

## HOUSE BILL No. 2831

By Representative Patton

2-12

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9 AN ACT concerning crimes and punishment; creating the crime of theft  
10 of a vehicle; amending K.S.A. 21-3705, 21-4603d and 21-4704 and  
11 repealing the existing sections; also repealing K.S.A. 21-4704b.  
12

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

14 New Section 1. (a) Theft of a vehicle is:

15 (1) The taking or removal of a vehicle without permission of the  
16 owner or lessee in a manner that deprives the owner or lessee of the use  
17 of the vehicle permanently or temporarily;

18 (2) failing to return a vehicle to the owner or lessee after having the  
19 permission of the owner or lessee to use the vehicle; or

20 (3) temporarily depriving the owner or lessee use of the vehicle by  
21 taking or removing the vehicle without permission of the owner or lessee  
22 but the person taking or removing the vehicle returns it to the owner or  
23 lessee in essentially the same condition as when it was taken or removed.

24 (b) (1) A violation of subsection (a)(1) is a class 7 nonperson felony.

25 (2) A violation of subsection (a)(2) is a class A nonperson  
26 misdemeanor.

27 (3) A violation of subsection (a)(3) is a class A nonperson misde-  
28 meanor. Upon a first conviction of this subsection, a person shall be sen-  
29 tenced to not less than 30 days imprisonment and fined not less than  
30 \$100. Upon a second or subsequent conviction of this subsection, a person  
31 shall be sentenced to not less than 60 days imprisonment and fined not  
32 less than \$200. The person convicted shall not be eligible for release on  
33 probation, suspension or reduction of sentence or parole until the person  
34 has served the minimum mandatory sentence as provided herein. The  
35 mandatory provisions of this subsection shall not apply to any person  
36 where such application would result in a manifest injustice.

37 (c) In any prosecution under this section, the following shall be prima  
38 facie evidence of a violation of subsection (a)(1):

39 (1) The driver of the vehicle attempts to elude law enforcement  
40 officers;

41 (2) the vehicle is taken without the use of a key provided by the owner  
42 or lessee of the vehicle;

43 (3) the vehicle is abandoned at a location not known to the owner or

1 lessee of the vehicle; or

2 (4) the vehicle is altered in a manner disguising its identity.

3 (d) As used in this section, "vehicle" has the meaning ascribed thereto  
4 in K.S.A. 8-126, and amendments thereto.

5 Sec. 2. K.S.A. 21-3705 is hereby amended to read as follows: 21-  
6 3705. (a) Criminal deprivation of property *other than a vehicle, as defined*  
7 *in K.S.A. 8-126, and amendments thereto*, is obtaining or exerting unau-  
8 thorized control over property, with intent to deprive the owner of the  
9 temporary use thereof, without the owner's consent but not with the  
10 intent of depriving the owner permanently of the possession, use or ben-  
11 efit of such owner's property.

12 ~~(b) Criminal deprivation of property that is a motor vehicle, as de-~~  
13 ~~defined in K.S.A. 8-1437, and amendments thereto, is a class A nonperson~~  
14 ~~misdemeanor. Upon a first conviction of this subsection, a person shall~~  
15 ~~be sentenced to not less than 30 days nor more than one year's impris-~~  
16 ~~onment and fined not less than \$100. Upon a second or subsequent con-~~  
17 ~~viction of this subsection, a person shall be sentenced to not less than 60~~  
18 ~~days nor more than one year's imprisonment and fined not less than \$200.~~  
19 ~~The person convicted shall not be eligible for release on probation, sus-~~  
20 ~~pension or reduction of sentence or parole until the person has served~~  
21 ~~the minimum mandatory sentence as provided herein. The mandatory~~  
22 ~~provisions of this subsection shall not apply to any person where such~~  
23 ~~application would result in a manifest injustice.~~

24 ~~(c) (b)~~ (b) Criminal deprivation of property other than a ~~motor~~ vehicle,  
25 as defined in K.S.A. ~~8-1437~~ 8-126, and amendments thereto, is a class A  
26 nonperson misdemeanor. Upon a second or subsequent conviction of this  
27 subsection, a person shall be sentenced to not less than 30 days impris-  
28 onment and fined not less than \$100, except that the provisions of this  
29 subsection relating to a second or subsequent conviction shall not apply  
30 to any person where such application would result in a manifest injustice.

31 Sec. 3. K.S.A. 21-4603d is hereby amended to read as follows: 21-  
32 4603d. (a) Whenever any person has been found guilty of a crime, the  
33 court may adjudge any of the following:

34 (1) Commit the defendant to the custody of the secretary of correc-  
35 tions if the current crime of conviction is a felony and the sentence pre-  
36 sumes imprisonment, or the sentence imposed is a dispositional departure  
37 to imprisonment; or, if confinement is for a misdemeanor, to jail for the  
38 term provided by law;

39 (2) impose the fine applicable to the offense;

40 (3) release the defendant on probation if the current crime of con-  
41 viction and criminal history fall within a presumptive nonprison category  
42 or through a departure for substantial and compelling reasons subject to  
43 such conditions as the court may deem appropriate. In felony cases except

1 for violations of K.S.A. 8-1567, and amendments thereto, the court may  
2 include confinement in a county jail not to exceed 60 days, which need  
3 not be served consecutively, as a condition of an original probation sen-  
4 tence and up to 60 days in a county jail upon each revocation of the  
5 probation sentence, or community corrections placement;

6 (4) assign the defendant to a community correctional services pro-  
7 gram as provided in K.S.A. 75-5291, and amendments thereto, or through  
8 a departure for substantial and compelling reasons subject to such con-  
9 ditions as the court may deem appropriate, including orders requiring full  
10 or partial restitution;

11 (5) assign the defendant to a conservation camp for a period not to  
12 exceed six months as a condition of probation followed by a six-month  
13 period of follow-up through adult intensive supervision by a community  
14 correctional services program, if the offender successfully completes the  
15 conservation camp program;

16 (6) assign the defendant to a house arrest program pursuant to K.S.A.  
17 21-4603b and amendments thereto;

18 (7) order the defendant to attend and satisfactorily complete an al-  
19 colhol or drug education or training program as provided by subsection  
20 (3) of K.S.A. 21-4502, and amendments thereto;

21 (8) order the defendant to repay the amount of any reward paid by  
22 any crime stoppers chapter, individual, corporation or public entity which  
23 materially aided in the apprehension or conviction of the defendant; repay  
24 the amount of any costs and expenses incurred by any law enforcement  
25 agency in the apprehension of the defendant, if one of the current crimes  
26 of conviction of the defendant includes escape, as defined in K.S.A. 21-  
27 3809, and amendments thereto, or aggravated escape, as defined in K.S.A.  
28 21-3810, and amendments thereto; repay expenses incurred by a fire dis-  
29 trict, fire department or fire company responding to a fire which has been  
30 determined to be arson under K.S.A. 21-3718 or 21-3719, and amend-  
31 ments thereto, if the defendant is convicted of such crime; repay the  
32 amount of any public funds utilized by a law enforcement agency to pur-  
33 chase controlled substances from the defendant during the investigation  
34 which leads to the defendant's conviction; or repay the amount of any  
35 medical costs and expenses incurred by any law enforcement agency or  
36 county. Such repayment of the amount of any such costs and expenses  
37 incurred by a county, law enforcement agency, fire district, fire depart-  
38 ment or fire company or any public funds utilized by a law enforcement  
39 agency shall be deposited and credited to the same fund from which the  
40 public funds were credited to prior to use by the county, law enforcement  
41 agency, fire district, fire department or fire company;

42 (9) order the defendant to pay the administrative fee authorized by  
43 K.S.A. 22-4529, and amendments thereto, unless waived by the court;

1 (10) order the defendant to pay a domestic violence special program  
2 fee authorized by K.S.A. 20-369, and amendments thereto;

3 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6),  
4 (7), (8), (9) and (10); or

5 (12) suspend imposition of sentence in misdemeanor cases.

6 (b) (1) In addition to or in lieu of any of the above, the court shall  
7 order the defendant to pay restitution, which shall include, but not be  
8 limited to, damage or loss caused by the defendant's crime, unless the  
9 court finds compelling circumstances which would render a plan of res-  
10 titution unworkable. In regard to a violation of K.S.A. 21-4018, and  
11 amendments thereto, such damage or loss shall include, but not be limited  
12 to, attorney fees and costs incurred to repair the credit history or rating  
13 of the person whose personal identification documents were obtained and  
14 used in violation of such section, and to satisfy a debt, lien or other ob-  
15 ligation incurred by the person whose personal identification documents  
16 were obtained and used in violation of such section. *In regard to a vio-*  
17 *lation of section 1, and amendments thereto, such damage or loss shall*  
18 *include, but not be limited to, any damage to the vehicle, any costs in-*  
19 *curring due to the taking of the vehicle and the resulting loss of use of the*  
20 *vehicle and any decrease in value of the vehicle created by the theft of the*  
21 *vehicle.* If the court finds a plan of restitution unworkable, the court shall  
22 state on the record in detail the reasons therefor.

23 (2) If the court orders restitution, the restitution shall be a judgment  
24 against the defendant which may be collected by the court by garnishment  
25 or other execution as on judgments in civil cases. If, after 60 days from  
26 the date restitution is ordered by the court, a defendant is found to be in  
27 noncompliance with the plan established by the court for payment of  
28 restitution, and the victim to whom restitution is ordered paid has not  
29 initiated proceedings in accordance with K.S.A. 60-4301 et seq., and  
30 amendments thereto, the court shall assign an agent procured by the  
31 attorney general pursuant to K.S.A. 75-719, and amendments thereto, to  
32 collect the restitution on behalf of the victim. The administrative judge  
33 of each judicial district may assign such cases to an appropriate division  
34 of the court for the conduct of civil collection proceedings.

35 (c) In addition to or in lieu of any of the above, the court shall order  
36 the defendant to submit to and complete an alcohol and drug evaluation,  
37 and pay a fee therefor, when required by subsection (4) of K.S.A. 21-  
38 4502, and amendments thereto.

39 (d) In addition to any of the above, the court shall order the defend-  
40 ant to reimburse the county general fund for all or a part of the expend-  
41 itures by the county to provide counsel and other defense services to the  
42 defendant. Any such reimbursement to the county shall be paid only after  
43 any order for restitution has been paid in full. In determining the amount

1 and method of payment of such sum, the court shall take account of the  
2 financial resources of the defendant and the nature of the burden that  
3 payment of such sum will impose. A defendant who has been required  
4 to pay such sum and who is not willfully in default in the payment thereof  
5 may at any time petition the court which sentenced the defendant to  
6 waive payment of such sum or any unpaid portion thereof. If it appears  
7 to the satisfaction of the court that payment of the amount due will im-  
8 pose manifest hardship on the defendant or the defendant's immediate  
9 family, the court may waive payment of all or part of the amount due or  
10 modify the method of payment.

11 (e) In imposing a fine the court may authorize the payment thereof  
12 in installments. In releasing a defendant on probation, the court shall  
13 direct that the defendant be under the supervision of a court services  
14 officer. If the court commits the defendant to the custody of the secretary  
15 of corrections or to jail, the court may specify in its order the amount of  
16 restitution to be paid and the person to whom it shall be paid if restitution  
17 is later ordered as a condition of parole, conditional release or postrelease  
18 supervision.

19 (f) (1) When a new felony is committed while the offender is incar-  
20 cerated and serving a sentence for a felony, or while the offender is on  
21 probation, assignment to a community correctional services program, pa-  
22 role, conditional release, or postrelease supervision for a felony, a new  
23 sentence shall be imposed pursuant to the consecutive sentencing  
24 requirements of K.S.A. 21-4608, and amendments thereto, and the court  
25 may sentence the offender to imprisonment for the new conviction, even  
26 when the new crime of conviction otherwise presumes a nonprison sen-  
27 tence. In this event, imposition of a prison sentence for the new crime  
28 does not constitute a departure.

29 (2) When a new felony is committed while the offender is incarcer-  
30 ated in a juvenile correctional facility pursuant to K.S.A. 38-1671 prior to  
31 its repeal or K.S.A. 2007 Supp. 38-2373, and amendments thereto, for an  
32 offense, which if committed by an adult would constitute the commission  
33 of a felony, upon conviction, the court shall sentence the offender to  
34 imprisonment for the new conviction, even when the new crime of con-  
35 viction otherwise presumes a nonprison sentence. In this event, imposi-  
36 tion of a prison sentence for the new crime does not constitute a depart-  
37 ure. The conviction shall operate as a full and complete discharge from  
38 any obligations, except for an order of restitution, imposed on the of-  
39 fender arising from the offense for which the offender was committed to  
40 a juvenile correctional facility.

41 (3) When a new felony is committed while the offender is on release  
42 for a felony pursuant to the provisions of article 28 of chapter 22 of the  
43 Kansas Statutes Annotated, or similar provisions of the laws of another

1 jurisdiction, a new sentence may be imposed pursuant to the consecutive  
2 sentencing requirements of K.S.A. 21-4608, and amendments thereto,  
3 and the court may sentence the offender to imprisonment for the new  
4 conviction, even when the new crime of conviction otherwise presumes  
5 a nonprison sentence. In this event, imposition of a prison sentence for  
6 the new crime does not constitute a departure.

7 (g) Prior to imposing a dispositional departure for a defendant whose  
8 offense is classified in the presumptive nonprison grid block of either  
9 sentencing guideline grid, prior to sentencing a defendant to incarceration  
10 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing  
11 guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H  
12 or 3-I of the sentencing guidelines grid for drug crimes, prior to sen-  
13 tencing a defendant to incarceration whose offense is classified in grid  
14 blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and  
15 whose offense does not meet the requirements of K.S.A. 21-4729, and  
16 amendments thereto, prior to revocation of a nonprison sanction of a  
17 defendant whose offense is classified in grid blocks 4-E or 4-F of the  
18 sentencing guideline grid for drug crimes and whose offense does not  
19 meet the requirements of K.S.A. 21-4729, and amendments thereto, or  
20 prior to revocation of a nonprison sanction of a defendant whose offense  
21 is classified in the presumptive nonprison grid block of either sentencing  
22 guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines  
23 grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the  
24 sentencing guidelines grid for drug crimes, the court shall consider place-  
25 ment of the defendant in the Labette correctional conservation camp,  
26 conservation camps established by the secretary of corrections pursuant  
27 to K.S.A. 75-52,127, and amendment thereto or a community interme-  
28 diate sanction center. Pursuant to this paragraph the defendant shall not  
29 be sentenced to imprisonment if space is available in a conservation camp  
30 or a community intermediate sanction center and the defendant meets  
31 all of the conservation camp's or a community intermediate sanction cen-  
32 ter's placement criteria unless the court states on the record the reasons  
33 for not placing the defendant in a conservation camp or a community  
34 intermediate sanction center.

35 (h) The court in committing a defendant to the custody of the sec-  
36 retary of corrections shall fix a term of confinement within the limits  
37 provided by law. In those cases where the law does not fix a term of  
38 confinement for the crime for which the defendant was convicted, the  
39 court shall fix the term of such confinement.

40 (i) In addition to any of the above, the court shall order the defendant  
41 to reimburse the state general fund for all or a part of the expenditures  
42 by the state board of indigents' defense services to provide counsel and  
43 other defense services to the defendant. In determining the amount and

1 method of payment of such sum, the court shall take account of the  
2 financial resources of the defendant and the nature of the burden that  
3 payment of such sum will impose. A defendant who has been required  
4 to pay such sum and who is not willfully in default in the payment thereof  
5 may at any time petition the court which sentenced the defendant to  
6 waive payment of such sum or any unpaid portion thereof. If it appears  
7 to the satisfaction of the court that payment of the amount due will im-  
8 pose manifest hardship on the defendant or the defendant's immediate  
9 family, the court may waive payment of all or part of the amount due or  
10 modify the method of payment. The amount of attorney fees to be in-  
11 cluded in the court order for reimbursement shall be the amount claimed  
12 by appointed counsel on the payment voucher for indigents' defense serv-  
13 ices or the amount prescribed by the board of indigents' defense services  
14 reimbursement tables as provided in K.S.A. 22-4522, and amendments  
15 thereto, whichever is less.

16 (j) This section shall not deprive the court of any authority conferred  
17 by any other Kansas statute to decree a forfeiture of property, suspend  
18 or cancel a license, remove a person from office, or impose any other civil  
19 penalty as a result of conviction of crime.

20 (k) An application for or acceptance of probation or assignment to a  
21 community correctional services program shall not constitute an acqui-  
22 escence in the judgment for purpose of appeal, and any convicted person  
23 may appeal from such conviction, as provided by law, without regard to  
24 whether such person has applied for probation, suspended sentence or  
25 assignment to a community correctional services program.

26 (l) The secretary of corrections is authorized to make direct place-  
27 ment to the Labette correctional conservation camp or a conservation  
28 camp established by the secretary pursuant to K.S.A. 75-52,127, and  
29 amendments thereto, of an inmate sentenced to the secretary's custody  
30 if the inmate: (1) Has been sentenced to the secretary for a probation  
31 revocation, as a departure from the presumptive nonimprisonment grid  
32 block of either sentencing grid, for an offense which is classified in grid  
33 blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug  
34 crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing  
35 guidelines grid for drug crimes, or for an offense which is classified in  
36 gridblocks 4-E or 4-F of the sentencing guidelines grid for drug crimes  
37 and such offense does not meet the requirements of K.S.A. 21-4729, and  
38 amendments thereto, and (2) otherwise meets admission criteria of the  
39 camp. If the inmate successfully completes a conservation camp program,  
40 the secretary of corrections shall report such completion to the sentencing  
41 court and the county or district attorney. The inmate shall then be as-  
42 signed by the court to six months of follow-up supervision conducted by  
43 the appropriate community corrections services program. The court may

1 also order that supervision continue thereafter for the length of time  
2 authorized by K.S.A. 21-4611 and amendments thereto.

3 (m) When it is provided by law that a person shall be sentenced pur-  
4 suant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of  
5 this section shall not apply.

6 (n) Except as provided by subsection (f) of K.S.A. 21-4705, and  
7 amendments thereto, in addition to any of the above, for felony violations  
8 of K.S.A. 65-4160 or 65-4162, and amendments thereto, the court shall  
9 require the defendant who meets the requirements established in K.S.A.  
10 21-4729, and amendments thereto, to participate in a certified drug abuse  
11 treatment program, as provided in K.S.A. 2007 Supp. 75-52,144, and  
12 amendments thereto, including but not limited to, an approved after-care  
13 plan. If the defendant fails to participate in or has a pattern of intentional  
14 conduct that demonstrates the offender's refusal to comply with or par-  
15 ticipate in the treatment program, as established by judicial finding, the  
16 defendant shall be subject to revocation of probation and the defendant  
17 shall serve the underlying prison sentence as established in K.S.A. 21-  
18 4705, and amendments thereto. For those offenders who are convicted  
19 on or after the effective date of this act, upon completion of the under-  
20 lying prison sentence, the defendant shall not be subject to a period of  
21 postrelease supervision. The amount of time spent participating in such  
22 program shall not be credited as service on the underlying prison  
23 sentence.

24 Sec. 4. K.S.A. 21-4704 is hereby amended to read as follows: 21-  
25 4704. (a) For purposes of sentencing, the following sentencing guidelines  
26 grid for nondrug crimes shall be applied in felony cases for crimes com-  
27 mitted 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	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 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. 21-3415, and amend-  
6 ments thereto, aggravated battery against a law enforcement officer com-  
7 mitted prior to July 1, 2006, or K.S.A. 21-3411, and amendments thereto,  
8 aggravated assault against a law enforcement officer, which places the  
9 defendant'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 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, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4)  
25 of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments  
26 thereto, shall be as provided by the specific mandatory sentencing  
27 requirements of that section and shall not be subject to the provisions of  
28 this section or K.S.A. 21-4707 and amendments thereto. If because of the  
29 offender's criminal history classification the offender is subject to pre-  
30 sumptive imprisonment or if the judge departs from a presumptive pro-  
31 bation sentence and the offender is subject to imprisonment, the provi-  
32 sions of this section and K.S.A. 21-4707, and amendments thereto, shall  
33 apply and the offender shall not be subject to the mandatory sentence as  
34 provided in K.S.A. 21-3710, and amendments thereto. Notwithstanding  
35 the provisions of any other section, the term of imprisonment imposed  
36 for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3)  
37 of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710,  
38 K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall not  
39 be served in a state facility in the custody of the secretary of corrections,  
40 *except that the term of imprisonment for felony violations of K.S.A. 8-*  
41 *1567, and amendments thereto, may be served in a state correctional*  
42 *facility designated by the secretary of corrections if the secretary deter-*  
43 *mines that substance abuse treatment resources and facility capacity is*

1 *available. The secretary's determination regarding the availability of*  
2 *treatment resources and facility capacity shall not be subject to review.*

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

10 (2) Except as otherwise provided in this subsection, as used in this  
11 subsection, "persistent sex offender" means a person who: (A) (i) Has  
12 been convicted in this state of a sexually violent crime, as defined in K.S.A.  
13 22-3717 and amendments thereto; and (ii) at the time of the conviction  
14 under paragraph (A) (i) has at least one conviction for a sexually violent  
15 crime, as defined in K.S.A. 22-3717 and amendments thereto in this state  
16 or comparable felony under the laws of another state, the federal gov-  
17 ernment or a foreign government; or (B) (i) has been convicted of rape,  
18 K.S.A. 21-3502, and amendments thereto; and (ii) at the time of the  
19 conviction under paragraph (B) (i) has at least one conviction for rape in  
20 this state or comparable felony under the laws of another state, the federal  
21 government or a foreign government.

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

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

43 (l) (1) The sentence for a violation of subsection (a) of K.S.A. 21-

1 3715 and amendments thereto when such person being sentenced has a  
2 prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715  
3 or 21-3716 and amendments thereto shall be presumed imprisonment.

4 (2) The sentence for a violation of K.S.A. 21-3715, and amendments  
5 thereto, when such person being sentenced has two or more prior con-  
6 victions for violations of K.S.A. 21-3715, and amendments thereto, or a  
7 prior conviction of K.S.A. 21-3715 and 21-3716, and amendments thereto,  
8 shall be presumed imprisonment and the defendant shall be sentenced  
9 to prison as provided by this section. Such sentence shall not be consid-  
10 ered a departure and shall not be subject to appeal.

11 (m) The sentence for a violation of K.S.A. 22-4903 or subsection (d)  
12 of K.S.A. 21-3812, and amendments thereto, shall be presumptive im-  
13 prisonment. If an offense under such sections is classified in grid blocks  
14 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison  
15 sentence upon making the following findings on the record:

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

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

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

25 (n) *The sentence for a violation of section 1, and amendments thereto,*  
26 *theft of a vehicle, shall be presumed imprisonment. Any decision made by*  
27 *the court imposing presumed imprisonment shall not be considered a de-*  
28 *parture and shall not be subject to appeal.*

29 Sec. 5. K.S.A. 21-3705, 21-4603d, 21-4704 and 21-4704b are hereby  
30 repealed.

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