

HOUSE BILL No. 2901

By Committee on Judiciary

2-14

9 AN ACT concerning crimes, criminal procedure and punishment; relat-
10 ing to sentencing; postrelease supervision; amending K.S.A. 21-4704
11 and 22-3716 and repealing the existing sections; also repealing K.S.A.
12 21-4704b.
13

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

15 Section 1. K.S.A. 21-4704 is hereby amended to read as follows: 21-
16 4704. (a) For purposes of sentencing, the following sentencing guidelines
17 grid for nondrug crimes shall be applied in felony cases for crimes com-
18 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
6 Months
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) *When two or more of subsections (f), (g), (h) or (m) are applicable*
26 *to an offender being sentenced, the sentencing court shall not grant an*
27 *optional nonprison sentence, except that the court may do so pursuant to*
28 *K.S.A. 21-4716, and amendments thereto. Such downward dispositional*
29 *departure shall be subject to appeal.*

30 Sec. 2. K.S.A. 22-3716 is hereby amended to read as follows: 22-
31 3716. (a) At any time during probation, assignment to a community cor-
32 rectional services program, suspension of sentence or pursuant to sub-
33 section (d) for defendants who committed a crime prior to July 1, 1993,
34 and at any time during which a defendant is serving a nonprison sanction
35 for a crime committed on or after July 1, 1993, or pursuant to subsection
36 (d), the court may issue a warrant for the arrest of a defendant for violation
37 of any of the conditions of release or assignment, a notice to appear to
38 answer to a charge of violation or a violation of the defendant's nonprison
39 sanction. The notice shall be personally served upon the defendant. The
40 warrant shall authorize all officers named in the warrant to return the
41 defendant to the custody of the court or to any certified detention facility
42 designated by the court. Any court services officer or community correc-
43 tional services officer may arrest the defendant without a warrant or may

1 deputize any other officer with power of arrest to do so by giving the
2 officer a written statement setting forth that the defendant has, in the
3 judgment of the court services officer or community correctional services
4 officer, violated the conditions of the defendant's release or a nonprison
5 sanction. The written statement delivered with the defendant by the ar-
6 resting officer to the official in charge of a county jail or other place of
7 detention shall be sufficient warrant for the detention of the defendant.
8 After making an arrest, the court services officer or community correc-
9 tional services officer shall present to the detaining authorities a similar
10 statement of the circumstances of violation. Provisions regarding release
11 on bail of persons charged with a crime shall be applicable to defendants
12 arrested under these provisions.

13 (b) Upon arrest and detention pursuant to subsection (a), the court
14 services officer or community correctional services officer shall immedi-
15 ately notify the court and shall submit in writing a report showing in what
16 manner the defendant has violated the conditions of release or assignment
17 or a nonprison sanction. Thereupon, or upon an arrest by warrant as
18 provided in this section, the court shall cause the defendant to be brought
19 before it without unnecessary delay for a hearing on the violation charged.
20 The hearing shall be in open court and the state shall have the burden of
21 establishing the violation. The defendant shall have the right to be rep-
22 resented by counsel and shall be informed by the judge that, if the de-
23 fendant is financially unable to obtain counsel, an attorney will be ap-
24 pointed to represent the defendant. The defendant shall have the right
25 to present the testimony of witnesses and other evidence on the defend-
26 ant's behalf. Relevant written statements made under oath may be ad-
27 mitted and considered by the court along with other evidence presented
28 at the hearing. Except as otherwise provided, if the violation is estab-
29 lished, the court may continue or revoke the probation, assignment to a
30 community correctional services program, suspension of sentence or non-
31 prison sanction and may require the defendant to serve the sentence
32 imposed, or any lesser sentence, and, if imposition of sentence was sus-
33 pended, may impose any sentence which might originally have been im-
34 posed. Except as otherwise provided, no offender for whom a violation
35 of conditions of release or assignment or a nonprison sanction has been
36 established as provided in this section shall be required to serve any time
37 for the sentence imposed or which might originally have been imposed
38 in a state facility in the custody of the secretary of corrections for such
39 violation, unless such person has already at least one prior assignment to
40 a community correctional services program related to the crime for which
41 the original sentence was imposed, except these provisions shall not apply
42 to offenders who violate a condition of release or assignment or a non-
43 prison sanction by committing a new misdemeanor or felony offense. The

1 provisions of this subsection shall not apply to adult felony offenders as
2 described in subsection (a)(3) of K.S.A. 75-5291, and amendments
3 thereto. The court may require an offender for whom a violation of con-
4 ditions of release or assignment or a nonprison sanction has been estab-
5 lished as provided in this section to serve any time for the sentence im-
6 posed or which might originally have been imposed in a state facility in
7 the custody of the secretary of corrections without a prior assignment to
8 a community correctional services program if the court finds and sets
9 forth with particularity the reasons for finding that the safety of the mem-
10 bers of the public will be jeopardized or that the welfare of the inmate
11 will not be served by such assignment to a community correctional serv-
12 ices program. When a new felony is committed while the offender is on
13 probation or assignment to a community correctional services program,
14 the new sentence shall be imposed pursuant to the consecutive sentenc-
15 ing requirements of K.S.A. 21-4608 and amendments thereto, and the
16 court may sentence the offender to imprisonment for the new conviction,
17 even when the new crime of conviction otherwise presumes a nonprison
18 sentence. In this event, imposition of a prison sentence for the new crime
19 does not constitute a departure.

20 (c) A defendant who is on probation, assigned to a community cor-
21 rectional services program, under suspension of sentence or serving a
22 nonprison sanction and for whose return a warrant has been issued by
23 the court shall be considered a fugitive from justice if it is found that the
24 warrant cannot be served. If it appears that the defendant has violated
25 the provisions of the defendant's release or assignment or a nonprison
26 sanction, the court shall determine whether the time from the issuing of
27 the warrant to the date of the defendant's arrest, or any part of it, shall
28 be counted as time served on probation, assignment to a community cor-
29 rectional services program, suspended sentence or pursuant to a nonpri-
30 son sanction.

31 (d) The court shall have 30 days following the date probation, assign-
32 ment to a community correctional service program, suspension of sen-
33 tence or a nonprison sanction was to end to issue a warrant for the arrest
34 or notice to appear for the defendant to answer a charge of a violation of
35 the conditions of probation, assignment to a community correctional serv-
36 ice program, suspension of sentence or a nonprison sanction.

37 (e) Notwithstanding the provisions of any other law to the contrary,
38 an offender whose nonprison sanction is revoked and a term of impris-
39 onment imposed pursuant to either the sentencing guidelines grid for
40 nondrug or drug crimes shall not serve a period of postrelease supervision
41 upon the completion of the prison portion of that sentence. The provi-
42 sions of this subsection shall not apply to offenders sentenced to a non-
43 prison sanction pursuant to a dispositional departure, whose offense falls

1 within a border box of either the sentencing guidelines grid for nondrug
2 or drug crimes, offenders sentenced for a “sexually violent crime” or a
3 “sexually motivated” crime as defined by K.S.A. 22-3717, and amend-
4 ments thereto, *offenders sentenced pursuant to K.S.A. 21-4704, and*
5 *amendments thereto, wherein the sentence is presumptive imprisonment*
6 *but a nonprison sanction may be imposed without a departure* or offend-
7 ers whose nonprison sanction was revoked as a result of a conviction for
8 a new misdemeanor or felony offense. The provisions of this subsection
9 shall not apply to offenders who are serving or are to begin serving a
10 sentence for any other felony offense that is not excluded from postrelease
11 supervision by this subsection on the effective date of this subsection.
12 The provisions of this subsection shall be applied retroactively. The de-
13 partment of corrections shall conduct a review of all persons who are in
14 the custody of the department as a result of only a revocation of a non-
15 prison sanction. On or before September 1, 2000, the department shall
16 have discharged from postrelease supervision those offenders as required
17 by this subsection.

18 (f) Offenders who have been sentenced pursuant to K.S.A. 21-4729,
19 and amendments thereto, and who subsequently violate a condition of
20 the drug and alcohol abuse treatment program shall be subject to an
21 additional nonprison sanction for any such subsequent violation. Such
22 nonprison sanctions shall include, but not be limited to, up to 60 days in
23 a county jail, fines, community service, intensified treatment, house arrest
24 and electronic monitoring.

25 Sec. 3. K.S.A. 21-4704, 21-4704b and 22-3716 are hereby repealed.

26 Sec. 4. This act shall take effect and be in force from and after its
27 publication in the Kansas register.