

## HOUSE BILL No. 2923

By Representatives Garner, Ballard, Barnes, Burroughs, Crow, Findley, Flora, Gilbert, Grant, Kirk, Klein, Kuether, Loganbill, McClure, McKinney, Minor, Nichols, Ruff, Showalter, Spangler, Storm, Thimesch and Wilson

2-13

---

AN ACT concerning crimes, punishment and criminal procedure; relating to the maximum statutory prison sentence; amending K.S.A. 21-4719 and K.S.A. 2001 Supp. 21-4704, 21-4705 and 21-4720 and repealing the existing sections; also repealing K.S.A. 2001 Supp. 21-4704a.

WHEREAS, When enacting the Kansas sentencing guidelines, the Kansas Legislature intended for the maximum sentence a defendant could receive to be twice the maximum presumptive imprisonment term that may be imposed for that crime; and

WHEREAS, In the Gould decision, the Kansas Supreme Court misinterpreted the Legislature's intent as to a maximum sentence; and

WHEREAS, This bill is enacted in response to that decision; and

WHEREAS, The sentences within the grid boxes establish presumptive sentences but do not reflect the maximum sentence allowed by law; and

WHEREAS, The purpose of this legislation is to clearly establish what is the maximum sentence; and

WHEREAS, With the enactment of this legislation, the sentencing courts will have the power to use and impose upward departures as the legislature intended such departures to be used: Now, therefore,

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

Section 1. K.S.A. 2001 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:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43

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 *minimum* presumptive punishments for felony con-  
11 victions, subject to judicial discretion to deviate for substantial and com-  
12 pelling reasons and impose a different sentence in recognition of aggra-  
13 vating and mitigating factors as provided in this act. The appropriate  
14 punishment for a felony conviction should depend on the severity of the  
15 crime of conviction when compared to all other crimes and the offender's  
16 criminal history.

17 (e) (1) The sentencing court has discretion to sentence at any place  
18 within the sentencing range. The sentencing judge shall select the center  
19 of the range in the usual case and reserve the upper and lower limits for  
20 aggravating and mitigating factors insufficient to warrant a departure. *The*  
21 *maximum presumptive imprisonment term that may be imposed is double*  
22 *the upper limit in each individual grid block based on aggravating factors.*

23 (2) In presumptive imprisonment cases, the sentencing court shall  
24 pronounce the complete sentence which shall include the prison sen-  
25 tence, the maximum potential reduction to such sentence as a result of  
26 good time and the period of postrelease supervision at the sentencing  
27 hearing. Failure to pronounce the period of postrelease supervision shall  
28 not negate the existence of such period of postrelease supervision.

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

32 (f) Each grid block states the *minimum* presumptive sentencing range  
33 for an offender whose crime of conviction and criminal history place such  
34 offender in that grid block. If an offense is classified in a grid block below  
35 the dispositional line, the presumptive disposition shall be nonimprison-  
36 ment. If an offense is classified in a grid block above the dispositional  
37 line, the presumptive disposition shall be imprisonment. If an offense is  
38 classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional  
39 nonprison sentence upon making the following findings on the record:

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

43 (2) the recommended treatment program is available and the of-

1 fender can be admitted to such program within a reasonable period of  
2 time; or

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

5 Any decision made by the court regarding the imposition of an optional  
6 nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or  
7 6-G shall not be considered a departure and shall not be subject to appeal.

8 (g) The sentence for the violation of K.S.A. 21-3411, *and amendments*  
9 *thereto*, aggravated assault against a law enforcement officer or K.S.A. 21-  
10 3415, *and amendments thereto*, aggravated battery against a law enforce-  
11 ment officer and amendments thereto which places the defendant's sen-  
12 tence in grid block 6-H or 6-I shall be presumed imprisonment. The court  
13 may impose an optional nonprison sentence upon making a finding on  
14 the record that the nonprison sanction will serve community safety in-  
15 terests by promoting offender reformation. Any decision made by the  
16 court regarding the imposition of the optional nonprison sentence, if the  
17 offense is classified in grid block 6-H or 6-I, shall not be considered  
18 departure and shall not be subject to appeal.

19 (h) When a firearm is used to commit any person felony, the of-  
20 fender's sentence shall be presumed imprisonment. The court may im-  
21 pose an optional nonprison sentence upon making a finding on the record  
22 that the nonprison sanction will serve community safety interests by pro-  
23 moting offender reformation. Any decision made by the court regarding  
24 the imposition of the optional nonprison sentence shall not be considered  
25 a departure and shall not be subject to appeal.

26 (i) The sentence for the violation of the felony provision of K.S.A. 8-  
27 1567 and, subsection ~~(c)(3) of K.S.A. 21-3412~~ *(b)(3) of K.S.A. 21-3412a*,  
28 and amendments thereto, shall be as provided by the specific mandatory  
29 sentencing requirements of that section and shall not be subject to the  
30 provisions of this section or K.S.A. 21-4707 and amendments thereto. If  
31 because of the offender's criminal history classification the offender is  
32 subject to presumptive imprisonment or if the judge departs from a pre-  
33 sumptive probation sentence and the offender is subject to imprisonment,  
34 the provisions of this section and K.S.A. 21-4707, and amendments  
35 thereto, shall apply and the offender shall not be subject to the mandatory  
36 sentence as provided in K.S.A. 21-3710, and amendments thereto. Not-  
37 withstanding the provisions of any other section, the term of imprison-  
38 ment imposed for the violation of the felony provision of K.S.A. 8-1567,  
39 subsection ~~(c)(3) of K.S.A. 21-3412~~ *(b)(3) of K.S.A. 21-3412a* and sub-  
40 sections (b)(2) and (b)(3) of K.S.A. 21-3710, and amendments thereto  
41 shall not be served in a state facility in the custody of the secretary of  
42 corrections.

43 (j) The sentence for any persistent sex offender whose current con-

1 victed crime carries a presumptive term of imprisonment shall be double  
2 the ~~maximum~~ *upper limit* duration of the presumptive imprisonment  
3 term. The sentence for any persistent sex offender whose current con-  
4 viction carries a presumptive nonprison term shall be presumed impris-  
5 onment and shall be double the ~~maximum duration~~ *upper limit* of the  
6 presumptive imprisonment term. Except as otherwise provided in this  
7 subsection, as used in this subsection, “persistent sex offender” means a  
8 person who: (1) Has been convicted in this state of a sexually violent  
9 crime, as defined in K.S.A. 22-3717 and amendments thereto; and (2) at  
10 the time of the conviction under subsection (1) has at least one conviction  
11 for a sexually violent crime, as defined in K.S.A. 22-3717 and amendments  
12 thereto in this state or comparable felony under the laws of another state,  
13 the federal government or a foreign government. The provisions of this  
14 subsection shall not apply to any person whose current convicted crime  
15 is a severity level 1 or 2 felony.

16 (k) If it is shown at sentencing that the offender committed any felony  
17 violation for the benefit of, at the direction of, or in association with any  
18 criminal street gang, with the specific intent to promote, further or assist  
19 in any criminal conduct by gang members, the offender’s sentence shall  
20 be presumed imprisonment. 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. As used in this subsection,  
23 “criminal street gang” means any organization, association or group of  
24 three or more persons, whether formal or informal, having as one of its  
25 primary activities the commission of one or more person felonies or felony  
26 violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*,  
27 and amendments thereto, which has a common name or common iden-  
28 tifying sign or symbol, whose members, individually or collectively engage  
29 in or have engaged in the commission, attempted commission, conspiracy  
30 to commit or solicitation of two or more person felonies or felony viola-  
31 tions of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and  
32 amendments thereto, or any substantially similar offense from another  
33 jurisdiction.

34 (l) The sentence for a violation of subsection (a) of K.S.A. 21-3715  
35 and amendments thereto when such person being sentenced has a prior  
36 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-  
37 3716 and amendments thereto shall be presumed imprisonment.

38 Sec. 2. K.S.A. 2001 Supp. 21-4705 is hereby amended to read as  
39 follows: 21-4705. (a) For the purpose of sentencing, the following sen-  
40 tencing guidelines grid for drug crimes shall be applied in felony cases  
41 under the uniform controlled substances act for crimes committed on or  
42 after July 1, 1993:  
43

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43

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 center  
8 of the range in the usual case and reserve the upper and lower limits for  
9 aggravating and mitigating factors insufficient to warrant a departure. The  
10 sentencing court shall not distinguish between the controlled substances  
11 cocaine base (9041L000) and cocaine hydrochloride (9041L005) when  
12 sentencing within the sentencing range of the grid block. *The maximum*  
13 *presumptive imprisonment term that may be imposed is double the upper*  
14 *limit in each individual grid block based on aggravating factors.*

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

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

24 (d) Each grid block states the *minimum* presumptive sentencing  
25 range for an offender whose crime of conviction and criminal history place  
26 such offender in that grid block. If an offense is classified in a grid block  
27 below the dispositional line, the presumptive disposition shall be non-  
28 imprisonment. If an offense is classified in a grid block above the dispo-  
29 sitional line, the presumptive disposition shall be imprisonment. If an of-  
30 fense is classified in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or 4-F, the  
31 court may impose an optional nonprison sentence upon making the fol-  
32 lowing findings on the record:

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

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

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

41 Any decision made by the court regarding the imposition of an optional  
42 nonprison sentence if the offense is classified in grid blocks 3-E, 3-F, 3-  
43 G, 3-H, 3-I, 4-E or 4-F shall not be considered a departure and shall not

1 be subject to appeal.

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

13 Sec. 3. K.S.A. 21-4719 is hereby amended to read as follows: 21-  
14 4719. (a) When a departure sentence is appropriate, the sentencing judge  
15 may depart from the sentencing guidelines as provided in this section.

16 (b) When a sentencing judge departs in setting the duration of a pre-  
17 sumptive term of imprisonment: (1) The judge shall consider and apply  
18 the enacted purposes and principles of sentencing guidelines to impose  
19 a sentence which is proportionate to the severity of the crime of convic-  
20 tion and the offender's criminal history; and

21 (2) the presumptive term of imprisonment set in such departure shall  
22 not total more than double the ~~maximum~~ *upper limit* duration of the  
23 presumptive imprisonment term.

24 (c) When a sentencing judge imposes a prison term as a dispositional  
25 departure: (1) The judge shall consider and apply the enacted purposes  
26 and principles of sentencing guidelines to impose a sentence which is  
27 proportionate to the severity of the crime of conviction; and

28 (2) the term of imprisonment shall not exceed the ~~maximum~~ *upper*  
29 *limit* duration of the presumptive imprisonment term listed within the  
30 sentencing grid. Any sentence inconsistent with the provisions of this  
31 section shall constitute an additional departure and shall require substan-  
32 tial and compelling reasons independent of the reasons given for the  
33 dispositional departure.

34 (d) If the sentencing judge imposes a nonprison sentence as a dis-  
35 positional departure from the guidelines, the recommended duration  
36 shall be as provided in subsection (c) of K.S.A. 21-4611 and amendments  
37 thereto.

38 Sec. 4. K.S.A. 2001 Supp. 21-4720 is hereby amended to read as  
39 follows: 21-4720. (a) The provisions of subsections (a), (b), (c), (d), (e)  
40 and (h) of K.S.A. 21-4608 and amendments thereto regarding multiple  
41 sentences shall apply to the sentencing of offenders for crimes committed  
42 on or after July 1, 1993, pursuant to the sentencing guidelines system as  
43 provided in this act. The mandatory consecutive requirements contained



1 in subsections (c), (d) and (e) shall not apply if such application would  
2 result in a manifest injustice.

3 (b) The sentencing judge shall otherwise have discretion to impose  
4 concurrent or consecutive sentences in multiple conviction cases. The  
5 sentencing judge shall state on the record if the sentence is to be served  
6 concurrently or consecutively. In cases where consecutive sentences may  
7 be imposed by the sentencing judge, the following shall apply:

8 (1) When the sentencing judge imposes multiple sentences consec-  
9 utively, the consecutive sentences shall consist of an imprisonment term  
10 which is the sum of the consecutive imprisonment terms, and a super-  
11 vision term. The postrelease supervision term will be based on the longest  
12 supervision term imposed for any of the crimes.

13 (2) The sentencing judge must establish a base sentence for the pri-  
14 mary crime. The primary crime is the crime with the highest crime se-  
15 verity ranking. An off-grid crime shall not be used as the primary crime  
16 in determining the base sentence when imposing multiple sentences. If  
17 sentences for off-grid and on-grid convictions are ordered to run consec-  
18 utively, the offender shall not begin to serve the on-grid sentence until  
19 paroled from the off-grid sentence, and the postrelease supervision term  
20 will be based on the off-grid crime. If more than one crime of conviction  
21 is classified in the same crime category, the sentencing judge must des-  
22 ignate which crime will serve as the primary crime. In the instance of  
23 sentencing with both the drug grid and the nondrug grid and simulta-  
24 neously having a presumption of imprisonment and probation, the sen-  
25 tencing judge will use the crime which presumes imprisonment as the  
26 primary crime. In the instance of sentencing with both the drug grid and  
27 the nondrug grid and simultaneously having a presumption of either both  
28 probation or both imprisonment, the sentencing judge will use the crime  
29 with the longest sentence term within the grid block range as the primary  
30 crime.

31 (3) The base sentence is set using the total criminal history score  
32 assigned.

33 (4) The total prison sentence imposed in a case involving multiple  
34 convictions arising from multiple counts within an information, complaint  
35 or indictment cannot exceed twice the base sentence. This limit shall  
36 apply only to the total sentence, and it shall not be necessary to reduce  
37 the duration of any of the nonbase sentences imposed to be served con-  
38 secutively to the base sentence. The postrelease supervision term will  
39 reflect only the longest such term assigned to any of the crimes for which  
40 consecutive sentences are imposed. Supervision periods will not be  
41 aggregated.

42 (5) Nonbase sentences will not have criminal history scores applied,  
43 as calculated in the criminal history I column of the grid, but base sen-

1 tences will have the full criminal history score assigned. In the event a  
2 conviction designated as the primary crime in a multiple conviction case  
3 is reversed on appeal, the appellate court shall remand the multiple con-  
4 viction case for resentencing. Upon resentencing, if the case remains a  
5 multiple conviction case the court shall follow all of the provisions of this  
6 section concerning the sentencing of multiple conviction cases.

7 (6) If the sentence for the primary crime is a prison term, the entire  
8 imprisonment term of the consecutive sentences will be served in prison.

9 (7) If the sentence for the consecutive sentences is a prison term, the  
10 postrelease supervision term is a term of postrelease supervision as es-  
11 tablished for the primary crime.

12 (8) If the sentence for the primary crime is a nonprison sentence, a  
13 nonprison term will be imposed for each crime conviction, but the non-  
14 prison terms shall not be aggregated or served consecutively even though  
15 the underlying prison sentences have been ordered to be served consec-  
16 utively. Upon revocation of the nonprison sentence, the offender shall  
17 serve the prison sentences consecutively as provided in this section.

18 (c) The following shall apply for a departure from the presumptive  
19 sentence based on aggravating factors within the context of consecutive  
20 sentences:

21 (1) The court may depart from the presumptive limits for consecutive  
22 sentences only if the judge finds substantial and compelling reasons to  
23 impose a departure sentence for any of the individual crimes being sen-  
24 tenced consecutively.

25 (2) When a departure sentence is imposed for any of the individual  
26 crimes sentenced consecutively, the imprisonment term of that departure  
27 sentence shall not exceed twice the ~~maximum~~ *upper limit* presumptive  
28 imprisonment term that may be imposed for that crime.

29 (3) The total imprisonment term of the consecutive sentences, in-  
30 cluding the imprisonment term for the departure crime, shall not exceed  
31 twice the ~~maximum~~ *upper limit* presumptive imprisonment term of the  
32 departure sentence following aggravation.

33 Sec. 5. K.S.A. 21-4719 and K.S.A. 2001 Supp. 21-4704, 21-4704a, 21-  
34 4705 and 21-4720 are hereby repealed.

35 Sec. 6. This act shall take effect and be in force from and after its  
36 publication in the Kansas register.

37  
38  
39  
40  
41  
42  
43