

HOUSE BILL No. 2043

By Committee on Transportation

1-10

9 AN ACT regulating traffic; concerning certain right-of-way violations;
10 providing increased penalties; amending K.S.A. 2006 Supp. 8-255 and
11 21-4704 and repealing the existing sections.
12

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

14 New Section 1. (a) Any person who is convicted of violating K.S.A.
15 8-1526, 8-1527, 8-1528, 8-1529 or 8-1531, and amendments thereto, and
16 as a result of such violation, such person was involved in a vehicle accident
17 or collision resulting in property damage in excess of \$1,000, upon con-
18 viction such person shall be guilty of a nonperson felony and shall be
19 fined \$200 and such person's driving privileges shall be suspended for 60
20 days.

21 (b) Any person who is convicted of violating K.S.A. 8-1526, 8-1527,
22 8-1528, 8-1529 or 8-1531, and amendments thereto, and as a result of
23 such violation, such person was involved in a vehicle accident or collision
24 resulting in injury to any person, upon conviction such person shall be
25 guilty of a person felony and shall be fined \$500 and such person's driving
26 privileges shall be suspended for 90 days.

27 (c) Any person who is convicted of violating K.S.A. 8-1526, 8-1527,
28 8-1528, 8-1529 or 8-1531, and amendments thereto, and as a result of
29 such violation, such person was involved in a vehicle accident or collision
30 resulting in the death of any person, upon conviction such person shall
31 be guilty of a person felony and shall be sentenced to not less than six
32 months imprisonment and fined \$1,000. Such person's driving privileges
33 shall be suspended for three years.

34 (d) Upon a second or subsequent conviction of a violation of subsec-
35 tion (a), a person shall be guilty of a nonperson felony and shall be fined
36 \$1,000 and such person's driving privileges shall be suspended for 180
37 days.

38 (e) Upon a second or subsequent conviction of a violation of subsec-
39 tion (b), a person shall be guilty of a person felony and shall be sentenced
40 to not less than 90 days imprisonment and fined \$2,000. Such person's
41 driving privileges shall be suspended for one year.

42 (f) Upon a second or subsequent conviction of a violation of subsec-
43 tion (c), a person shall be guilty of a person felony and shall be sentenced

1 to not less than one year imprisonment and fined not less than \$5,000.
2 Such person's driving privileges shall be suspended for three years.

3 (g) For the purpose of this section, "conviction" means a final con-
4 viction without regard whether sentence was suspended or probation
5 granted after such conviction. Forfeiture of bail, bond or collateral de-
6 posited to secure a defendant's appearance in court, which forfeiture has
7 not been vacated, shall be equivalent to a conviction.

8 Sec. 2. K.S.A. 2006 Supp. 8-255 is hereby amended to read as fol-
9 lows: 8-255. (a) The division is authorized to restrict, suspend or revoke
10 a person's driving privileges upon a showing by its records or other suf-
11 ficient evidence the person:

12 (1) Has been convicted with such frequency of serious offenses
13 against traffic regulations governing the movement of vehicles as to in-
14 dicate a disrespect for traffic laws and a disregard for the safety of other
15 persons on the highways;

16 (2) has been convicted of three or more moving traffic violations com-
17 mitted on separate occasions within a 12-month period;

18 (3) is incompetent to drive a motor vehicle;

19 (4) has been convicted of a moving traffic violation, committed at a
20 time when the person's driving privileges were restricted, suspended or
21 revoked; or

22 (5) is a member of the armed forces of the United States stationed
23 at a military installation located in the state of Kansas, and the authorities
24 of the military establishment certify that such person's on-base driving
25 privileges have been suspended, by action of the proper military author-
26 ities, for violating the rules and regulations of the military installation
27 governing the movement of vehicular traffic or for any other reason re-
28 lating to the person's inability to exercise ordinary and reasonable control
29 in the operation of a motor vehicle.

30 (b) The division shall suspend a person's driving privileges when re-
31 quired by K.S.A. 8-262, 8-1014, 41-727 or K.S.A. 2006 Supp. 21-3765,
32 and amendments thereto, *and section 1, and amendments thereto*, and
33 shall disqualify a person's privilege to drive commercial motor vehicles
34 when required by K.S.A. 8-2,142, and amendments thereto. The division
35 shall restrict a person's driving privileges when required by K.S.A. 2006
36 Supp. 39-7,155, and amendments thereto.

37 (c) When the action by the division restricting, suspending, revoking
38 or disqualifying a person's driving privileges is based upon a report of a
39 conviction or convictions from a convicting court, the person may not
40 request a hearing but, within 30 days after notice of restriction, suspen-
41 sion, revocation or disqualification is mailed, may submit a written request
42 for administrative review and provide evidence to the division to show
43 the person whose driving privileges have been restricted, suspended, re-

1 voked or disqualified by the division was not convicted of the offense
2 upon which the restriction, suspension, revocation or disqualification is
3 based. Within 30 days of its receipt of the request for administrative
4 review, the division shall notify the person whether the restriction, sus-
5 pension, revocation or disqualification has been affirmed or set aside. The
6 request for administrative review shall not stay any action taken by the
7 division.

8 (d) Upon restricting, suspending, revoking or disqualifying the driv-
9 ing privileges of any person as authorized by this act, the division shall
10 immediately notify the person in writing. Except as provided by K.S.A.
11 8-1002 and 8-2,145, and amendments thereto, and subsections (c) and
12 (g), if the person makes a written request for hearing within 30 days after
13 such notice of restriction, suspension or revocation is mailed, the division
14 shall afford the person an opportunity for a hearing as early as practical
15 not sooner than five days nor more than 30 days after such request is
16 mailed. If the division has not revoked or suspended the person's driving
17 privileges or vehicle registration prior to the hearing, the hearing may be
18 held within not to exceed 45 days. Except as provided by K.S.A. 8-1002
19 and 8-2,145, and amendments thereto, the hearing shall be held in the
20 person's county of residence or a county adjacent thereto, unless the
21 division and the person agree that the hearing may be held in some other
22 county. Upon the hearing, the director or the director's duly authorized
23 agent may administer oaths and may issue subpoenas for the attendance
24 of witnesses and the production of relevant books and papers and may
25 require an examination or reexamination of the person. When the action
26 proposed or taken by the division is authorized but not required, the
27 division, upon the hearing, shall either rescind or affirm its order of re-
28 striction, suspension or revocation or, good cause appearing therefor, ex-
29 tend the restriction or suspension of the person's driving privileges, mod-
30 ify the terms of the restriction or suspension or revoke the person's driving
31 privileges. When the action proposed or taken by the division is required,
32 the division, upon the hearing, shall either affirm its order of restriction,
33 suspension, revocation or disqualification, or, good cause appearing there-
34 for, dismiss the administrative action. If the person fails to request a
35 hearing within the time prescribed or if, after a hearing, the order of
36 restriction, suspension, revocation or disqualification is upheld, the per-
37 son shall surrender to the division, upon proper demand, any driver's
38 license in the person's possession.

39 (e) In case of failure on the part of any person to comply with any
40 subpoena issued in behalf of the division or the refusal of any witness to
41 testify to any matters regarding which the witness may be lawfully inter-
42 rogated, the district court of any county, on application of the division,
43 may compel obedience by proceedings for contempt, as in the case of

1 disobedience of the requirements of a subpoena issued from the court or
2 a refusal to testify in the court. Each witness who appears before the
3 director or the director's duly authorized agent by order or subpoena,
4 other than an officer or employee of the state or of a political subdivision
5 of the state, shall receive for the witness' attendance the fees and mileage
6 provided for witnesses in civil cases in courts of record, which shall be
7 audited and paid upon the presentation of proper vouchers sworn to by
8 the witness.

9 (f) The division, in the interest of traffic and safety, may establish
10 driver improvement clinics throughout the state and, upon reviewing the
11 driving record of a person whose driving privileges are subject to suspen-
12 sion under subsection (a)(2), may permit the person to retain such per-
13 son's driving privileges by attending a driver improvement clinic. A person
14 who is required to attend a driver improvement clinic shall pay a fee of
15 \$15. Amounts received under this subsection shall be remitted to the state
16 treasurer in accordance with the provisions of K.S.A. 75-4215, and
17 amendments thereto. Upon receipt of each such remittance, the state
18 treasurer shall deposit the same in the state treasury to the credit of the
19 division of vehicles operating fund.

20 (g) When the action by the division restricting a person's driving priv-
21 ileges is based upon certification by the secretary of social and rehabili-
22 tation services pursuant to K.S.A. 2006 Supp. 39-7,155, and amendments
23 thereto, the person may not request a hearing but, within 30 days after
24 notice of suspension is mailed, may submit a written request for admin-
25 istrative review and provide evidence to the division to show the person
26 whose driving privileges have been restricted by the division is not the
27 person certified by the secretary of social and rehabilitation services, did
28 not receive timely notice of the proposed restriction from the secretary
29 of social and rehabilitation services or has been decertified by the sec-
30 retary of social and rehabilitation services. Within 30 days of its receipt
31 of the request for administrative review, the division shall notify the per-
32 son whether the restriction has been affirmed or set aside. The request
33 for administrative review shall not stay any action taken by the division.

34 Sec. 3. K.S.A. 2006 Supp. 21-4704 is hereby amended to read as
35 follows: 21-4704. (a) For purposes of sentencing, the following sentencing
36 guidelines grid for nondrug crimes shall be applied in felony cases for
37 crimes committed on or after July 1, 1993:
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	618 586	285 272	267 253	246 234	226 214	203 195	186 176	165 155
II	493 467	460 438	216 205	200 190	184 174	168 160	154 146	138 131	123 117
III	247 233	228 216	107 102	100 94	92 88	83 79	77 74	71 66	61 59
IV	172 162	162 154	75 71	69 66	64 60	59 56	52 50	48 45	43 41
V	136 130	128 120	60 57	55 52	51 49	47 44	43 41	38 36	35 34
VI	46 43	41 39	38 36	36 34	32 30	29 27	26 24	21 20	19 18
VII	34 32	31 29	29 27	26 24	23 21	19 18	17 16	14 13	13 12
VIII	23 21	20 19	19 18	17 16	15 14	13 12	11 10	11 10	9 8
IX	17 16	15 14	13 12	13 12	11 10	10 9	9 8	8 7	7 6
X	13 12	12 11	11 10	10 9	9 8	8 7	7 6	6 5	5 4

LEGEND
Presumptive Probation
Bar/Box
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. 21-3411, and amend-
6 ments thereto, aggravated assault against a law enforcement officer or
7 K.S.A. 21-3415, and amendments thereto, aggravated battery against a
8 law enforcement officer and amendments thereto which places the de-
9 fendant'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 de-
13 cision 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, *and section 1, and amendments thereto*, shall be as provided by
27 the specific mandatory sentencing requirements of that section and shall
28 not be subject to the provisions of this section or K.S.A. 21-4707 and
29 amendments thereto. If because of the offender's criminal history clas-
30 sification the offender is subject to presumptive imprisonment or if the
31 judge departs from a presumptive probation sentence and the offender
32 is subject to imprisonment, the provisions of this section and K.S.A. 21-
33 4707, and amendments thereto, shall apply and the offender shall not be
34 subject to the mandatory sentence as provided in K.S.A. 21-3710, and
35 amendments thereto. Notwithstanding the provisions of any other sec-
36 tion, the term of imprisonment imposed for the violation of the felony
37 provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a, subsec-
38 tions (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-
39 4318, and amendments thereto, *and section 1, and amendments thereto*,
40 shall not be served in a state facility in the custody of the secretary of
41 corrections.

42 (j) (1) The sentence for any persistent sex offender whose current
43 convicted crime carries a presumptive term of imprisonment shall be

1 double the maximum duration of the presumptive imprisonment term.
2 The sentence for any persistent sex offender whose current conviction
3 carries a presumptive nonprison term shall be presumed imprisonment
4 and shall be double the maximum duration of the presumptive impris-
5 onment term.

6 (2) Except as otherwise provided in this subsection, as used in this
7 subsection, “persistent sex offender” means a person who: (A) (i) Has
8 been convicted in this state of a sexually violent crime, as defined in K.S.A.
9 22-3717 and amendments thereto; and (ii) at the time of the conviction
10 under paragraph (A) (i) has at least one conviction for a sexually violent
11 crime, as defined in K.S.A. 22-3717 and amendments thereto in this state
12 or comparable felony under the laws of another state, the federal gov-
13 ernment or a foreign government; or (B) (i) has been convicted of rape,
14 K.S.A. 21-3502, and amendments thereto; and (ii) at the time of the
15 conviction under paragraph (B) (i) has at least one conviction for rape in
16 this state or comparable felony under the laws of another state, the federal
17 government or a foreign government.

18 (3) Except as provided in paragraph (2)(B), the provisions of this sub-
19 section shall not apply to any person whose current convicted crime is a
20 severity level 1 or 2 felony.

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

39 (l) The sentence for a violation of subsection (a) of K.S.A. 21-3715
40 and amendments thereto when such person being sentenced has a prior
41 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-
42 3716 and amendments thereto shall be presumed imprisonment.

43 (m) The sentence for a violation of K.S.A 22-4903 or subsection (d)

1 of K.S.A. 21-3812, and amendments thereto, shall be presumptive im-
2 prisonment. If an offense under such sections is classified in grid blocks
3 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison
4 sentence upon making the following findings on the record:

5 (1) An appropriate treatment program exists which is likely to be
6 more effective than the presumptive prison term in reducing the risk of
7 offender recidivism, such program is available and the offender can be
8 admitted to such program within a reasonable period of time; or

9 (2) the nonprison sanction will serve community safety interests by
10 promoting offender reformation.

11 Any decision made by the court regarding the imposition of an optional
12 nonprison sentence pursuant to this section shall not be considered a
13 departure and shall not be subject to appeal.

14 Sec. 4. K.S.A. 2006 Supp. 8-255 and 21-4704 are hereby repealed.

15 Sec. 5. This act shall take effect and be in force from and after its
16 publication in the statute book.