

HOUSE BILL No. 2841

By Representative Ward

2-11

9 AN ACT concerning crimes, punishment and criminal procedure; relat-
10 ing to the maximum statutory prison sentence; amending K.S.A. 21-
11 4719 and K.S.A. 2003 Supp. 21-4704, 21-4705 and 21-4720 and re-
12 pealing the existing sections.
13

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

15 Section 1. K.S.A. 2003 Supp. 21-4704 is hereby amended to read as
16 follows: 21-4704. (a) For purposes of sentencing, the following sentencing
17 guidelines grid for nondrug crimes shall be applied in felony cases for
18 crimes committed on or after July 1, 1993:
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
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

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	139 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 66	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	39 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	25 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	16 15 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	7 6 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 *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 amend-
9 ments thereto, aggravated assault against a law enforcement officer or
10 K.S.A. 21-3415, and amendments thereto, aggravated battery against a
11 law enforcement officer and amendments thereto which places the de-
12 fendant's sentence in grid block 6-H or 6-I shall be presumed impris-
13 onment. The court may impose an optional nonprison sentence upon
14 making a finding on the record that the nonprison sanction will serve
15 community safety interests by promoting offender reformation. Any de-
16 cision made by the court regarding the imposition of the optional non-
17 prison sentence, if the offense is classified in grid block 6-H or 6-I, shall
18 not be considered 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 (b)(3) of K.S.A. 21-3412a, and subsections (b)(3)
28 and (b)(4) of K.S.A. 21-3710, and amendments thereto, shall be as pro-
29 vided by the specific mandatory sentencing requirements of that section
30 and shall not be subject to the provisions of this section or K.S.A. 21-4707
31 and amendments thereto. If because of the offender's criminal history
32 classification the offender is subject to presumptive imprisonment or if
33 the judge departs from a presumptive probation sentence and the of-
34 fender is subject to imprisonment, the provisions of this section and
35 K.S.A. 21-4707, and amendments thereto, shall apply and the offender
36 shall not be subject to the mandatory sentence as provided in K.S.A. 21-
37 3710, and amendments thereto. Notwithstanding the provisions of any
38 other section, the term of imprisonment imposed for the violation of the
39 felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a
40 and subsections (b)(3) and (b)(4) of K.S.A. 21-3710, and amendments
41 thereto shall not be served in a state facility in the custody of the secretary
42 of 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~~ *upper limit* duration 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. 2003 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

SENTENCING RANGE - DRUG 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 Felonies	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felonies	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	34 30 28	36 24 23	24 22 20	19 16 17	16 15 14
IV	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
Other Box
Presumptive Imprisonment

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 or 3-I, the court may
31 impose an optional nonprison sentence upon making the following find-
32 ings 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 or 3-I shall not be considered a departure and shall not be subject

1 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~~ *upper limit* duration 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 (f) The sentence for a third or subsequent felony conviction of K.S.A.
14 65-4160 or 65-4162, and amendments thereto, shall be a presumptive
15 term of imprisonment and the defendant shall be sentenced to prison as
16 provided by this section, if the defendant has previously completed a
17 certified drug abuse treatment program, as provided in K.S.A. 2003 Supp.
18 75-52,144, and amendments thereto, or has been discharged or refused
19 to participate in a certified drug abuse treatment program, as provided
20 in K.S.A. 2003 Supp. 75-52,144, and amendments thereto. Such sentence
21 shall not be considered a departure and shall not be subject to appeal.

22 Sec. 3. K.S.A. 21-4719 is hereby amended to read as follows: 21-
23 4719. (a) When a departure sentence is appropriate, the sentencing judge
24 may depart from the sentencing guidelines as provided in this section.

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

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

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

37 (2) the term of imprisonment shall not exceed the ~~maximum~~ *upper*
38 *limit* duration of the presumptive imprisonment term listed within the
39 sentencing grid. Any sentence inconsistent with the provisions of this
40 section shall constitute an additional departure and shall require substan-
41 tial and compelling reasons independent of the reasons given for the
42 dispositional departure.

43 (d) If the sentencing judge imposes a nonprison sentence as a dis-

1 positional departure from the guidelines, the recommended duration
2 shall be as provided in subsection (c) of K.S.A. 21-4611 and amendments
3 thereto.

4 Sec. 4. K.S.A. 2003 Supp. 21-4720 is hereby amended to read as
5 follows: 21-4720. (a) The provisions of subsections (a), (b), (c), (d), (e)
6 and (h) of K.S.A. 21-4608 and amendments thereto regarding multiple
7 sentences shall apply to the sentencing of offenders for crimes committed
8 on or after July 1, 1993, pursuant to the sentencing guidelines system as
9 provided in this act. The mandatory consecutive requirements contained
10 in subsections (c), (d) and (e) shall not apply if such application would
11 result in a manifest injustice.

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

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

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

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

42 (4) The total prison sentence imposed in a case involving multiple
43 convictions arising from multiple counts within an information, complaint

1 or indictment cannot exceed twice the base sentence. This limit shall
2 apply only to the total sentence, and it shall not be necessary to reduce
3 the duration of any of the nonbase sentences imposed to be served con-
4 secutively to the base sentence. The postrelease supervision term will
5 reflect only the longest such term assigned to any of the crimes for which
6 consecutive sentences are imposed. Supervision periods will not be
7 aggregated.

8 (5) Nonbase sentences will not have criminal history scores applied,
9 as calculated in the criminal history I column of the grid, but base sen-
10 tences will have the full criminal history score assigned. In the event a
11 conviction designated as the primary crime in a multiple conviction case
12 is reversed on appeal, the appellate court shall remand the multiple con-
13 viction case for resentencing. Upon resentencing, if the case remains a
14 multiple conviction case the court shall follow all of the provisions of this
15 section concerning the sentencing of multiple conviction cases.

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

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

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

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

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

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

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

42 Sec. 5. K.S.A. 21-4719 and K.S.A. 2003 Supp. 21-4704, 21-4705 and
43 21-4720 are hereby repealed.

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