

SENATE BILL No. 189

By Committee on Judiciary

2-10

AN ACT concerning crimes, criminal procedure and punishment; relating to possession of controlled substances; sentencing; expansion or construction of minimum security facilities; amending K.S.A. 2002 Supp. 21-4705 and repealing the existing section.

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

Section 1. K.S.A. 2002 Supp. 21-4705 is hereby amended to read as follows: 21-4705. (a) For the purpose of sentencing, the following sentencing guidelines grid for drug crimes shall be applied in felony cases under the uniform controlled substances act for crimes committed on or after July 1, 1993:

SENTENCING RANGE - DRUG OFFENSES

Category y	A	B	C	D	E	F	G	H	I
Severity Level 9	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 31 28	36 24 23	23 22 20	19 18 17	15 15 14
IV	42 40 37	36 34 32	32 30 28	26 24 23	23 20 18	18 17 16	16 15 14	14 13 12	11 11 10

LEGEND
Presumptive Probation
Presumptive Imprisonment

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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.

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

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

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

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

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

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

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

43 (e) The sentence for a second or subsequent conviction of K.S.A. 65-

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

11 *(f) The sentence for a violation of K.S.A. 65-4160 or 65-4162, and*
12 *amendments thereto, when the offender is sentenced to prison, shall be*
13 *served at a correctional facility that houses inmates having a minimum*
14 *custody or security classification. There shall be a presumption of a min-*
15 *imum custody or security classification, except that if the secretary of*
16 *corrections determines that such classification is not in the best interests*
17 *of the inmate, the public or the department of corrections, the secretary*
18 *shall otherwise classify such inmate and such inmate shall serve their term*
19 *of imprisonment in a correctional facility as determined by the secretary.*
20 *Such determination of custody or security classification by the secretary*
21 *is not subject to judicial review.*

22 New Sec. 2. Subject to the provisions of appropriation acts and the
23 availability of appropriations therefor, the department of corrections is
24 hereby authorized to initiate and complete capital improvements for the
25 expansion or construction of additional housing for inmates having a min-
26 imum custody or security classification. In making such expenditures the
27 secretary shall give priority to such expansion or construction at correc-
28 tional facilities that already house inmates having a minimum custody or
29 security classification.

30 Sec. 3. K.S.A. 2002 Supp. 21-4705 is hereby repealed.

31 Sec. 4. This act shall take effect and be in force from and after its
32 publication in the statute book.

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