

3
4 **SENATE BILL No. 487**

5
6 By Committee on Judiciary

7
8 2-1

9
10 AN ACT concerning crimes, criminal procedure and punishment; relat-
11 ing to burglary; sentencing; amending K.S.A. 2001 Supp. 21-4704 and
12 repealing the existing section; also repealing K.S.A. 2001 Supp. 21-
13 4704a.

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

16 Section 1. K.S.A. 2001 Supp. 21-4704 is hereby amended to read as
17 follows: 21-4704. (a) For purposes of sentencing, the following sentencing
18 guidelines grid for nondrug crimes shall be applied in felony cases for
19 crimes committed on or after July 1, 1993:
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
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 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 amendments*
6 *thereto*, aggravated assault against a law enforcement officer or K.S.A. 21-
7 3415, *and amendments thereto*, aggravated battery against a law enforce-
8 ment officer ~~and amendments thereto~~, which places the defendant's sen-
9 tence in grid block 6-H or 6-I shall be presumed imprisonment. The court
10 may impose an optional nonprison sentence upon making a finding on
11 the record that the nonprison sanction will serve community safety in-
12 terests by promoting offender reformation. Any decision made by the
13 court regarding the imposition of the optional nonprison sentence, if the
14 offense is classified in grid block 6-H or 6-I, shall not be considered
15 departure and shall not be subject to appeal.

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

23 (i) The sentence for the violation of the felony provision of K.S.A. 8-
24 1567 and, subsection ~~(c)(3) of K.S.A. 21-3412~~ *(b)(3) of K.S.A. 2001 Supp.*
25 *21-3412a*, and amendments thereto shall be as provided by the specific
26 mandatory sentencing requirements of that section and shall not be sub-
27 ject to the provisions of this section or K.S.A. 21-4707 and amendments
28 thereto. If because of the offender's criminal history classification the
29 offender is subject to presumptive imprisonment or if the judge departs
30 from a presumptive probation sentence and the offender is subject to
31 imprisonment, the provisions of this section and K.S.A. 21-4707, and
32 amendments thereto, shall apply and the offender shall not be subject to
33 the mandatory sentence as provided in K.S.A. 21-3710, and amendments
34 thereto. Notwithstanding the provisions of any other section, the term of
35 imprisonment imposed for the violation of the felony provision of K.S.A.
36 8-1567, subsection ~~(c)(3) of K.S.A. 21-3412~~ *(b)(3) of K.S.A. 2001 Supp.*
37 *21-3412a* and subsections (b)(2) and (b)(3) of K.S.A. 21-3710, and amend-
38 ments thereto shall not be served in a state facility in the custody of the
39 secretary of corrections.

40 (j) The sentence for any persistent sex offender whose current con-
41 victed crime carries a presumptive term of imprisonment shall be double
42 the maximum duration of the presumptive imprisonment term. The sen-
43 tence for any persistent sex offender whose current conviction carries a

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

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

30 (l) The sentence for a violation of subsection (a) of K.S.A. 21-3715
31 and amendments thereto when such person being sentenced has a prior
32 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-
33 3716 and amendments thereto [***or any comparable out of state con-***
34 ***viction or juvenile adjudication***] shall be presumed imprisonment. *The*
35 *sentence for a violation of subsection (b) or (c) of K.S.A. 21-3715 and*
36 *amendments thereto when such person being sentenced has three prior*
37 *convictions for a violation of K.S.A. 21-3715 or 21-3716 and amendments*
38 *thereto [***or any comparable out of state conviction or juvenile ad-****
39 ***judication****] shall be presumed imprisonment. [***The facts required to****
40 ***establish the out of state conviction as comparable must be estab-***
41 ***lished by the state by a preponderance of the evidence.****]*

42 Sec. 2. K.S.A. 2001 Supp. 21-4704 and 21-4704a are hereby
43 repealed.

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