bodily harm to another person with a deadly  
38 weapon, or in any manner whereby great bodily harm, disfigurement or  
39 death can be inflicted.

40 (b) Aggravated battery as described in subsection (a)(1)(A) is a se-  
41 verity level 4, person felony. Aggravated battery as described in subsec-  
42 tions (a)(1)(B) and (a)(1)(C) is a severity level 7, person felony. Aggravated  
43 battery as described in subsection (a)(2)(A) is a severity level 5, person

1 felony. Aggravated battery as described in subsection (a)(2)(B) is a sever-  
2 ity level 8, person felony. ~~A person convicted of aggravated battery shall~~  
3 ~~be subject to the provisions of subsection (h) of K.S.A. 21-4704 and~~  
4 ~~amendments thereto.~~

5 Sec. 3. K.S.A. 2006 Supp. 21-4704 is hereby amended to read as  
6 follows: 21-4704. (a) For purposes of sentencing, the following sentencing  
7 guidelines grid for nondrug crimes shall be applied in felony cases for  
8 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	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 31
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	18 17 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	7 6 5

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 deci-  
13 sion 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~~ (1) *If an offender uses or carries a firearm to commit a*  
18 *person felony, or in furtherance of a person felony, possesses a firearm,*  
19 *in addition to the sentence imposed pursuant to the Kansas sentencing*  
20 *guideline act, the offender shall be sentenced to:*

21 (A) *An additional 60 months imprisonment;*

22 (B) *if the firearm is brandished, an additional 84 months imprison-*  
23 *ment; and*

24 (C) *if the firearm is discharged, an additional 120 months*  
25 *imprisonment.*

26 (2) *The sentence imposed pursuant to paragraph (1) shall be pre-*  
27 *sumed imprisonment. The court may impose an optional nonprison sen-*  
28 *tence upon making a finding on the record that the nonprison sanction*  
29 *will serve community safety interests by promoting offender reformation.*  
30 Any decision made by the court regarding the imposition of the optional  
31 nonprison sentence shall not be considered a departure and shall not be  
32 subject to appeal.

33 (i) The sentence for the violation of the felony provision of K.S.A. 8-  
34 1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4)  
35 of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments  
36 thereto, shall be as provided by the specific mandatory sentencing  
37 requirements of that section and shall not be subject to the provisions of  
38 this section or K.S.A. 21-4707 and amendments thereto. If because of the  
39 offender's criminal history classification the offender is subject to pre-  
40 sumptive imprisonment or if the judge departs from a presumptive pro-  
41 bation sentence and the offender is subject to imprisonment, the provi-  
42 sions of this section and K.S.A. 21-4707, and amendments thereto, shall  
43 apply and the offender shall not be subject to the mandatory sentence as

1 provided in K.S.A. 21-3710, and amendments thereto. Notwithstanding  
2 the provisions of any other section, the term of imprisonment imposed  
3 for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3)  
4 of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710,  
5 K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall not  
6 be served in a state facility in the custody of the secretary of corrections.

7 (j) (1) The sentence for any persistent sex offender whose current  
8 convicted crime carries a presumptive term of imprisonment shall be  
9 double the maximum duration of the presumptive imprisonment term.  
10 The sentence for any persistent sex offender whose current conviction  
11 carries a presumptive nonprison term shall be presumed imprisonment  
12 and shall be double the maximum duration of the presumptive impris-  
13 onment term.

14 (2) Except as otherwise provided in this subsection, as used in this  
15 subsection, “persistent sex offender” means a person who: (A) (i) Has  
16 been convicted in this state of a sexually violent crime, as defined in K.S.A.  
17 22-3717 and amendments thereto; and (ii) at the time of the conviction  
18 under paragraph (A) (i) has at least one conviction for a sexually violent  
19 crime, as defined in K.S.A. 22-3717 and amendments thereto in this state  
20 or comparable felony under the laws of another state, the federal gov-  
21 ernment or a foreign government; or (B) (i) has been convicted of rape,  
22 K.S.A. 21-3502, and amendments thereto; and (ii) at the time of the  
23 conviction under paragraph (B) (i) has at least one conviction for rape in  
24 this state or comparable felony under the laws of another state, the federal  
25 government or a foreign government.

26 (3) Except as provided in paragraph (2)(B), the provisions of this sub-  
27 section shall not apply to any person whose current convicted crime is a  
28 severity level 1 or 2 felony.

29 (k) If it is shown at sentencing that the offender committed any felony  
30 violation for the benefit of, at the direction of, or in association with any  
31 criminal street gang, with the specific intent to promote, further or assist  
32 in any criminal conduct by gang members, the offender’s sentence shall  
33 be presumed imprisonment. Any decision made by the court regarding  
34 the imposition of the optional nonprison sentence shall not be considered  
35 a departure and shall not be subject to appeal. As used in this subsection,  
36 “criminal street gang” means any organization, association or group of  
37 three or more persons, whether formal or informal, having as one of its  
38 primary activities the commission of one or more person felonies or felony  
39 violations of the uniform controlled substances act, K.S.A. 65-4101 et seq.,  
40 and amendments thereto, which has a common name or common iden-  
41 tifying sign or symbol, whose members, individually or collectively engage  
42 in or have engaged in the commission, attempted commission, conspiracy  
43 to commit or solicitation of two or more person felonies or felony viola-

1 tions of the uniform controlled substances act, K.S.A. 65-4101 et seq.,  
2 and amendments thereto, or any substantially similar offense from an-  
3 other jurisdiction.

4 (l) The sentence for a violation of subsection (a) of K.S.A. 21-3715  
5 and amendments thereto when such person being sentenced has a prior  
6 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-  
7 3716 and amendments thereto shall be presumed imprisonment.

8 (m) The sentence for a violation of K.S.A 22-4903 or subsection (d)  
9 of K.S.A. 21-3812, and amendments thereto, shall be presumptive im-  
10 prisonment. If an offense under such sections is classified in grid blocks  
11 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison  
12 sentence upon making the following findings on the record:

13 (1) An appropriate treatment program exists which is likely to be  
14 more effective than the presumptive prison term in reducing the risk of  
15 offender recidivism, such program is available and the offender can be  
16 admitted to such program within a reasonable period of time; or

17 (2) the nonprison sanction will serve community safety interests by  
18 promoting offender reformation.

19 Any decision made by the court regarding the imposition of an optional  
20 nonprison sentence pursuant to this section shall not be considered a  
21 departure and shall not be subject to appeal.

22 Sec. 4. K.S.A. 2006 Supp. 21-4705 is hereby amended to read as  
23 follows: 21-4705. (a) For the purpose of sentencing, the following sen-  
24 tencing guidelines grid for drug crimes shall be applied in felony cases  
25 under the uniform controlled substances act for crimes committed on or  
26 after July 1, 1993:

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**SENTENCING RANGE - DRUG 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	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	32 30 28	25 24 23	23 22 21	19 18 17	15 14 14
IV	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
North Bay
Presumptive Imprisonment



1 (b) The provisions of subsection (a) will apply for the purpose of  
2 sentencing violations of the uniform controlled substances act except as  
3 otherwise provided by law. Sentences expressed in the sentencing guide-  
4 lines grid for drug crimes in subsection (a) represent months of  
5 imprisonment.

6 (c) (1) The sentencing court has discretion to sentence at any place  
7 within the sentencing range. The sentencing judge shall select the  
8 center of the range in the usual case and reserve the upper and lower  
9 limits for aggravating and mitigating factors insufficient to warrant a de-  
10 parture. The sentencing court shall not distinguish between the controlled  
11 substances cocaine base (9041L000) and cocaine hydrochloride  
12 (9041L005) when sentencing within the sentencing range of the grid  
13 block.

14 (2) In presumptive imprisonment cases, the sentencing court shall  
15 pronounce the complete sentence which shall include the prison sen-  
16 tence, the maximum potential reduction to such sentence as a result of  
17 good time and the period of postrelease supervision at the sentencing  
18 hearing. Failure to pronounce the period of postrelease supervision shall  
19 not negate the existence of such period of postrelease supervision.

20 (3) In presumptive nonprison cases, the sentencing court shall pro-  
21 nounce the prison sentence as well as the duration of the nonprison sanc-  
22 tion at the sentencing hearing.

23 (d) Each grid block states the presumptive sentencing range for an  
24 offender whose crime of conviction and criminal history place such of-  
25 fender in that grid block. If an offense is classified in a grid block below  
26 the dispositional line, the presumptive disposition shall be nonimprison-  
27 ment. If an offense is classified in a grid block above the dispositional  
28 line, the presumptive disposition shall be imprisonment. If an offense is  
29 classified in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I, the court may impose  
30 an optional nonprison sentence upon making the following findings on  
31 the record:

32 (1) An appropriate treatment program exists which is likely to be  
33 more effective than the presumptive prison term in reducing the risk of  
34 offender recidivism; and

35 (2) the recommended treatment program is available and the of-  
36 fender can be admitted to such program within a reasonable period of  
37 time; or

38 (3) the nonprison sanction will serve community safety interests by  
39 promoting offender reformation.

40 Any decision made by the court regarding the imposition of an optional  
41 nonprison sentence if the offense is classified in grid blocks 3-E, 3-F, 3-  
42 G, 3-H or 3-I shall not be considered a departure and shall not be subject  
43 to appeal.

1 (e) The sentence for a second or subsequent conviction of K.S.A. 65-  
2 4159 and amendments thereto, manufacture of any controlled substance  
3 or controlled substance analog shall be a presumptive term of imprison-  
4 ment of two times the maximum duration of the presumptive term of  
5 imprisonment. The court may impose an optional reduction in such sen-  
6 tence of not to exceed 50% of the mandatory increase provided by this  
7 subsection upon making a finding on the record that one or more of the  
8 mitigating factors as specified in K.S.A. 21-4716 and amendments thereto  
9 justify such a reduction in sentence. Any decision made by the court  
10 regarding the reduction in such sentence shall not be considered a de-  
11 parture and shall not be subject to appeal.

12 (f) The sentence for a third or subsequent felony conviction of K.S.A.  
13 65-4160 or 65-4162, and amendments thereto, shall be a presumptive  
14 term of imprisonment and the defendant shall be sentenced to prison as  
15 provided by this section, if the defendant has previously completed a  
16 certified drug abuse treatment program, as provided in K.S.A. 2006 Supp.  
17 75-52,144, and amendments thereto, or has been discharged or refused  
18 to participate in a certified drug abuse treatment program, as provided  
19 in K.S.A. 2006 Supp. 75-52,144, and amendments thereto. Such sentence  
20 shall not be considered a departure and shall not be subject to appeal.

21 (g) (1) *Except as provided further, if an offender uses or carries a*  
22 *firearm to commit a drug felony, or in furtherance of a drug felony, pos-*  
23 *sesses a firearm, in addition to the sentence imposed pursuant to the*  
24 *Kansas sentencing guideline act, the offender shall be sentenced to:*

25 (A) *An additional 60 months imprisonment;*

26 (B) *if the firearm is brandished, an additional 84 months imprison-*  
27 *ment; and*

28 (C) *if the firearm is discharged, an additional 120 months*  
29 *imprisonment.*

30 (2) *The sentence imposed pursuant to paragraph (1) shall be pre-*  
31 *sumed imprisonment. The court may impose an optional nonprison sen-*  
32 *tence upon making a finding on the record that the nonprison sanction*  
33 *will serve community safety interests by promoting offender reformation.*  
34 *Any decision made by the court regarding the imposition of the optional*  
35 *nonprison sentence shall not be considered a departure and shall not be*  
36 *subject to appeal.*

37 (3) *The provisions of this subsection shall not apply to violations of*  
38 *K.S.A. 65-4152, 65-4160 or 65-4162, and amendments thereto.*

39 Sec. 5. K.S.A. 21-3410 and 21-3414 and K.S.A. 2006 Supp. 21-4704  
40 and 21-4705 are hereby repealed.

41 Sec. 6. This act shall take effect and be in force from and after its  
42 publication in the statute book.